

**ORDER XXXIII**  
**SUITS BY PAUPERIS**

1. Suits may be instituted in forma pauperis.--Subject to the following provisions, any suit may be instituted by a pauper.

**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 prescribed, when he is not entitled to property worth <sup>3</sup>[one thousand] rupees other than his necessary wearing-apparel and the subject-matter of the suit.

**Proposed Draft Amendment:** (Notification No. 338/Rules XI-Y-26, dated 20th October, 2001. Published in Gazette of Pakistan Extraordinary dated 22nd October, 2001, p. 1403.):

(i) In Order XXXIII, in Rule 1, in the explanation below Rule 1, for the words "one thousand" the words "twenty five thousands" shall be substituted.

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1. Subs. by the A.O., 1937, for "the G. G-in-C, or a L.G". Federal subs. by P.O. 4 of 1975.
  2. The words "or the Own Representative" omitted by the A.O., 1949.
  3. Subs. for the words "one hundred" by Ordi. XII of 1872.

## COMMENTS

**Pauper.** A pensioner having no other source of income except his pension of Rs. 850/-p.m. having no property other than the house in dispute or the house hold articles, a pauper. [2001 MLD 117]. Object of O. XXXIII dealing with applications and suits by pauper is three fold i.e. to protect bona fide claim of a pauper, to safeguard interest of revenue and to protect defendants right not to be harassed. [2000 CLC 1442]. Once the application is admitted, it would be numbered and registered as a plaint in a suit which would proceed in all respects as a suit in ordinary manner. [2000 PLC 1442].

**2. Contents of application.**--Every application for permission to sue as a pauper shall contain the particulars required in regard to plaints in suits; a schedule of any movable or immovable 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.

## COMMENTS

**Scope of.** It is obligatory for a plaintiff firstly to seek permission to sue as a pauper. Application must contain the particulars required in regard to plaints in suits, a schedule of any moveable or immovable property belonging to the applicant. Estimated value is to be annexed thereto. [PLJ 2010 AJ&K 123]

**Verification.** Absence of signatures on the plaint or verification of plaint or such irregularities which are curable under provisions of the Code, however, would not cause plaintiff to be non-suited. Such principle would be applicable to proceedings in forma pauperis under O. XXXIII of the Code and plaint can be rectified. [1995 MLD 323].

**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.

**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 when the applicant is allowed to appear by 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 an 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.

## COMMENTS

**Pauper suit.** High Court has to examine the applicant and if it does not satisfy the requirements of Rules 2 & 3 the same shall be rejected u/R. 5 of Order XXXIII of CPC. First Appellate Court had not even bothered to go through the provisions of Order XXXIII of CPC. Proceedings had been conducted without application of judicial mind which was duty of every judicial officer. [PLJ 2010 AJ&K 123]

**5. Rejection of application.**--The Court shall reject an application for permission to sue as a pauper--

- (a) Where it is not framed and presented in the manner prescribed by Rules 2 and 3, or
- (b) where the applicant is not a pauper, 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 a pauper, or
- (d) where his applications 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 in such subject-matter.

**Proposed Draft Amendment:** (Notification No. 338/Rules XI-Y-26, dated 20th October, 2001. Published in Gazette of Pakistan Extraordinary dated 22nd October, 2001, p. 1403.):

- (i) In Rule 5, in clause (d) after the word "action" the words "or where the suit appears from the statement in the application to be barred by any law" shall be added.

**6. Notice of day for receiving evidence of applicant's pauperism.**--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 day's 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 pauperism, and for hearing any evidence which may be adduced in disproof thereof.

**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 a memorandum of the substance of their evidence.

(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 as herein

provided, 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 a pauper.

Proposed Draft Amendment: (Notification No. 338/Rules XI-Y-26, dated 20th October, 2001. Published in Gazette of Pakistan Extraordinary dated 22nd October, 2001, p. 1403.)

(a) For sub-rule (1) the following shall be substituted, namely:-

"(1) On the day so fixed or as soon thereafter as may be convenient, the Court shall further examine and cross-examine the applicant or his agent and also examine and cross-examine the opposite party and shall make a memorandum of the substance of their evidence"; and

(b) In sub-rule (2), for the words "evidence (if any) taken by the Court as herein provided" the words "affidavit (if any) filed in the Court" shall be substituted.

**COMMENTS**

Revision. An order allowing or rejecting application under O. XXXIII, R. 7 constitutes "case decided" and is open to revision. [PLD 1968 Lah. 423].

**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 (other than fee payable for service of process) in respect of any petition, appointment of a pleader or other proceeding connected with the suit.

**COMMENTS**

Revision. Order declaring a party a pauper for purposes of payment of Court-fee is not one of appealable orders but revisable. [1994 CLC 2084]. Order allowing plaintiff to sue as a pauper without examining him or his evidence is erroneous so as to attract provision of S. 115 of the Code. [PLD 1991 Pesh. 25].

**9. Dispaupering.**--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 the plaintiff to be dispaupered--

- (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 a pauper; or

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- (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.

**10. Costs where pauper succeeds.**--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 had not been permitted to sue as a pauper: such amount shall be recoverable by the <sup>4</sup>[Provincial 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.

**11. Procedure where pauper fails.**--Where the plaintiff fails in the suit or is dispaupered, or where the suit is withdrawn or dismissed:--

- (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 for such service, 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 a pauper.

<sup>5</sup>[11-A. Procedure where pauper suit abates.--Where the suit abates by reason of the death of the plaintiff or 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 a pauper shall be recoverable by the Provincial Government from the estate of the deceased plaintiff.]

**12. Provincial Government may apply for payment of Court-fees.**--The <sup>6</sup>[Provincial Government] shall have the right at any time to apply to the Court to make an order for the payment of Court-fees under R. 10, <sup>7</sup>[rule 11 or Rule 11 -A]

**13. Provincial Government to be deemed a party.**--All matters arising between the <sup>8</sup>[Provincial Government] and any party to

4. Subs. by the A.O., 1937 for, "Govt".

5. Rule 11-A ins by the C.P.C. (Second Amendment) Act, 1942 (24 of 1942), S. 2.

6. Subs. by the A.O., 1937, for, "Govt."

7. Subs. by the C.P.C. (Second Amendment) Act, 1942 (24 of 1942), S. 2, for the words and figures "or Rule 11".

8. Subs. by the A.O., 1937, for, "Govt."

the suit under Rule 10, 11, <sup>1</sup>[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.

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 pauper to bar subsequent application of like nature.--An order refusing to allow an applicant to sue as a pauper shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue; the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right, provided that he first pays the costs (if any) incurred by the <sup>3</sup>[Provincial Government] and by the opposite party in opposing his application for leave to sue as a pauper.

16. Costs.--The costs of an application for permission to sue as a pauper and of an inquiry into pauperism shall be costs in the suit.

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