

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : COURT FEE MATTER

Date of decision : 01st November, 2007.

CM(M) No.1308-09/2006 & CM No.11463/2006

1. Ms. Disha Sethi
 2. Master Sanskar Sethi
- Petitioners

Versus

1. Sh. Chander Mohan Sethi
- Respondent

Advocates who appeared in this case :

For the petitioners : Mr. Sanjay Agarwal, Advocate.

For the respondent : Mr. Sirjan Singh, Advocate.

J.M. MALIK, J. (Oral)

1. Heard counsel for the parties. The learned trial court vide its order dated 15th February, 2006, directed the minors/plaintiffs to deposit the court fee. Aggrieved by this order, the minors have approached this Court.

2. The relations between the husband and wife were strained and thereafter, the minors, Disha Sethi and Sanskar Sethi, filed a suit for maintenance against their father through their next friend, Smt.Rashmi Sethi, their mother. Vide the impugned order Smt. Rashmi Sethi was appointed ad litem guardian for the minors/plaintiffs.

3. Before the trial court it was prayed that the minors/plaintiffs have no source of income and that they are dependant only on their mother and other relatives. A prayer was made that they should be exempted from paying the court fee. Their application was supported by an affidavit of Smt.Rashmi Sethi. The report of SDM was also called and this is an indisputable fact that the SDM reported that the minors are indigent persons. The statement of Smt.Rashmi Devi was also recorded under Order 33 CPC. In her statement, she has stated that the school fee of the minors in the sum of Rs. 4950/- is being paid by her. She also stated that she has got two accounts having balance of Rs.7,000/- and Rs.12,879.40/-. According to her she is drawing a salary of Rs. 12,000/- per month as she is working as Deputy Manager (Accounts).

4. The trial court came to the conclusion that Smt.Rashmi Sethi, the mother of the minors/plaintiffs, is having sufficient means to pay the court fee and therefore, it had ordered the minors/plaintiffs to deposit the court fee.

5. It must be borne in mind that the mother of the plaintiffs is only working as their next friend. It is the property and other income of the plaintiffs which is to be taken into consideration. The mother of the plaintiffs has nothing to do with this case. This view finds support from a case reported in Nemichand Bhickchand Marwadi V. Kevalchand Jasraj Marwadi, 1924 The Bombay Law Reporter Vol. XXVI page 380, wherein it is held, "It has been contended that the real appellant is the maternal uncle, and he would have to show that he was a pauper before the suit could be instituted in forma pauperis. This question was decided in Venkatanarasayya v. Achemma where it was held that the rule of English practice which prevents a minor from instituting a suit in forma pauperis through his next friend, unless he gives proof not only that he himself is a pauper, but that the next friend is a pauper, should not be deduced from the provisions of the Civil Procedure Code, and that it was only necessary to show, when a minor was seeking to file a suit in forma pauperis, that the minor had no means. We see no reason to differ from that decision. We must, therefore, remand the application to the lower Court so that it may be decided definitely whether the minor applicant has sufficient means to pay the Court fees. We note that his application in the lower Court was not resisted by the Government Pleader.

Costs of this application to be costs in the cause.

Rule made absolute."

6. Similar view is taken in another case reported in Ms. Baljit Kaur and another V. The State of Punjab and others, (1993) 105 PLR 388, it was held :-

"I am of the view that the orders of the Authorities below cannot be sustained. The application to sue as indigent persons was filed by the minors through their natural guardian, who in this case is the mother. The application was rejected only on the ground that the mother has sufficient means to pay the court fee. This ground insist not tenable in law as in the application for permission to file the suit as indigent person, the financial condition of the minors alone or the applicants is to be seen. The financial condition of the guardian or any other relative is totally irrelevant and cannot be taken into consideration at all for the purpose of arriving at the conclusion regarding financial condition of the applicants."

7. In a recent case reported in Kapil (minor) V. Dr. Shivmangal Awasthy, AIR 2001 Madhya Pradesh 108, it was held :-

"8. In my opinion, the trial court should have focused his attention to the fact whether appellant (plaintiff) – minor Kapil is possessed of any property in his own name. In order to decide whether the plaintiff is allowed to sue as an indigent person, it is necessary for the court to determine the extent of property whether moveable or immoveable held and possessed of by the plaintiff in his own name. Merely because the plaintiff happens to be a minor would not make any difference. So far as the issue regarding his holding of properties is concerned, the court cannot take into account the properties standing in the name of his father or any near relations. Merely because there are certain properties which are standing in the name of his father would not come in the way of plaintiff to contend that he is an indigent person.

9. I am supported by a Division Bench decision of Calcutta High Court, reported in AIR 1923 Calcutta 656 (Nemibala Dassya v. Jaimni Sundari). The Calcutta High Court speaking through Rankin, J. while accepting the aforesaid proposition made following observations :

“In this case I am of opinion that the rule must be made absolute. It appears that upon the terms of the Civil Procedure Code and the cases thereunder, in the particular case of Venkatanarasaya v. Achemma (1881) ILR 3 Mad. 3(1) a minor who is not possessed of sufficient means within the definition of pauperism for the purpose of Order 33 is entitled to be allowed to sue in forma pauperis by a next friend although the next friend is not a pauper. In like manner the wealth or other circumstances of the minor's relation in general are not material under the Code. The law of India in this respect appears to be very different indeed from the law as prevailed in the court of Chancery in England.

Under the circumstances we have no option but to make this rule absolute to direct the court below to proceed under Order 33. There will be no order as to costs.”

10. Similar was the view taken by the Bombay High Court in yet another case reported in AIR 1924 Bombay 440.”

8. It is, therefore, clear that the minors cannot be directed to pay the court fee under such circumstances. They be treated as indigent persons. However, as per Order 32 Rule 2(A) the court can direct the next friend of the minors to submit a security. In this case, the trial court had directed Smt. Rashmi Sethi, the next friend of the minors, to submit a security in the form of indemnity bond of Rs. 5000/- in favour of the defendant for securing costs, if any, incurred by the defendant. In addition it is hereby directed that the next friend of the minors will furnish a security in the form of indemnity bond of Rs.12,000/- in favour of the trial court towards court fee etc.

9. With this, the petition and application stand disposed of.

10. The Parties are directed to appear before trial court on the date already fixed before it. A copy of this order be given dasti to both counsel for the parties. A copy of this order be also sent to the trial court forthwith.

November 01, 2007

Sd./-
J.M. MALIK, J.