

**Enhancing the Limit Prescribed to File Suit
in Forma Pauperis**

Report No.58

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In order to provide an equal opportunity of access to justice to an indigent or poor litigant, the law furnished the remedy of suit in forma pauperis, whereunder court fee is remitted to such a plaintiff. Not just the public but the courts too have been emphasizing on the need for some mechanism, so that no person is deprived of access to justice on account of poverty. The Calcutta High Court in a case decided in 1893 justifying the provision of pauper suit held that there may be persons who by reason of their poverty are unable to pay the court fee, therefore, provisions have been enacted in this Order exempting such person from paying in the first instance, the court fee prescribed and allowing them to prosecute their suit in forma pauperis (20 Cal. 111).

Rule I of Order XXXIII of the Code of Civil Procedure 1908 (hereinafter called "the Code") is the relevant provision whereunder a person who does not possess sufficient means to pay the prescribed court fee and fees incidental to a suit for seeking legal remedy may file a suit in forma pauperis. A special procedure is prescribed in the Code to institute a suit without payment of court fee. Similarly the court may permit a regularly instituted suit to be continued in forma pauperis subject to the following tests:

Where the applicant is not possessed of sufficient means to pay such fees where a court fee is prescribed; and

where no such fee is prescribed, when he is not entitled to property worth one thousand rupees other than his necessary wearing-apparel and the subject-matter to the suit.

The expression "sufficient means" being a question of fact has to be determined by the courts keeping in view the above circumstances, because in many cases a person has means but not sufficient to meet requirements of law e.g. a person may be entitled to property but may nevertheless be not possessed of sufficient means to pay court fee (AIR 1929 Nag 319). Likewise, in a case (AIR 1933 Lah 528) where a person though entitled to property which is not yet within his reach, or realizable assets not convertible into cash. In these circumstances the person is said to be not possessed of sufficient means. Another Indian case law recites, that in determining pauper status, property exempt from attachment in execution of a decree and the arrears of maintenance in the hand of the wife (whether spend or un-spend), being exempt from attachment, are not property which can be reckoned towards determining the question whether the person is indigent to pursue cause in suit or appeal. (AIR 1986 P & H 217.)

Pauper's Rights

A person qualifying to be a pauper is entitled to the following rights under Rule 8 Order XXXIII of the Code where:

- (i) if the application to sue in forma pauperis is allowed shall be converted into a plaint;
- (ii) the court shall proceed in all other respect as a suit instituted in the ordinary manner;
- (iii) the person qualifying to be a pauper is exempted from the payment of prescribed court fee/counsel fee.

In this regard an amendment in the Indian C.P.C., as revised in 1976, is worth mentioning, where in Rule I of Order XXXIII the word pauper has been substituted by "indigent person". According to this amended provision a person is indigent-

(a) if he is not possessed of sufficient means (other than property exempt from attachment in execution of a decree and the subject-matter of the suit) to enable him to pay the fee prescribed by law for the plaint in such suit; or

(b) where no such fee is prescribed, if he is not entitled to property worth one thousand rupees other than the property exempt from attachment in execution of a decree, and subject-matter of the suit.

The determination that a person is indigent or pauper can be done through state machinery for example, any revenue officer where the pauper resides can be directed to report about financial conditions of the plaintiff or petitioner also the defendant or opposite party during the pendency of the proceedings have a right to bring on record every material to show that plaintiff is not a pauper.

It may also be relevant to refer Rule 9 of Order XXXIII of the Code where a person can be dispaupered at any time by the court on the following grounds if the concession is abused by person and is detected at any stage of proceedings-

- (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 a pauper; 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.

The limit of rupees one thousand was fixed more than a quarter of a century ago (by Ordinance XII of 1972) and has since lost its efficacy, as hardly any person qualifies today to invoke the provision. There is thus a need to review and enhance this limit to make it reasonable and in tune with the present-day

realities. It may be pointed out that irrespective of the upper limit for declaration as a pauper, the Government will not suffer any financial loss, because in case a decree is passed, the pauper as a decree holder is obliged to pay the court fee and other charges. In case of default, under Rule 12 of Order XXXIII, the Provincial Government have the right to apply to the court to make an order for the payment of court fee, which under Rule 14 of said Order, is recoverable as an arrear of land revenue. Again, in case a suit is dismissed on any of the grounds mentioned in Rule 11 of the said Order, still the charges i.e. court fee and process fee are recoverable from him.

It is therefore proposed that the limit of rupees one thousand under Rule 1 of Order XXXIII of the Code may be increased to rupees twenty five thousand. Further, the exempted items should include besides wearing apparel, other items like cooking vessels, bed and bedding, tools of artisans and implements of husbandry.

The amendments suggested are indicated in the table below: -

Existing	Proposed
<p>Rule 1. Suits may be instituted in forma pauperis –</p> <p>Subject to the following provision, any suit may be instituted by a pauper.</p> <p>Explanation. – A person is a “pauper” when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit, or, where no such fee is preserved, when he is not entitled to property worth one thousand rupees other than his necessary wearing-apparel and the subject-matter of the suit.</p>	<p>Rule 1. Suits may be instituted in forma pauperis –</p> <p>Subject to the following provision, any suit may be instituted by a pauper.</p> <p>Explanation. – A person is a “pauper” when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit, or, where no such fee is preserved, when he is not entitled to property worth twenty-five thousand rupees other than his necessary wearing-apparel, cooking vessels, bed and bedding, tools of artisans, implements of husbandry, necessary for earning livelihood and the subject matter of the suit.</p>

The Commission considered the proposal and approved the draft Notification seeking to enhance a limit of value of property owned by a person to qualify as

pauper for claiming exemption from court fee. The draft Notification as at Annex has been sent to the four High Courts for further action.

Annex:

High Court Notification

In exercise of the powers conferred by Section 122 of the Code of Civil Procedure 1908(V of 1908), hereinafter referred to as the said Code, the Lahore High Court is pleased to amend the following rule in the First Schedule, in order XXXIII after previous publication in the Extraordinary Punjab Gazette dated _____ and in Extraordinary Gazette of Pakistan dated _____ and with the approval of the Government of Punjab and the Government of Pakistan and is published for general information under the provision of Section 127 of the said Code.

In the said Code, in the First Schedule, in Order XXXIII, in rule 1, in explanation- for the word "one " the words "twenty five" shall be substituted; and after the words "wearing-apparel" the words " cooking vessels, bed and bedding, tools of artisans, implements of husbandry, necessary for earning livelihood," shall be inserted

Registrar