

**THE
INDIAN LAW REPORTS**

PUNJAB SERIES

REVISIONAL CIVIL

Before Falshaw, J.

MESSRS ASSOCIATED PICTURES, LTD.,—Defendant-Petitioner.

versus

THE NATIONAL STUDIOS LTD., (IN VOLUNTARY LIQUIDATION),—Plaintiff-Respondent.

1951

June 21st

Civil Revision Case No. 624 of 1950.

Code of Civil Procedure (V of 1908), Order 33, rule 1—Limited company whether a “person” within the meaning of Order 33, rule 1—General Clauses Act (X of 1897)—Section 3, clause 39 (now 42)—Whether intended to be of universal application—Whether a limited company incorporated under the Companies Act can sue in forma pauperis.

Held, that word “person” in Order 33 is used in the sense of an individual person, and does not include a limited company incorporated under the Companies Act. The provisions of section 3, clause 39 (now 42) of the General Clauses Act are not intended to be of universal application in view of the opening words of section 3 of the Act.

Petition under section 44 of Act 9 of 1919 and section 115, Civil Procedure Code, for revision of the order of Shri Des Raj Pahwa, Commercial Sub-Judge, Delhi, dated the 3rd August 1950, ordering that the application be registered as a suit and written statement be filed on the 4th October 1950.

S. L. PURI, for Petitioner.

I. D. DUA, for Respondent.

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JUDGMENT

FALSHAW, J. A company known as the National Cine Studios Limited (in voluntary liquidation) presented a petition through its voluntary liquidator, Mr. Ram Partap Garg, in the Court of the Commercial Subordinate Judge at Delhi under Order XXXIII, rule 1, Civil Procedure Code, for permission to bring a suit in *forma pauperis* for the recovery of Rs 21,000 against the present petitioner, a company known as Associated Pictures Limited of Calcutta. Apart from the question whether the applicant company has sufficient means to pay the requisite court-fee, the question also arose whether a limited company could be regarded as a 'person' within the meaning of Order XXXIII, rule 1, Civil Procedure Code. It does not appear that there has been any decision on this point by the High Court of Lahore or by this Court by which the learned Subordinate Judge could consider himself bound, and there are decisions of other High Courts in support of either side. From the judgment it seems that two decisions in favour of the view that a company is not a "person" within the meaning of Order XXXIII, rule 1, Civil Procedure Code, were cited, whereas four decisions were cited to the contrary. In the circumstances the learned Subordinate Judge followed the view of what he considered to be the majority and held, it having been proved that the company in liquidation had not sufficient assets to pay the requisite court-fee, that the company was entitled to bring the suit in *forma pauperis*. The defendant company has come in revision against this order.

There is no doubt that in clause (39) of section 3 of the General Clauses Act of 1897 it is provided that the word "person" shall include any company or association or body of individuals, whether incorporated or not; but at the same time it is clear that this meaning is not intended to be of universal application wherever the word "person" appears in a statute, since the opening words of section 3 read—

"In this Act, and in all Central Acts and Regulations made after the commencement

of this Act, unless there is anything repugnant in the subject or context....”

From this it is clear that where the word “person” appears in a statute, some regard must be had to the nature of the subject dealt with and to the context in deciding whether the word has the wider meaning mentioned in clause (39) or is restricted to its ordinary sense of an individual person. On a bare perusal of the relevant provisions of Order XXXIII of the Civil Procedure Code, I do not think there is any doubt that the word “person” is used in this Order, in the sense of an individual person. Rule 1 reads—

“1. Subject to the following provisions, any suit may be instituted by a pauper.

Explanation. A person is a “pauper” when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit, or, where no such fee is prescribed, when he is not entitled to property worth one hundred rupees other than his necessary wearing-apparel and the subject-matter of the suit.”

The later part of the explanation could not be applied to a company by any stretch of imagination and I can hardly believe that any part of explanation could be intended to be inapplicable to any ‘person’ referred to in the rule. Rule 2 merely prescribes that every application to sue as a pauper shall contain the particulars required in regard to a plaint in a suit and shall be verified in the same manner as a plaint. Rule 3, however, is more relevant to the present question as it reads :—

“3. Notwithstanding anything contained in these rules, the application shall be presented to the Court by the applicant in person, unless he is exempted from appearing in Court, in which case the application may be presented by an authorized agent who can answer all material questions relating to the application, and who may be examined in the same manner as the

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party represented by him might have been examined had such party attended in person."

It is difficult to interpret the word "person" as used in rule 3 other than its ordinary sense of an individual, and this interpretation is confirmed by the words of rule 4 which read—

"4. (1) Where the application is in proper form and duly presented, the Court may, if it thinks fit, examine the applicant, or his agent when the applicant is allowed to appear by agent, regarding the merits of the claim and the property of the applicant.

(2) Where the application is presented by an agent, the Court may, if it thinks fit, order that the applicant be examined by a commission in the manner in which the examination of an absent witness may be taken."

There is, however, no doubt that this, to my mind, obvious interpretation of the meaning of the word "person" in this Order has not been accepted by a number of learned Judges of various High Courts. In A. I. R. 1918 Mad. 362 Bakewell and Kumarswami Sastri, JJ., held that the word "person" in Order XXXIII has the same meaning as in the General Clauses Act, and that the Explanation to rule 1 simply allows deduction of the value of wearing-apparel where the applicant has such apparel and cannot be construed to mean that only persons who, in law, can possess wearing-apparel, can sue as paupers. The ruling in A. I. R. 1925 Mad. 765 is not so much in point, as the facts were that after a suit had been instituted in *forma pauperis* the plaintiff who had been allowed to sue as a pauper died, and the question was whether his executor was liable to be dispaupered because personally he was not a pauper, and it was held that he was not liable to be dispaupered and made to pay the court-fee. In A. I. R. 1927 Cal. 309

it was held that when a plaintiff sues in a representative character, such as a *mutwalli*, trustee, or a *shebait*, unless it is shown that the plaintiff has in his possession property belonging to the *wakf* estate or trust or the idol for whom he sues, sufficient to enable him to pay the requisite court-fee prescribed by law, he may be allowed to sue as a pauper even if it is shown that he has sufficient personal property of his own. It was also observed that the capacity of a person suing in a representative character must be kept distinct from his personal capacity, and this was really the main question decided, the question whether the idol or trust on behalf of which the suit was being brought was a "person" or not within the meaning of Order XXXIII not being discussed at all. In A. I. R. 1944 Oudh 248 Thomas, C. J., and Misra, J., held that a limited company was a person within the meaning of Order XXXIII, rule 1; and that the word "person" in this Order means a juristic person. Similarly in A. I. R. 1930 Rang. 272 Das and Brown, JJ., held that a firm can be considered to be a "person" under Order XXXIII, rule 1. The authoritativeness of this decision, however, appears to me to be rather undermined by the fact that in the same volume only a few pages away at page 259 there is a decision by Heald, A. C. J., and Otter, J., to the contrary, these learned Judges coming to the conclusion after full discussion of the matter that the "person" in Order XXXIII means a natural person, that is a human being and does not include a juridical person such as a receiver under the Insolvency Act. There is also a carefully considered decision of the Calcutta High Court reported as A. I. R. 1938 Cal. 745 in which Costello and Biswas, JJ., after considering in separate judgments the provisions of Order XXXIII and previous decisions on the point, held that the word "person" in Order XXXIII, rule 1, and also in Order XLIV, rule 1, does not include a limited company incorporated under the Companies Act and such a company can neither sue in *forma pauperis* nor prefer an appeal under Order XLIV, rule 1, in *forma pauperis*. With due respect to the learned Judges who delivered the decisions cited above on behalf of the respondent to

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Messrs Asso- the contrary, I do not think that there is any doubt
 ciated Pictures, that the view taken in the second of the Rangoon
 Ltd. decisions and in the Calcutta decision was correct.
 v. The National The wording of section 3 of the General Clauses Act
 Studios, Ltd. clearly indicates that the definitions and explanations
 — which form the rest of the section are not universally
 Falshaw J. applicable, and that in spite of these definitions and
 explanations the meaning of the words has to be con-
 strued in the light of the subject of the statute and
 the context in which the words are used, and to my
 mind the provisions of Order XXXIII leave no doubt
 that the word "person" in this part of the Civil Pro-
 cedure Code means only an individual person.

I accordingly accept the revision petition with costs and set aside the order of the lower Court permitting the respondent company to sue in *forma pauperis*. The parties have been directed to appear in the lower Court on the 16th of July 1951. I assess the costs at fifty rupees.

APPELLATE CIVIL

Before Kapur, J.

SAWAI SINGH AND OTHERS,—Plaintiffs-Appellants.

versus

UDE SINGH AND OTHERS,—Defendants-Respondents.

Regular Second Appeal No. 540 of 1948.

Custom (Punjab)—Succession—Non-ancestral Property—Sister's sons,—Whether excluded by Seventh degree collaterals in the Ambala District.

Held, that sister's sons are better heirs to non-ancestral property than the collaterals of the seventh degree in the Ambala District particularly when a sister and a sister's son exclude collaterals beyond the fifth degree even with regard to ancestral property.

Second appeal from the decree of Shri M. R. Bhatia, District Judge, Ambala, dated the 9th April 1948, reversing that of Shri Jasmer Singh, Additional Sub-Judge, 1st Class, Rupar, dated the 25th April 1947, and dismissing the plaintiffs' suit and leaving the parties to bear their own costs throughout.

TEK CHAND, for Appellants.

SHAMAIR CHAND, for Respondents.

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