

Order-33 Suits by indigent persons

CONTENTS

1. Suits may be instituted in forma pauperis
- 1A. Inquiry into the means of an indigent person
2. Contents of application
3. Presentation of application
4. Examination of applicant
5. Rejection of application
6. Notice of day for receiving evidence of applicants 1 [indigency]
7. Procedure at hearing
8. Procedure if application admitted
9. [Withdrawal of permission to sue as an indigent person]
- 9A. Court to assign a pleader to an unrepresented indigent person
10. Costs where [an indigent person] succeeds
11. Procedure where an [indigent person] fails
- 11A. Procedure where [an indigent persons suit abates
12. State Government may apply for payment of court-fees
13. State Government to be deemed a party
14. Recovery of amount of court-fees
15. Refusal to allow applicant to sue as 1 [an indigent person] to bar subsequent application of like nature
- 15A. Grant of time for payment of court-fee
16. Costs
17. Defence by an indigent person
18. Power of Government to provide for free legal services to indigent persons

Order-33 Suits by indigent persons

Order-33 Suits by indigent persons

1. Suits may be instituted in forma pauperis :-

Subject to the following provision, any suit may be instituted by [an indigent person].

1A. 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.]

2. Contents of application :-

Every application for permission to sue as ¹ [an indigent person] shall contain the particulars required in regard to plaints in suits; a schedule of any moveable or immoveable property belonging to the applicant, with the estimated value thereof, shall be annexed thereto; and it shall be signed and verified in the manner prescribed for the signing and verification of pleadings.

1. Subs by act 104 of 1976 Sec. 81 for the word "pauper" (w. e. f 1st February, 1977).

3. Presentation of application :-

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

¹ [Provided that, where there are more plaintiffs than one, it shall be sufficient if the application is presented by one of the plaintiffs.]

1. Added by C.P.C. (Amendment) Act 104 of 1976.

4. Examination of applicant :-

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

(2) If presented by agent. Court may order applicant to be examined by commission.-Where the application is presented by any 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.

5. Rejection of application :-

The Court shall reject an application for permission to sue as ¹[an indigent person]-

(a) where it is not framed and presented in the manner prescribed by rules 2 and 3, or

(b) where the applicant is not ¹[an indigent person], or

(c) where he has, within two months next before the presentation

of the application, disposed of any property fraudulently or in order to be able to apply for permission to sue as ¹an indigent person]:
⁴[Provided that no application shall be rejected if, even after the value of the property disposed of by the applicant is taken into account, the applicant would be entitled to sue as an indigent person; or]

(d) where his allegations do not show a cause of action, or

(e) where he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest ⁵[or]

³ [(f) where the allegations made by the applicant in the application show that the suit would be barred by any law for the time being in force, or

(g) where any other person has entered into an agreement with him to finance the litigation.]

1. Subs by act 104 of 1976 Sec. 81 for the word "pauper" (w. e. f 1st February, 1977).

4. Ins. by C.P.C. (Amendment) Act 104 of 1976., Sec. 81.

5. Subs. by Act 104 of 1976, Sec. 81, for the word "pauperism" (w.e.f. 1st February, 1977).

6. Notice of day for receiving evidence of applicants 1 [indigency] :-

Where the Court sees no reason to reject the application on any of the grounds stated in rule 5, it shall fix a day (of which at least ten days' clear notice shall be given to the opposite-party and the Government pleader) for receiving such evidence as the applicant may adduce in proof of his ¹ [indigency] and for hearing any evidence which may be adduced in disproof thereof.

1. Ins. by the Act 104 of 1976, Sec. 81 (w.e.f. 1st February 1977)

7. Procedure at hearing :-

(1) On the day so fixed or as soon thereafter as may be convenient, the Court shall examine the witnesses (if any) produced by either party, and may examine the applicant or his agent, and shall make ¹[a full record of their evidence.]

²[(1-A) The examination of the witnesses under sub-rule (1) shall be confined to the matters specified in Cl. (b), Cl. (c) and Cl. (e) of

rule 5 but the examination of the applicant or his agent may relate to any of the matters specified in rule 5.]

(2) The Court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court ³[under rule 6 or under this rule], the applicant is or is not subject to any of the prohibitions specified in rule 5.

(3) The Court shall then either allow or refuse to allow the applicant to sue as ⁴ [an indigent person].

1. Ins. by C.P.C. (Amendment) Act 104 of 1976., Sec. 81.

2. Subs. by Act 104 of 1976, Sec. 81, for the word "pauperism" (w.e.f. 1st February, 1977).

3. Subs. by C.P.C. (Amendment) Act 104 of 1976., for the words "a memorandum of the substance of the evidence".

4. Ins. by C.P.C. (Amendment) Act 104 of 1976.

8. Procedure if application admitted :-

Where the application is granted, it shall be numbered and registered, and shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as a suit instituted in the ordinary manner, except that the plaintiff shall not be liable to pay any court-fee ¹ [or fees payable for service of process] in respect of any petition, appointment of a pleader or other proceeding connected with the suit.

1. Subs. by Act 104 of 1976, (w.e.f. 1st February, 1976), for the brackets and words "(other than fees payable for service of process.)"

9. [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' clear notice in writing has been given to the plaintiff, order ¹[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 his means are such that he ought not to continue to sue as ² [an indigent person]; or

(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.

1. Ins. by Act 104 of 1976, Sec. 81 for the words ""a pauper" (w.e.f. 1st February, 1977).

2. Subs. by Act 104 of 1976, (w.e.f. 1st February, 1976), for the brackets and words "(other than fees payable for service of process.)"

9A. Court to assign a pleader to an unrepresented indigent person :-

(1) Where a person, who is permitted to sue as an indigent person, is not represented by a pleader, the Court may, if the circumstances of the case so require, assign a pleader to him.

(2) The High Court may, with the previous approval of the State Government, make rules providing for-

(a) the mode of selecting pleaders to be assigned under sub-rule (1);

(b) the facilities to be provided to such pleader by the Court;

(c) any other matter which is required to be or may be provided by the rules for giving effect to the provisions of sub-rule (1).]

10. Costs where [an indigent person] succeeds :-

¹.-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 not been permitted to sue as ¹ [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-matter of the suit.

1. Subs. by Act 104 of 1976, (w.e.f. 1st February, 1976), for the brackets and words "(other than fees payable for service of process.)"

11. Procedure where an [indigent person] fails :-

¹Where the plaintiff fails in the suit or ²[the permission granted to him to sue as indigent person has been

(a) because the summons for the defendant to appear and answer has not been served upon him in consequence of the failure of the plaintiff to pay the court-fee or postal charges (if any) chargeable of such service, ³[or to present copies of the plaint or concise statement]; or

(b) because the plaintiff does not appear when the suit is called on for hearing, the Court shall order the plaintiff or any person added as a co-plaintiff to the suit, to pay the court-fees which would have been paid by the plaintiff if he had not been permitted to sue as ⁴ [an indigent person].

1. Ins. by Act 104 of 1976, Sec. 81 for the words "'a pauper" (w.e.f. 1st February, 1977).

2. Ins by Act 24 of 1942, Sec. 2. withdrawn,] or where the suit is withdrawn or dismissed,-

3. Subs by the A.O., 1950, for "Provincial Government", which had been substituted by the A.O" 1937 for "Government".

4. Subs. by Act 104 of 1976, Sec. 81, for the word "pauper" (w.e.f. 1st February, 1977).

11A. Procedure where [an indigent persons suit abates :-

Where the suit abates by reason of the death of the plaintiff or of any person added as a co-plaintiff, the Court shall order that the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as ¹ [an indigent person] shall be recoverable by the State Government from the estate of the deceased plaintiff.]

1. Subs. by Act 104 of 1976, Sec. 81, for the word "pauper" (w.e.f. 1st February, 1977).

12. State Government may apply for payment of court-fees :-

The ¹[State Government] shall have the right at any time to apply to the Court to make an order for the payment of court-fees under rule 20, ² [rule 11 or 11-A].

1. Subs by the A.O., 1950, for "Provincial Government", which had been substituted by the A.O" 1937 for "Government".

2. Subs by Act 24 of 1942, Sec. 2, for "or rule 11".

13. State Government to be deemed a party :-

All matters arising between the ¹[State Government] and any party to the suit under rule 10, rule 11, ² [rule 11-A] or rule 12 shall be deemed to be questions arising between the parties to the suit within the meaning of Section 47 .

1. Subs by the A.O., 1950, for "Provincial Government", which had been substituted by the A.O" 1937 for "Government".

2. Subs. by lbtd.

14. Recovery of amount of court-fees :-

Where an order is made under rule 10, rule 11 or rule 11-A, 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].

15. Refusal to allow applicant to sue as 1 [an indigent person] to bar subsequent application of like nature :-

An order refusing to allow the applicant to sue as ¹[an 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 as suit in the ordinary manner in respect of such right, ²[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 ³[State Government] and by the opposite party in opposing his application for leave to sue as ¹ [an indigent person].

1. Subs. by Act 104 of 1976, Sec. 81, for the word "pauper" (w.e.f. 1st February, 1977).

2. Subs. by Act 104 of 1976, Sec 81, for the words "provided that he first pays" (w.e.f. 1st February, 1977).

3. Subs by the A.O., 1950, for "Provincial Government", which had been substituted by the A.O" 1937 for "Government".

15A. Grant of time for payment of court-fee :-

Nothing contained in rule 5, rule 7 or rule 15 shall prevent a court, while rejecting an 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 fixed by the Court or extended by it from time to time; and upon such payment and on payment of the costs referred to in sub-rule (2) of rule 15 within that time, the suit shall be deemed to have been instituted on the date on which the application for permission to sue as an indigent person was presented.]

16. Costs :-

The costs of an application for permission to sue as ¹[an indigent person] and of an inquiry into ² [indigency] shall be costs in the suit.

1. Subs. by Act 104 of 1976, Sec. 81, for the word "pauper" (w.e.f. 1st February, 1977).

2. Subs. by C.P.C. (Amendment) Act 104 of 1976., for the word "pauperism".

17. Defence by an indigent person :-

Any defendant, who desires to plead a set-off 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.]

18. Power of Government to provide for free legal services to indigent persons :-

(1) Subject to the provisions of this Order, the Central or State Government may make such supplementary provisions as it thinks fit for providing free legal services to those who have been permitted to sue as indigent persons.

(2) The High Court may, with the previous approval of the State Government, make rules for carrying out the supplementary provisions made by the Central or State Government for providing free legal services to the indigent persons referred to in sub-rule (1), and such rules may include 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 be rendered.]