

Order XXXIII CPC ‘Suits By Indigent Persons’

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ABSTRACT:

Order XXXIII of CPC deals with the suits by indigent person. An indigent person is one who does not possess sufficient means to pay court fees and unable to proceed with any suit. Every application for permission to sue as indigent person must contain the report of his moveable and immoveable property, with the estimated value annexed with the application. When the application is in proper form and duly presented, the court, may think fit, examine the applicants or his agents and the application must be duly verified and signed by the applicants. The court has the power to reject or withdraw the application under order 33 even in the middle of the proceedings, if the court finds suitable grounds under Rule 5 & 9. If the application is duly admitted and accepted by the court the suit will be treated as any other normal suit and court may also provide the applicant a lawyer to represent him. If the applicant wins the suit the court will then decide who has to pay the court fees but if the respondent wins the case the court fees is payable by the applicants. If the application under Order XXXIII is rejected by any subordinate court the, the same is appealable.

In landmark judgement by Supreme Court in 2011 'Union Bank of India vrs. Khader International Construction and Ors', it was stated the Order XXXIII may also include any juristic person i.e. any corporate firm etc.

I. WHO CAN FILE AN APPLICATION UNDER THIS PROVISION?

Any application may be filed by natural person or any judicial person who all fall within the ambit and are not barred by law in any manner. In landmark judgement held by Supreme Court 2011 'Union Bank of India vrs. Khader International Construction and Ors'¹, juristic person can also avail the application under Order 33 of Civil Procedure Code². Order 33 enacts to help the proper people who do not possess sufficient means (other than the property exempted in Section 60) to pay the prescribed court fees by law in the suit filed by him. It cannot be the purpose of this legislation that the indigent person should first deprive himself of the sole means of livelihood or alienate all his assets and seek justice in penury. If the particular suit is pending and the applicant dies in between the same benefit won't be granted to the legal heirs.

II. MEANING: INDIGENT PERSON

- A person is an indigent person if he is not possessed of sufficient means (other than the property exempt from attachment in execution of a decree and the subject matter of the suit) to enable to pay the fee prescribed by law for the plaint in such suit. The concept is well explained in the case of Rabinder Singh VS. Maheshwar Rao, 1997 BLJR 1568 by Patna High Court that the person having sufficient means cannot be allowed to sue as an indigent person. It was further more clarity was brought by Orissa High Court in the

¹Union Bank of India v. Khader International Construction, (2001) 5 SCC 22.

²M/s. Mamata Papers Pvt. Ltd. v State of Orissa and others, 2000 99

MangluChattar vs. MaheswarBhoi in which it was stated that, the tools of artisans are exempted from attachment.³

- Where no such fees is prescribed, if he is not entitled to property worth one thousand rupees other than the property exempted from attachment in execution of a decree and the subject matter of the suit.

In A.A. HajaMuniuddin v. Indian Railways, (1992) 4 SCC 736, this Court has observed: Access to justice cannot be denied to an individual merely because he does not have the means to pay the prescribed fee.⁴

III. CONTENTS, PRESENTATION & REJECTION OF THE APPLICATION:-

Every application filled by an indigent person should undergo proper filing process and shall contain the required regarding plaint in the suits. It should contain the details of any movable or immovable property possessed by the applicants and the estimated value of the property should be annexed with the application. The application should be duly signed and verified by the applicant and thereafter should be presented before the court. It may also be presented by any authorized person who can answer all material question regarding the application. After the application is duly presented in proper manner the court has the power to examine the applicant or his agent. It depends on the discretion of the court which it shall deem fit, the court can either accept or reject the application⁵. There are several grounds on which the application may be rejected: -

- a. When the application is not framed in the manner prescribed by rule 2 or 3.
- b. When applicant is not indigent.
- c. If the person has frequently sold his property within two months next before the presentation of the application.
- d. No cause of action is arising of the application filed.
- e. If he has entered into an agreement with reference to the subject matter of the proposed suit under which any other person has obtained interest.
- f. If the application is barred by any law.
- g. If any other person has entered into an agreement with him the finance the litigation.

IV. ADMISSION OF EVIDENCE AND PROCEDURE OF HEARING: -

When the court is satisfied with the application and sees no reasons to reject it on any of the grounds, a notice shall be given to the opposite party and government pleader atleast 10 days prior and a date shall be fixed for

³*Mathai M. Paikeday v C.K. Anthony*, CIVIL APPEAL NO. 5493 OF 2011.

⁴*A. A. HajaMuniuddin v. Indian Railways*, (1992) 4 SCC 736.

⁵*RL Nathan v PK Ojha* AIR 1976 Pat 127

receiving such evidences as the application may adduce in proof of his indigency and for hearing any evidence which may be adduced in disproof thereof.

After the admission of the required documents and evidence the court shall examine the witness produced by either party. After hearing all arguments and questions on the application and evidences. The court shall then either allow or refuse to allow the application to sue as indigent person. When the application is granted, it shall be numbered and registered and shall be deemed the plaint in the suit, the suit shall proceed in any the ordinary manner just like other normal suit.⁶

MathalBrijitha v. Thenkappan Nair, AIR 1993 in a proceeding connected with the suit or appeal indigent plaintiff or appealing filing review petition need not to pay Court-fee.

The court on the application of the defendant or the government pleader shall withdraw the permission granted to the plaintiff the sue as an indigent person on grounds of vexatious or improper conduct in the course of the suit else if the applicant got into an agreement with reference to the subject matter of the suit under which any third party has obtained interest.

Rule 9 provides for contingency where the plaintiff though originally permitted to sue as an indigent person ceases to be an indigent person subsequent to the institution of the suit. If the plaintiff ceases to be an indigent person, then he shall be ordered to pay the court fee which he would have done if he would have had to if a non-indigent person. It is a matter of discretion by the court if they would like to dispauper the plaintiff. Application under this rule should be disposed of before the suit is decided. It is not sound practise to dispauper the plaintiff while the suit is going on. Where leave to sue was given after notice to the defendant, who did not appear, an application by him under this rule to dispauper the plaintiff on the ground that he was possessed of sufficient means on the date of application is not maintainable. The matter of pauperism is co-related with payment of court fees. The state government is principally concerned with the payment of court fees.

V. OTHER PROVISIONS

Rule 10 applies only when suit has been permitted to be instituted in forma pauperis. When the plaintiff advances in the suit⁷, the Court shall compute the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as an indigent person; such amount shall be recoverable by the State Government any party order by the decree to pay the same and shall be a first charge on the subject-matter of the suit. Rule 12 enables the government, in cases of error and omission in regard to court fees, to have the error or omission rectified by a mere application to the court. Rule 12 can be invoked only when the court had

⁶*B.Manikyam v B Ramamurthy* AIR 1975

⁷*AnangaBhusan v. Ghanashyam*AIR 1951

omitted to make an order under rule 10 and 11⁸. Where an order is made under rule 10, rule 11 or rule 11A, the court shall forthwith cause a copy of the decree or order to be forwarded to the Collector who may, without prejudice to any other mode of recovery, recover the amount of court-fees specified therein from the person or property liable for the payment as if it were an arrear of land revenue. An order refusing to allow the applicant to sue as indigent person shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue; but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right. Provided that the plaint shall be rejected if he does not pay, either at the time of the institution of the suit or within such time thereafter as the Court may allow, the costs (if any) incurred by the State Government and by the opposite party in opposing his application for leave to sue as an indigent person.

VI. CONCLUSION

Summarizing up the indigent person under Order 33 is one who is either not possessed of sufficient means to pay court fee when such fee is prescribed by law or is not entitled to property worth one thousand rupees when such court fee is not prescribed. In both the cases, the property exempted from the attachment in execution of a decree and the subject-matter of the suit shall not be taken into account to calculate financial worth or ability of such indigent person. If a person fails in his action as an indigent person then he is bound to pay the court fee of the respective court, and the remaining damages have to be borne by the State Government as if they had committed the wrong. Whereas if indigent person won the case then he cannot be held liable to any kind of expenses, fee or damages.

⁸*JeyporeEvangelicalLutheranChrch vSamuel Santhi Kumar Chaudhry AIR*