CIVIL REVISION.

Before Mr. Justice Mya Bu, and Mr. Justice Mackney.

DR. A. KARIM AND ANOTHER

v.

PANDIT LAIQ RAM AND OTHERS.*

1938

Dec. 19.

Pauper suit—Inquiry into pauperism after issue of notice—Plaint disclosing cause of action and not barred—Jurisdiction of the Court to inquire—Civil Procedure Code, O. 33, rr. 3 and 4.

A Court after issue of notice and after hearing the case on the question of pauperism under O. 33, r. 4 of the Civil Procedure Code, as amended by the High Court, is not precluded from considering the questions as to whether the plaint discloses a cause of action or whether the suit is barred by limitation under rule 3 (*b*) and (*c*), provided its conclusions are based solely upon the materials in the plaint itself and not upon some extraneous evidence.

Sahney for the applicants.

No appearance for the respondents.

MYA BU and MACKNEY, JJ.—This is an application for revision of an order dismissing the applicants' application for leave to sue *in forma pauperis*. The main grounds on which the order is based are that the proposed plaint did not disclose a cause of action and that the claim was barred by the law of limitation.

The applicant having filed his petition in the manner required by Order 33, rule 2, the Court ordered issue of notice to the respondents and the Government Pleader and fixed a date for hearing of the petition. Hearing took place at which evidence was adduced with reference to the question of pauperism of the applicants. Upon the evidence the learned District Judge held that the applicants were paupers, but he found that the plaint did not disclose a cause of action and that the proposed suit was barred by limitation.

* Civil Revision No. 191 of 1938 from the order of the District Court of Pegu in Civil Misc. No. 11 of 1937.

1938

KARIM
v.
LAIQ RAM.

MYA BU
and
MACKNEY, JJ.

The present application is prosecuted mainly on the ground that the Court not having rejected the application under rule 3, but having issued notice and having heard the case with reference to the question of pauperism under rule 4 acted without jurisdiction in considering the questions as to whether the plaint disclosed a cause of action or whether the suit was barred by limitation.

Rule 3 provides :

" Subject to the jurisdiction of the Court to allow amendments to be made, the Court shall reject the petition in any of the following cases :

(*a*) where the plaint is not in the form prescribed ;

(*b*) where the plaint does not disclose a cause of action within the jurisdiction of the Court ;

(*c*) where the claim appears to be barred by any law ;

(*d*) where the applicant has within two months next before the presentation of the petition disposed of any property fraudulently or in order to be enabled to plead pauperism ;

(*e*) where the applicant has entered into any agreement with any person whereby such person has or will have an interest in the proceeds of the suit."

It has been contended before us that the matters that fell within clauses (*a*), (*b*) and (*c*) cannot properly be investigated by the Court after hearing the case on the question of pauperism under rule 4. Rule 4 as it stands deals with the inquiry into the question of pauperism and pauperism alone, *i.e.*, whether the applicant is a person who is unable to pay the Court fee prescribed by law for the plaint in the suit, or whether he has fraudulently disposed of property or whether he has entered into any agreement as stated in clauses (*d*) and (*e*) of rule 3. But there is nothing to warrant the reading of these rules in such a way as to show that the Court not having rejected the petition on any of the grounds mentioned in rule 3, before the issue of notices

and the holding of the enquiry under rule 4, has no further jurisdiction to consider and determine whether it is liable to be rejected under clause (*a*) or (*b*) or (*c*) of that rule. There is nothing in rule 4 or in any other rule in Order 33 which expressly prohibits the consideration and determination by the Court of these circumstances after issue of notice and hearing of the case under rule 4.

Our attention has been drawn to the fact that in the old rule 7 (in the place of which the present rule 4 has been framed) sub-clause (2) of that rule expressly enjoined the Court to hear any argument which the parties might desire to offer on the question whether on the face of the application and of the evidence if any taken by the Court as therein provided, the applicant was or was not subject to any of the prohibitions specified in rule 5 (in the place of which the present rule 3 has been framed). We do not think that the fact that sub-rule (2) of the old rule 7 is not reproduced in the present rule 4 is sufficient to deprive the Court of the jurisdiction to consider questions under clauses (*a*), (*b*) and (*c*) of the present rule 3 after issue of notice and hearing of evidence under rule 4, because it is inconceivable that just because the Court omitted to pass a particular order at a particular moment it is to be deprived of the power of passing the order at a subsequent stage of the proceeding while it still has seizin of it.

If in this case the Court had allowed itself to be influenced by any evidence which was taken at the enquiry under rule 4 or by anything which has been brought to its notice by the opposite party, which are not to be found either on the face of the proposed plaint or in an admission by the applicant, then the order would be vitiated for material irregularity ; but in this case there is no such material irregularity

1938

KARIM
v.
LAIQ RAM.

MYA BU
and
MACKNEY, JJ.

because the conclusions come to upon the questions whether the plaint disclosed a cause of action and whether the suit was time barred [rule 3 (*b*) and (*c*)] were based upon materials appearing within the four corners of the proposed plaint.

In our opinion, this application fails and it is dismissed.