
CIVIL PROCEDURE CODE: ORDER XXXIII: SUITS BY INDIGENT PERSON

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ABSTRACT

Given India's high percentage of poverty, it can be difficult for the underprivileged segment of society to file a lawsuit and pay for all associated costs. However, the problem cannot be solved by stating categorically that these defenceless individuals have no chance of success in court. An indigent individual is one who, according to legal terminology, lacks the resources to pay the court charge. Order 33 of the Code of Civil Procedure, 1908, contains measures that were developed with the goal of bringing justice to such people. In this paper the author has analysed Order XXXIII of Civil procedure Code, 1908.

INTRODUCTION

Order 33 of Civil Procedure Code¹ (hereinafter, CPC) talks about the suits by indigent person. It provides the procedures for filing of suits by indigent person. The intent of Order 33 is to make it possible for those who lack financial means to file and pursue legal claims without having to pay any court costs. Typically, while filing a lawsuit in a court of law, the plaintiff is required to pay court costs outlined in the Court Fees Act. But a person could not have enough money to cover the required court fee. This order relieves that person of the first-instance court fee and permits him to pursue his lawsuit in forma pauperis as long as he complies with the requirements specified in the order. According to the definition, an "indigent person" is someone who is living in abject poverty, is extremely poor, or does not have access to the necessities of life. From the lens of law, an indigent person is someone who does not have the financial means to pay the court charge. It makes it possible for people who are unable to afford court costs to file lawsuits without having to pay the necessary court expenses.

This paper focuses on brief analysis of this particular provision with the help of relevant case laws as well as the significance it carries in the administration of justice.

¹ Order 33, Civil Procedure Code, 1908.

1. OBJECT AND DEFINITION

The court in the case of **Venkatasubbaiah v Thirupathiah and Ors.**² held that order 33 was implemented to fulfill three purposes:

1. In order to safeguard the claims of a pauper
2. To protect the interests of removal.
3. To safeguard the defendant's right to be free from harassment.

The Court ruled in the case of **A.A. Haja Muniuddin v Indian Railway**³ that "access to justice cannot be denied to an individual essentially because he lacks the means to pay the prescribed fee."

Definition of Indigent person (Rule 1)⁴

An indigent person is defined in explanation one to rule 1, which states that a person is 'indigent' person if:

- He lacks the financial resources necessary to be able to pay the legal filing fee for this lawsuit. (Other than the subject of the lawsuit and any property immune from attachment under a decree).
- when no such cost is specified, if he is not entitled to property worth one thousand rupees other than property free from attachment in execution of a decree and the subject matter of the claim.

In **Union bank of India v. Khader International Construction**⁵, the apex court discussed the definition of an indigent person. It ruled that an application under order 33 can also be filed by a juristic person i.e. Any corporate firm etc. Thus, any application may be submitted by a natural person or judicial person as long as they fall within the parameters and are not otherwise prohibited by law.

² Venkatasubbaiah v. Thirupathiah and Ors., AIR 1955 AP 165.

³ A.A. HajaMuniuddin v. Indian Railways, (1992) 4 SCC 736.

⁴ Order 33, Rule 1, Civil Procedure Code, 1908.

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

The Supreme court held in **Mathai M. Paikeday v. C.K. Antony** that additional factors, including employment status of a person, total income (including pension), total debt, ownership of realisable unencumbered assets and financial support from family members, can be taken into consideration when determining whether a person has sufficient means. As a result, the term “sufficient means” mentioned in Order 33 refers to capacity or ability of a person to collect money by legal means that are available to them in the regular course in order to pay court fees.

In the recent case of **Sushil Thomas Abraham v. Skyline Builders**⁶, it was held that the trial court must conduct an inquiry as required by Rules 4 to 7 of Order 33 of CPC in order to determine whether the plaintiff is in possession of sufficient means to pay the required court fees for the plaint in the suit in accordance with the provisions of the Court Fees Act, 1870⁷. The court is not permitted to take the two properties into account while deciding the issue. The first is the property that is exempt from being attached in accordance with a court order, while the second is the subject matter of the lawsuit.

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| Rule 1 | Suit may be instituted by indigent person |
| Rule 1A | Inquiry into the means of an indigent person |
| Rule 2 | Contents of application |
| Rule 3 | Presentation of application |
| Rule 4 | Examination of application |
| Rule 5 | Rejection of application |

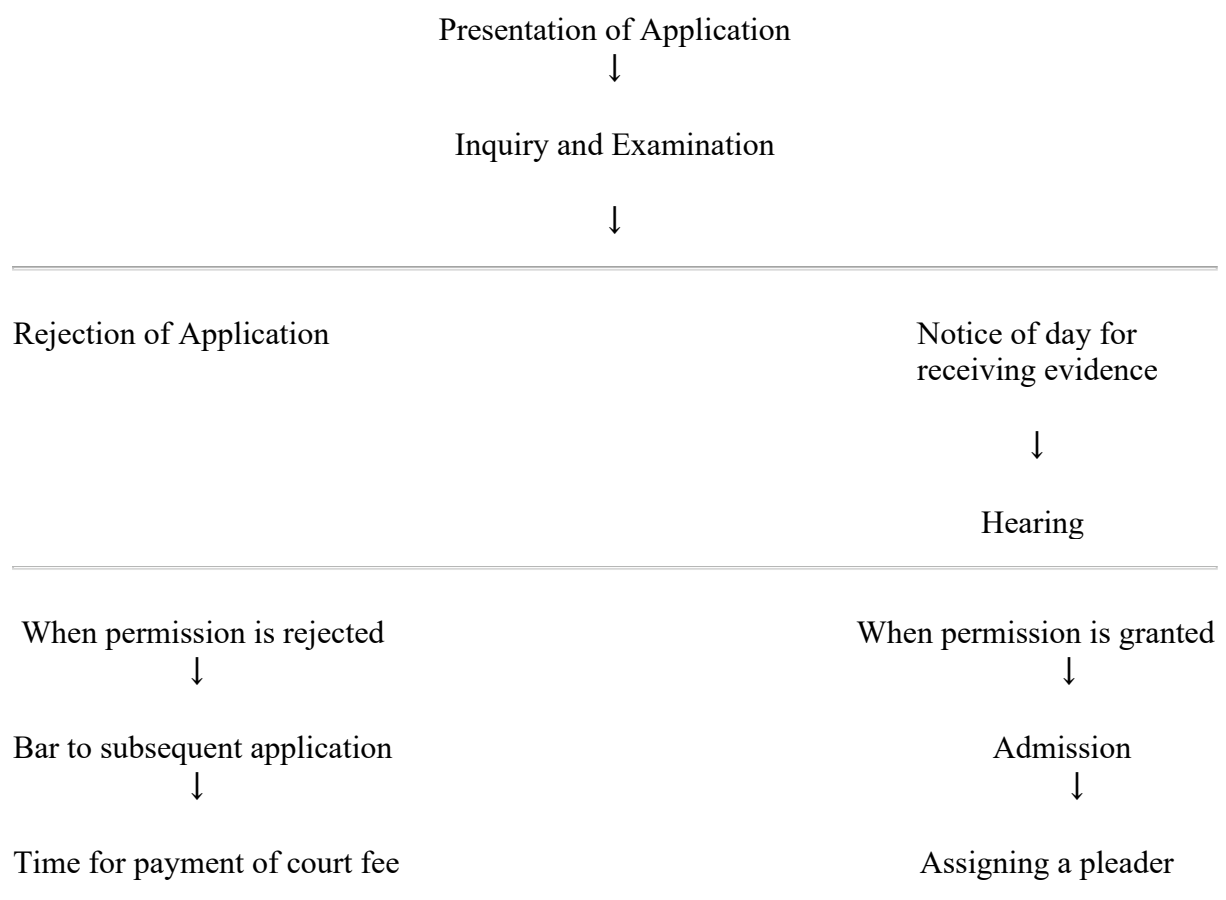
⁶ Mathai M. Paikeday v. C.K. Antony, (2011) 13 SCC 174.

⁷ Sushil Thomas Abraham v. Skyline builders, (2019) 3 SCC 415.

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| Rule 6 | Notice of day for receiving evidence of applicant's indigency |
| Rule 7 | Procedure at hearing |
| Rule 8 | Procedure if application admitted |
| Rule 9 | Withdrawal of permission to sue as an indigent person |
| Rule 9A | Court to assign a pleader to an unrepresented indigent person |
| Rule 10 | Costs when indigent person succeeds |
| Rule 11 | Procedure when indigent person fails |
| Rule 11A | Procedure when indigent person suit abates |
| Rule 12 | State government may apply for payment of court fees |
| Rule 13 | State government to be deemed a party |
| Rule 14 | Recovery of amount of court fees |
| Rule 15 | Refusal to allow applicant to sue an indigent person to bar subsequent application of like nature |
| Rule 15A | Grant of time of payment of court fee |

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| Rule 16 | Costs |
| Rule 17 | Defence by an indigent person |
| Rule 18 | Power of government to provide for free legal services to indigent persons |

PROCEDURE



The application for permission to sue under order 33 that is as an indigent person must include report on moveable and immovable property of person along with an estimate of its value. The court may, if it finds it appropriate, examine the applicant or his agents after the application has been properly filled out and submitted. The applicant must also properly examine and sign the application. If the court determines that Rule 5 and 9 provide sufficient grounds, it may decline or revoke the application pursuant to Order 33 even while the case is still pending. If the application is properly approved and accepted by the court, the case will be handled just

like any other regular case, and the court may also appoint a lawyer to represent the applicant. If the applicant prevails in the lawsuit, the court would then decide who is responsible for paying the court costs; however, if the respondents succeed, the applicants are responsible for essential costs. If a subordinate court denies an application made in accordance with Order 33, the application may be appealed.

IMPORTANCE IN THE ADMINISTRATION OF JUSTICE

“The concept of seeking justice cannot be equated with the value of dollars.”

- Justice Blackmun in *Jackson v Bishop*⁸

The legal system based on the principles of justice and equity must have safeguards to guarantee that all citizens who appear before it receive fair justice. Justice is a concept that conjures up the rule of law and it speaks of how institutions that create laws and those in charge of enforcing them settle disputes. According to John Rawls, justice means fairness and it brings recognition of the principle of equability implicitly.⁹ He talks about two principles of justice - first being “basic liberties” and the second called “fair equality of opportunity”. Inherent concept of justice is Access to justice. The primary goal of giving access to justice is to ensure that everyone has the opportunity to seek redress through the legal system, regardless of social or economic status or other infirmity. Justice should be delivered impartially, and the state should take all necessary measures to offer equitable, open, efficient, and accountable services that support access to justice for all. An essential part of plans to improve access to justice is legal aid programmes. Order 33 of CPC contains legal principles and regulation about legal aid. It enables individuals who are unable to afford court costs and permits them to file lawsuits without having to pay the essential court costs. Noteworthy points are as follows:

- By exempting them from paying the required and essential court fees, it enables the destitute, poor and oppressed who fulfil definition of an indigent person to seek justice.
- It is also noteworthy that term person also includes ‘juristic person’¹⁰ and widens

⁸ Blackmun, J. in *Jackson v. Bishop*, 404 F.2d 571 (8th Cir. 1968).

⁹ John Rawls, *A Theory of Justice*, (Belknap Press, 1971).

¹⁰ It is a legal entity separate from its members or stockholders and with its own existence.

the scope of the order.

- It is worth noting that the court will provide the time to applicant to pay the fees required while rejecting an application to sue as a poor person. A future comparable application cannot be made after an order prohibiting an applicant from suing as an indigent person. However, as long as he covers the fees incurred by the Government legal representative and the opposition party in opposing the application, this does not prevent him from suing ordinarily.
- The court may give notice to the opposing party and the legal representative of government for at least 10 days if there is no reason to deny the application in order to receive any evidence that the applicant may present to demonstrate his indigency and to hear any evidence that may be presented to demonstrate it is not true.
- Rule 18 stipulates that in addition to Order 33 of the Code, the Central or the state Government may adopt further measures for free legal services with regard to indigent people.
- It is worth noting that, like Order 33, Order 44 of the CPC assists Indigent Persons in preferring appeals.¹¹

PRESENCE of an ANOMALY

The application may be rejected under Rule 5¹²

- if it is not properly constructed and framed,
- if the applicant is not indigent or
- has disposed of any property dishonestly,
- if his allegations do not establish a cause of action or are legally barred,
- or if he has a financial arrangement with any other party financing the litigation.

¹¹ Order 44, Civil Procedure Code, 1908.

¹² Order 33, Rule 5, Civil Procedure Code, 1908.

The plaintiff continues the trail of the case after the petition submitted by an indigent individual is officially registered as a lawsuit. In the event that the person prevails, Rule 10 of the order¹³ states that the State Government may recover the court fees from any party that was subject to the decree's order. The technique outlined here is reasonable and without flaw. If the poor individual loses the suit, it will be difficult for him. Initially he will suffer from its outcome. He would face additional hardships due to Rule 11 of the order¹⁴ which outlines a procedure when an indigent individual fails. It empowers the court to order the plaintiff to pay the required amount of fees which would have been paid if he had not been allowed to file a lawsuit as an indigent person.

If the poor individual loses the lawsuit, it will be difficult for him. The person who lost the case initially suffers from its outcome. According to Rule 11, which outlines a Procedure where an Indigent Person Fails, he would face additional hardships which outlines a procedure when an indigent individual fails. It is against the principles of natural justice. It can be said reasonable to the extent when the right to sue on the basis of indigence granted to him has been revoked, or when the suit is dismissed for default in accordance with its provisions.

CONCLUSION

Order 33 is an enabling provision allowing indigent persons to file a suit without paying essential court fees in the beginning. Order 33 comes to their aid by exempting them from paying Court Fees in the first instance and permitting them to proceed with the suit in forma pauperis, it is subjected to specific requirements specified in the Order. The application of indigent person should be examined carefully so that people facing basic resources as access to justice in some cases can take form of injustice.

Being a welfare state, India offers the required legal aid and support to the underprivileged and downtrodden. In the regard of providing access to justice to all, raising legal awareness among individuals from all walks of life is the most crucial prerequisite. It is necessary to make legal jargon understandable to a wider set of people. Most importantly, it is imperative that public spirited lawyers continue the very noble job of delivering justice to people from all facets society. Only then the idealistic and noble goal of legal aid be completely realised.

¹³ Order 33, Rule 10, Civil Procedure Code, 1908.

¹⁴ Order 33, Rule 11, Civil Procedure Code, 1908.