
A CRITICAL ANALYSIS OF THE EFFECTIVENESS OF ORDER XXXIII OF THE CODE OF CIVIL PROCEDURE, 1908, IN ENSURING EQUAL ACCESS TO JUSTICE

S. Pavisha, The Tamilnadu Dr. Ambedkar Law University, SOEL, Taramani

ABSTRACT

This article examines a detailed statutory framework under Order XXXIII of code of civil procedure. It focuses on the concept of indigent person, eligible criteria and their benefits available to them. It also discusses about safeguards provided to prevent misuse of this provision. Further the main aim of this article is to analyse the effectiveness of Order XXXIII in ensuring equal access to justice while balancing the interest of indigent person without abusing.

INTRODUCTION:

In a democratic country, every people must given an equal opportunity to approach the court to protect their rights. But, due to some financial barriers, some people cannot seek their remedies. They even can't afford to pay court fees. To overcome this, the code of civil procedure introduces Order XXXIII which provides procedure for institution of suits by indigent person without paying court fees. It also helps to achieve constitutional objective contained in Article 39A of the Constitution of India which ensures equal access to justice irrespective of person's financial conditions.

By exempting eligible indigent persons from paying court fees at the time of the institution of a suit, Order XXXIII ensures that poverty does not become a ground for the denial of justice. By this way, it emphasis that access to justice is an essential requirement for rule of law. At the same time, some people misuse this provision so that eligible indigent person cannot access this benefit. To prevent this, this provision provides certain conditions to verify the status of indigent person.

Once it finds out that applicant is not indigent. Then he is barred from subsequent application

on the same matter. But this rejection does not prevent that person from institution of suit in the ordinary manner with paying court fees.

Further, Order XXXIII of CPC which grants relief at the institution of suit is temporary in nature. The state government may recovered that exempted amount from the person against whom the court is directed to pay, if that decree is in favour of plaintiff or from the plaintiff or deceased plaintiffs property in case of withdrawal or death of plaintiff respectively.

Therefore, this provision balance the interest of indigent person while preventing the abuse of legal process and gives practical implementation of Article 14 of Constitution of India which ensures that equality before law and equal protection of the law.

MEANING OF INDIGENT PERSON:

Under Order XXXIII , Rule 1 of CPC , A person is said to be an indigent person if he does not have a sufficient means to pay for prescribed court fees or does not own a property worth of rs 1000 where no court fee is prescribed.

While determining indigency, property attached in the execution of decree and subject matter of that suit must be excluded.

In Union bank of India vs Khader international constructions¹, it was held that public limited company which is a legal person can maintain a suit under this rule. Therefore the “person” mentioned in Rule 1 includes both natural and juristic person.

Further, In Rani Ammal v. Rathinasabapathi Mudaliar ², the court emphasized that the word “sufficient means” refers to possession of liquid assets which allows that person to pay court fees. Mere possession of property is not enough, if that property is not easily converted into cash.

Whether such person is Indigent or not, inquiry is conducted by chief ministerial officer of the court whose report is accepted by the court unless the court decides to conduct a suo motu inquiry.

¹ Union bank of India vs Khader international constructions, (2001) 5 SCC 22

² Rani Ammal v. Rathinasabapathi Mudaliar, AIR 1967 Mad 194

APPLICATION FOR PERMISSION:

Under Rules 2 to 4, it mandates that the application for permission to sue as an indigent person must contain all the particulars which are required for a plaint. It must be accompanied by a schedule of movable and immovable properties of the applicant, along with their estimated value. It must be signed, verified in the same manner as required for pleadings and presented to the court in person. If that person is exempted, then it can be presented by authorized agent alternatively. In some cases, a suit is filed by multiple plaintiff, in such scenario, presentation of application by one person is sufficient. Once it is presented, the court then examines the merits of claim and the financial conditions of the applicant to identify indigency.

While examining, it should not be rejected on the ground of technical defects such as defects in its format or verification. It should be given an opportunity to rectify its mistake. (M/s Powsulph (India) Pvt. Ltd. V. M/s Inventia Technical & Others³)

Rule 17 states that application for leave to sue as an indigent person applies not only for plaintiff, it also applies to defendant in the same manner as a plaintiff. If that person is indigent and wants to file an application for setoff or counterclaim.

GROUND FOR REJECTION:

Before granting permission to sue as an indigent person, the court is empowered to reject that application on certain grounds as prescribed under Order XXXIII, Rule 1 of CPC. They are:

- If that person does not fulfill the criteria mentioned in Rule 2 and 3; or
- Applicant is not an indigent person; or
- Before 2 months of application, the applicant fraudulently disposed the property to show him as an indigent person; or
- There is no cause of action; or
- Another person agreed to finance for that applicant.

³ M/s Powsulph (India) Pvt. Ltd. V. M/s Inventia Technical & Others, AIR 1995 Orissa 291

PROCEDURE FOR HEARING AND ADMISSION (OR) REJECTION OF AN APPLICATION:

If there is no ground exist to reject that application under Rule 5 , the court may send atleast 10 days notice to opposite party of that suit or government pleader to present the evidence that applicant is not indigent. On the fixed date, The court examine the witnesses and record the evidences presented by both parties, hear arguments and decide whether the permission to sue as an indigent person is granted or not, as per Rule 6 and 7.

This was emphasized in the case of *M.L. Sethi v. R.L. Kapur*⁴, where it was held that opposite party has the right to produce evidence to prove that applicant is not an indigent person.

Rule 8 states that, if applicant was proved to be a indigent person and permission to sue as an indigent person is granted, then that application is registered as a plaint and allows the suit to proceeds in the ordinary manner without paying court fees and prescribed process fees.

In case, application to leave to sue as an indigent person is refused, it does not mean to bar the filing of suit in the ordinary manner with the prescribed court fees and costs. As per Order XXXIII, Rule 15 of CPC, it only bars the subsequent application to sue as an indigent person in the same matter. But after that refusal, the court may grant time for payment of fees and deemed that suit is instituted on the date of the original application under Order XXXIII, Rule 15A of CPC.

WITHDRAWAL OF PERMISSION:

Under Rule 9, the court is empowered to withdraw that granted permission to sue as an indigent person, if the applicant engages in improper conduct during proceedings or the applicant is no more indigent or enter into agreement where interest of the subject matter of that case is transferred to another person.

In the case of *R.Jayaraja Menon v. Dr. Rajakrishnan & Another*⁵, it was clearly explained that once a plaintiff acquires a sufficient financial means required for that suit, indigent person benefits comes to end even the permission to sue as an indigent person was granted initially

⁴ *M.L. Sethi v. R.L. Kapur*, (1974) 2 SCC 543

⁵ *R.Jayaraja Menon v. Dr. Rajakrishnan & Another*, 1997 (1) KLT 813

and the court may require that person to pay court fees immediately.

ASSIGNMENT OF PLEADER:

If the person to whom the permission to sue as an indigent person is granted, is not represented by a legal practitioner. Then the court may assign a pleader if it necessarily required.

RECOVERY OF MONEY:

The permission granted to sue as an indigent person without paying court fees is not a complete waiver, Under Rule 10, once the indigent plaintiff wins the suit, the state government can recover the exempted amount from the person against whom the court is directed to pay.

But, if the indigent plaintiff fails or withdrawn the suit himself or withdrawn or dismissed by the court due to that plaintiff's default, then the state government can recover that amount from the plaintiff as per Rule 11.

This was affirmed by the Supreme Court in *R.V. Dev v. Chief Secretary, Government of Kerala* (2007)⁶, where the court held that if indigent plaintiff fails in suit, the deferred court fees are recovered from him.

In some cases, the suit abates due to death of the indigent plaintiff, in such scenario, the court ordered to recover that amount under Rule 11A, from the deceased plaintiff's estate by the state government.

For this purpose, Rule 12 to 14 states that the state government may treated as a party to that suit and apply for recovery to the court at any time. Once the court passed a decree for recovery, that report should be send to collector. Then, that collector recover that money as a arrear in a land revenue.

COSTS:

Under Rule 16, the costs required for filing an application for permission to sue as an indigent person and conduct an inquiry of indigency are treated as cost of that suit. These costs are

⁶ in *R.V. Dev v. Chief Secretary, Government of Kerala*, (2007) 5 SCC 698

determined along with the final decision of that suit.

POWER OF GOVERNMENT:

Rule 18 empowers central or state government to make provisions for legal aid to that person whom the permission to sue as an indigent person is granted. Then, High court may frame rules regarding how that legal aid is provided, with the prior permission of the state government.

CONCLUSION:

In conclusion, Order XXXIII clearly defines who is indigent person and lays down the essential conditions for application for permission to sue as an indigent person. It also provides procedure for inquiry about indigency for safeguard purpose. While this inquiry into indigency and strict conditions may lead to some delay, it ensures that no one can misuse this provision and all eligible indigent person must be benefited. Even if the applicant obtains a permission initially by fraud, the court is empowered to withdraw that permission during proceedings, once it finds out.

Further, the application for permission to sue as an indigent person is rejected, the applicant is granted some time to institute a suit in the ordinary manner. Moreover, if an indigent person is unable to afford to be represented by an advocate, the court may arrange an advocate if it is necessarily required. Therefore, Order XXXIII ensures that poverty doesn't become a ground for denial of justice and everyone gets an equal access to justice. By this way, it also gives an effect to Article 39A and 14 of the constitution of India.

REFERENCES:

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3. The Code of Civil Procedure, M.P. Jain
4. Code of Civil Procedure, Tandon, 28th edition 2016