

Suits by Indigent person an critical analysis under Code of Civil Procedure

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ABSTRACT

The paper deals with the provisions and legal status of an Indigent person (i.e) A person who is not able to take care of himself it also states that no person should be left unheard it one of the main principal of Rule of Natural Justice. The Indian constitution has also provided with the provisions of free legal aid to every citizen. Order 33, Code of Civil Procedures deals with Suits by indigent person. The main aim of this research is to bring out in detail about the rights, duty and liability of an Indigent person.

KEYWORDS: Indigent person, pauper, paupered, code of civil procedure

INTRODUCTION

The expression "indigent person" as been substituted for the expression "pauper" by the amendment act of 1976. A person is an indigent person if he is not possessed of sufficient means, other than property exempt from attachment in the execution of degree and the sufficient matter of the suit to enable in to pay the fee prescribed by law for the plaint in such suit. It does not include such means on which the bare living of the party and his family dependents and also the reference to the capacity to rise fund by normal available lawful means. The plaintiff suing in a civil court must pay the court fee prescribed by law for the plaint and subsequent proceedings in the suit. This fees are prescribed by the court fees act of 1870 but a person may be too poor to pay the fee and object of this order is to enable such a person to bring and prosecute suits without the payment of fees. If the indigent person succeeds in the suit the government as the first charge on the subject on the suit for the amount of the court fee which would have been paid by him if he had not been permitted to sue as an Indigent person. If the indigent person fails in the suit the court should order him to pay the court fees due by him. Where two person apply jointly to sue as indigent persons and one is held to be a indigent person and other not, the later is not entitled to pursue the suit in forma pauperis as the exemption in personal to the former. He must either pay full court fee on the plaint or withdraw from the suit. And order directing a indigent plaintiff to pay the defendant in cash the cost occasioned by an amendment of the plaint and dismissing the suit is default of such payment was held to pay to be only improper. But the Ragoon High court as held that a indigent person may be ordered to pay costs as a condition of a adjourned. The madras high court as also held that on order permitting a party to sue

as in indigent person does not operate to confer a journal immunity from liability to pay cost and there is nothing the court exempting the indigent plaintiff from payment of cost. The Allahabad high court as taken the same view, but it as also held that an order granting permission to sue as a indigent person and requiring as a condition that the plaintiff should pay the cost of the other side in erroneous. An application to sue as an individual person can be filed subsequent to the filing of the suit. Where is the suit is barred by any law the application provision under order 33 rule 1 is also not maintainable. The date of the suit would be the date of the presentation of the petition under order 33 rule 1. If the plaintiff is permitted to sue as a indigent person then the court must pass an order to register the plaint and number it and then summons to be issued to the defendant for the settlement of the issues.

OBJECTIVES

- To learn about the status of Indigent person.
- To learn about the procedure to be followed by an Indigent person in filing an application.
- To analyse the difference between Suits by plaintiff and suits by indigent person.

INQUIRY INTO THE MEANS OF AN INDIGENT PERSON

Every Inquiry into the question whether or not a person is an indigent person shall be made, in the first instance, by the chief ministerial officer of the court, unless the court otherwise directs and the court may adopt the report of such officer as its own finding or may itself make an inquiry into the question.

Content Of Application

Every Application for permission to sue as an indigent person shall contain the particulars required in regarding to plaints in suits; a

schedule of any movable or immovable Property belonging to the applicant with the estimated value thereof shall be annexed and shall be signed and verified in the manner prescribed for the signing and verification of pleadings.

Procedures

Rule 2 to 8 prescribes the procedure to be followed when the suit is proposed to be instituted as a indigent person. Rule 2 provides for signing and verification of the plaint. This rule is sufficiently complied with the application for permission is accompanied by a separate plaint where the plaint contains all the necessary particulars and as been properly verified. The non verification of the schedule of properties does not entitle a rejection of the application where the contents of the petition have not been verified but a separate affidavit in which the statements contained in the application are stated to be true, has been filed, the same can be treated as part of the application.

Examination

The rule contemplates examination of two kinds namely

1. The examination of the applicant which may, as indicated in the rule be regarding

- a. The merits of the claim
- b. Pauperism, &

2. The examination of the persons other than the applicant which should be confined to pauperism only as indicated by the provisions by rules 6 and 7. Persons other than applicant cannot be examined on the merits of the applicant's claim. When an applicant is a minor it is sufficient to examine the next friend.

Stages Of Inquiry

On application for a permission to file a suit as an indigent person, the first stage examination of the petition under order 33 rule 4 at which stage the court can suo motu can reject the petition on any ground specified in order 33 rule 5. If the petition is not so rejected the second stage is noticed to the opposite party and a fixation of the date under order 33 rule 7 for evidence regarding the application. At this second stage the applicant can let him evidence that the petition is not subjected to any of the prohibitions mentioned in order 33 rule 5 and it is equally opened to show that the petition is so object. In deciding the questions of grant of leave to sue as an individual person the question whether the suit as framed is maintainable and competent must be decided first it cannot be left for consideration during trial. It goes to very root of the matter

Rejection Of The Application

The court shall reject an application for permission to sue as an individual person

a. Where it is not framed and presented the manner prescribed by rule 2 and 3.

b. Where the applicant is not an indigent person.

c. Where he has, within two months next before the presentation of application, disposed of any property fraudulently or in order to be able to apply for permission to sue as an indigent person; Provided That no application shall be rejected if, even after the value of property disposed of by the applicant is taken into account.

d. Where his allegations do not show a cause of action.

e. Where he has entered into any agreement with reference to the subject of the proposed suit under which any person has obtained an interest in such subject matter.

f. Where the allegation made by the applicant in the application shows that the suit would be bought by any law for the time being in force.

g. Where any other person has entered into an agreement with him to finance the litigation.

Difference Between Suit By Plaintiff And A Suit By An Indigent Person:

A plaintiff who files the suit by presentation of plaint pays the required Court fee along with plaint. Whereas, the person filing a suit as indigent person has to obtain the permission of the competent Court to file a suit as forma pauperis (indigent person). If the indigent person succeeds the Court Government shall have the first charge over the fruits of the suit to recover Court fee from the indigent person.

WITHDRAWAL OF PERMISSION TO SUE AS AN INDIGENT PERSON

The court may on the application of the defendant or of the government pleader of which seven days prior notice in return as been given to the plaintiff, order that the permission granted to the plaintiff to sue as an indigent person be withdrawn

a. If he is guilty of vexatious or improper conduct in the course of the suit

b. If it appears that it has means or such that he ought not to continue to sue as an indigent person

c. If he has entered into any agreement with reference to the subject matter of the suit under which any other person has obtained an interest in such subject matter.

The object is to re-open the matter of pauperism. This rule provides for a contingency where the plaintiff originally permitted to sue as an indigent person ceases to be a indigent subsequent to the institution of the suit. It is clearly provided that on the plaintiff ceasing to be indigent person the court shall order him to pay the court fee which would have been payable by him if

he had not been permitted to sue as an indigent person. Once such an order is made the court cannot proceed with the suit unless the court fee payable on the plaint is paid by the plaintiff. The principle of *res judicata* is not applicable to proceedings under this rule however it does not authorise revocation of the passed order on the ground that even at that time the plaintiff had sufficient means the court has no proper *suo motu* to dispauper the plaintiff. That can be done only on the application of the defendant or the government pleader. It is matter of discretion with the court whether it would dispauper the plaintiff. Where leave to sue was given after notice to the defendant who did not appear on application by him, under this rule, dispauper the plaintiff in the ground that he was possessed of sufficient means on the date of the application is not maintainable.

CLAUSE(a)

The disclosure by the plaintiff of life policy worth Rs.225 in a suit where the court fees were over Rs 500 was held not to justify his being dispauper

CLAUSE(b)

Receipt of interim maintenance during the suit is not a ground for dispaupering the plaintiff if it is not enough to enable her to save the amount required court fees nor can she be dispaupered because she is living with the rich relative and appearing through eminent council.

CLAUSE(c)

If the plaintiff executes a mortgage of the property in suit after he has been given leave to sue a pauper, he is liable to the dispaupered. It is bit necessary that the agreement should be champetours.

Court To Assign a Pleader To An Unrepresented Indigent Person

1. Where the person who is permitted to sue as an indigent person is not represented by a pleader the court may, if the circumstance of the case so required, assign a pleader to him.
2. The High court may, with the previous approval of the state government make rule providing for
 - a. The mode of selecting pleaders to be assigned under the sub rule 1
 - b. The facilities to be provided to search pleaders by the court
 - c. Any other matter which is required to be or may be provided by the rule for giving effect to the provisions of sub rule 1.

Costs Where Indigent Person Succeeds

Where the plaintiff succeeds in the suit, the court shall calculate 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 from any party ordered by the decree to pay the same, and shall be a first charge on the subject charge on the subject matter of the suit.

This rule applies only when the suit has been permitted to be instituted in *forma pauperis*. Further the court as to order the payment of court fee on the amount claimed and not on the amount decreed being the court fee payable on the plaint had the plaintiff not been permitted to sue as pauper.

PROCEDURE WHERE INDIGENT PERSON FAILS IN THE SUIT

Where the plaintiff fails in the suit or a permission granted to him to sue as an indigent person as been withdrawn or where the suit is withdrawn or dismissed

a. Because the summon for the defendant to appear and answer as not been served upon him in consequence of the failure of the plaintiff to pay the court fee or if any chargeable for such service or to present copies of the plaint or concise statement.

b. Because the plaintiff does not appear when the suit is called on for the hearing

The court shall order the plaintiff to pay the court fees which would have been paid by the plaintiff if he had not been permitted to sue as an indigent person.

An order under this rule directing the pauper plaintiff to pay the court fees can be made only in the following four cases:

1. Where the plaintiff fails in the suits;
2. Where the plaintiff is dispaupered under rule 9; i.e. his indigent status is cancelled;
3. Where the suit is withdrawn; or
4. Where the suit is dismissed under the circumstances specified in clause (a) or clause (b).

Cost

This rule does not preclude the court from awarding a successful defendant is caused in a pauper suit. The court has full power under section 35 to give and apportion cost in any matter it thinks fit. Nothing in this rule limits or otherwise affect the power conferred upon the section 35 to give and apportion cost. It has been held that the description of the court under section 35 empowers the court to order that the court fees which would have to be paid by a minor plaintiff suing as an indigent person should be paid by his next friend.

Death Of Plaintiff

In Muthukumar vs State of Tamil nadu,

The plaintiff suing as an indigent person died and his legal representative where substituted. The

suit was dismissed and the court pass an order to recover the court fees from the legal representative to held that the order need not the conferred to assests inherited by the deceased.

Procedure Where Indigent Person Suit Abates

Where the suit abate by the reason of the death of the plaintiff or coplaintiff, the court shall order the amount of court fees which should have been paid by the plaintiff if he had not been permitted to sue as an individual person shall be recovered by the state government from the estate of the deceased plaintiff.

State Government May Apply For The Payment Of Court Fees

The state government shall have the right at any time to apply to the court to make an order for payment of the court fees under rule 10, 11 or rule 11A.

State Government To Be Deemed A Party

All matters arising between the state government and any party to the suit Under rule 10,11,11A or 12 shall be deemed to be questions arising between the parties to the suit within the meaning of section 47.

Recovery Of Amount Of Court Fees

Where an order is made under rule 10,11 or 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, specified therein from the person or property liable for payment as if it were arrear of land revenue.

Refusal To Allow Applicant To Sue As Indigent Person To Bar Subsequent Application Of Like Nature

An Order refusing to allow the applicant to sue as an indigent person shall the a bar to any subsequent application of the like nature by him in respect of same right to sue but the applicant shall be at liberty to instutute a suit in ordinary manner in respect of such right provided that tge 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 cost incurred by state government and by the opposite party in opposing his application for leave to sue as a indigent person.

Grant Of Time For Payment Of Court Fee

Nothing contain in rule 5,7 or 15 shall prevent the court while rejecting the application under rule 5 or refusing an application under rule 7 from granting time to the applicant to pay the requisite court fee within such time as may be fix by the court. The cost of the application for permission to sue as an indigent person and inquiry into indegny shall be deemed to be cost in the suit.

Defendant As An Indigent Person

Any defendant who desires to plead as setoff or counter claim may be allowed to set up such claim as an indigent person, and the rules contained in this order shall so far as may be, apply to him as if he were a plaintiff and his written statement were a plaint.

Power Of Government To Provide For Free Legal Services To Indigent Persons

Subject to the provisions of thisorder, the central or state government may make such supplementary provisions as it thinks it fits for providing free legal services to those who have been permitted to sue as indigent persons.

The High court may, with the previous approval of the state government makes rules for carrying out the supplementary provisions made by the cebtral or state government for providing free legal services to indigent persons referred to in sub rule(1), and such rules may include the nature and extent of such legal services, the conditions under which they may be made available, the matters in respect of which, and the agencies through which such services may rendered.

CONCLUSION

In the end I would like to conclude the Paper, that my hypothesis was partially incorrect regarding the position of indigent person when he fails in the suit brought by him, the hypothesis is that an indigent person cannot be made liable to pay anykind of damages or compensation, but according to Order 33 Rule 11 of Code of Civil Procedure, an indigent person cannot be held liable for any kind of damages other than the court fee, i.e. 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

REFERANCE

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