

Before R. S. Narula, C.J.

SIKANDAR KAUR,—Petitioner.

versus

BHAGWANT SINGH,—Respondent.

Civil Revision No. 1050 of 1975

January 9, 1976.

Code of Civil Procedure (V of 1908)—Order XXXIII Rule 5(d)—Application for permission to sue as a pauper—Suit by a wife against her husband for recovery of articles of dowry—Whether discloses a cause of action.

Held, that the dowry is given by the parents of the girl to their daughter and she is expected to be its owner and if anybody deprives her of the same, she is normally entitled to claim it back subject to proof of such other matters as may be in dispute in a particular case. An application of the plaintiff in such a suit for permission to sue in forma pauperis cannot be rejected on the ground that the suit did not disclose a cause of action.

(Para 2)

Petition under section 115 of the Civil Procedure Code for revision of the order of Shri R. D. Singal, Subordinate Judge 1st Class, Samrala, dated May 27, 1975, rejecting the petitioner's application for leave to sue in forma pauperis for recovery of articles worth Rs. 18,000 from the defendant-respondent who was her husband.

S. S. Kang, Advocate, for the Petitioner.

Achhra Singh, Advocate, for the respondent.

JUDGMENT

R. S. Narula, C.J.—(1) This is a petition for revision of the order of the Court of Shri R. D. Singal, Subordinate Judge, 1st Class, Samrala, dated May 27, 1975, rejecting the petitioner's application for leave to sue in *forma pauperis* for recovery of articles worth Rs. 18,000 from the defendant-respondent who was her husband. The learned trial Judge has not found that the petitioner is not a pauper. He has, however, dismissed the application of the present petitioner on the ground that it did not disclose any cause of action against the respondent as no law was shown to the learned Subordinate Judge under which articles given at the time of wedding could be claimed back by the wife. The learned Subordinate Judge has observed in his order under revision that the Articles given on the occasion of marriage are given by way of dowry and there is no law under which the dowry can be claimed back under any circumstances.

(2) It appears that the Subordinate Judge has forgotten that the dowry is given by the parents of the girl to their daughter and she is expected to be its owner and that if anybody deprives her of the same, she is normally entitled to claim it back subject to proof of such other matters as may be in dispute in a particular case. The solitary ground on which the application of the present petitioner was rejected is contrary to law. The order under revision is, therefore reversed. If the trial Court is satisfied that the applicant-petitioner is a pauper, her application shall be allowed. Since no finding on that point has been recorded by the trial Court, it is not proper for me to say anything on the merits of that matter. This revision petition is accordingly allowed, the order of the trial Court is set aside, and the application is sent back to the trial Court for being heard and decided in accordance with law after recording such evidence, if any, as the parties may wish to lead on the question of pauperism. The costs of the proceedings in this Court shall abide the result of the main application. Parties have been directed to appear before the trial Court on February 9, 1976.

N.K.S.

APPELLATE CIVIL

Before M. L. Verma, J.

KEHR CHAND DHIMAN AND ANOTHER,—*Petitioners-Appellants*

versus

SARVSHRI DHARAM CHAND DHIMAN ETC.,—*Respondents.*

First Appeal From The Order No. 113 of 1965

January 12, 1976.

Arbitration Act (X of 1940) — Sections 3, 14, 30, 33 and First Schedule, Rules 2, 4 and 5—Arbitrators appointing an Umpire even before commencement of arbitration proceedings — Umpire — Whether could participate in such proceedings before the arbitrators differed — Award given by the arbitrators in consultation with the Umpire — Whether valid.

Held, that the provisions contained in rules 4 and 5 of the First Schedule of the Arbitration Act, 1940 make it clear that an Umpire is not an Arbitrator *ab initio* and he cannot act as an additional Arbitrator. It is only when the Arbitrators fail to make