

CR-3376-2015(O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CR-3376-2015(O&M).
Decided on: July 6, 2015.**

Surinder Singh

... Petitioner(s)

VERSUS

Mam Chand and others

... Respondent(s)

*** * ***

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

**PRESENT Mr.Rakesh Bakshi, Advocate,
for the petitioner.**

M.M.S. BEDI, J (ORAL).

This is a revision petition against the order Annexure P1 dated 13.3.2015, dismissing the application under Order 7 Rule 11 CPC filed by the defendant- petitioner for rejection of the plaint on the ground that the suit is not maintainable for want of notice under Section 80 CPC and for Court fee. It is claimed in the application that the suit of the plaintiff-respondent is not maintainable as the plaintiff-respondent is not a pauper and has wrongly filed a suit under Order 33 Rule 1 CPC.

I have heard the learned counsel for the petitioner and carefully gone through the facts and circumstances of the case. The plaintiff-respondent in the present case has filed a suit for recovery of a sum of Rs.5 lacs claiming himself to be a pauper with an application for permission to file a suit in forma pauperis. One of

the defendants-respondent No.5 has filed written statement taking the legal objection that the plaintiff is not a pauper.

Counsel for the petitioner submits that while considering the application for permission to file the suit as indigent person, the trial Court has obtained a report from the Collector which is not correct and on the basis of that report, has allowed the plaintiff -respondent to sue as an indigent person.

After hearing the counsel for the petitioner at length and going through the legal provisions, I am of the opinion that the relevant provision for consideration of an application filed by an indigent person is contained in Order 33 CPC. Any application filed by a person claiming to be an indigent person has to be enquired into as per the provisions of Order 33 Rule 1A CPC. The application can be rejected on the grounds mentioned in Order 33 Rule 5 CPC after adopting the procedure under Order 33 Rule 7 CPC. As per Order 33 Rule 7 sub clause 3 CPC, it is always open to the court either to allow or to refuse to allow the applicant-plaintiff to sue as indigent person.

Order 43 Rule 1 sub rule (na) CPC, reads as follows: -

“Order 43 -

1. Appeal from Orders – An appeal shall lie from the following orders under the provisions of Section 104 namely -

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(na) an order under rule 5 or rule 7 of Order XXXIII

rejecting an application for permission to sue as an indigent person.”

In view of alternative remedy available to the defendant- petitioner to challenge the order allowing an application granting permission under Order 33 Rule 1 CPC, it will not be appropriate to adjudicate regarding the dismissal of the application under Order 7 Rule 11 CPC in the exercise of jurisdiction under Article 227 of the Constitution of India.

This petition is dismissed without prejudice to the rights of the petitioner to avail the alternative remedy of appeal in case the application for permission to sue as pauper filed by the plaintiff-respondent is allowed.

July 6, 2015.
rka

(M.M.S. BEDI)
JUDGE