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**QUESTION:**

**Explain the suit in Forma pauperis ? When a suit in forma pauperis be filed?**

**ANSWER:**

**PAUPER SUIT:**

The law enables persons who are too poor to pay the prescribed court fee to institute a suit without payment of court fee, and similarly the court may permit a regularly instituted suit to be contained in forma pauperis. **PLD 1966 AJ&K 15.** Non-payment of court fee even otherwise has no effect regarding institution of the suit. But even a pauper has to pay for certain purposes. Where a plaintiff is allowed to sue in forma pauperis the Government has a first charge on the subject matter of the suit. No security should be demanded of such persons. A defendant cannot defend in forma pauperis. Even a firm or limited company can sue in forma pauperis.

**EXAMINATION OF PAUPER APPLICATION:**

For the purposes of determining a pauper application under this rule the Explanation lays down the following tests.

### WHERE THE FEE IS PRESCRIBED:

The applicant is not entitled to property worth <sup>25</sup> ~~one~~ thousand rupees other than the subject matter of the suit, and his necessary wearing apparel, and which is sufficient to pay the court-fee. It is not the property that a person owns or is entitled to that is determinative, but the fact whether he is possessed of sufficient means to pay the court fee.

### SUFFICIENT MEANS:

The term 'sufficient means' refers to all kinds of assets which can be realized and converted into cash for the purpose of paying court-fee, and this includes a mortgage, or a decree, in favour of the petitioner. It does not include equity of redemption. Another view is that this does not include debts due, whilst according to yet another view it is to be seen whether in the circumstances in which the applicant is placed he can raise enough money to pay the court-fee. Where the prescribed court-fee is Rs. 1,775/- and the petitioner is possessed of Rs. 1600/- only the cannot be said to be possessed of sufficient means, and is a pauper for the purposes of this rule. For the purposes of determining pauperism the court will as such inquire into all the means of the applicant, on the date of the application. The means of his relatives, or of a minor's next friend, are irrelevant. Where a person sues in a representative capacity, his personal means are irrelevant. A mutawalli's personal property cannot be taken into consideration, nor can the property of a spouse be considered.

### HOW SUFFICIENT MEANS SHALL BE DETERMINED:

The subject matter of the suit is not to be considered in cases where no court-fee is prescribed. Where court-fee is prescribed the subject matter of the suit will be taken into consideration if the petitioner is in possession of the same, but it will be excluded if he is not in possession of it. Where the defendant subsequent to the institution of an application for permission to sue as a pauper hands over possession of the subject matter to the petitioner. The ornaments of a woman can be taken into consideration. A defendant cannot be

allowed to defend or claim set off in forma pauperis. The term 'person' refers to a natural person as well as to a juridical personality.

#### **CONTENTS OF APPLICATION:**

A pauper application is a composite document consisting of an application for leave to sue as a pauper and a plaint. 1986 CLC 1227. Rules prescribing the procedure to be followed where a suit is proposed to be instituted in forma pauperis. The application must contain the particulars required in regard to plaints. The petitioner should in all good faith, enumerate in the Schedule any movable or immovable property to which the petitioner is entitled though it may not be in his possession, or in which he has interest. Debts due must also be listed. The property which is the subject-matter of the suit should be included in the Schedule. Where the petitioner intentionally suppresses facts, the application may be dismissed, and where permission has already been accorded it may even be cancelled. However, omission to mention some items of property if not deliberate, may be allowed to be corrected by amendment.

#### **PRESENTATION OF APPLICATION:**

The application should be presented in person so that examination of the applicant can take place. Unless the applicant is exempted from appearance in court, an application not presented in person is to be rejected. Where there are several applications, they must all be personally present. Minors, lunatics and companies will necessarily be represented by an agent. A purdah nashin lady may present the application through an agent.

#### **EXAMINATION:**

The court can examine the matter at two stages under this Order XXXIII. The examination of the applicant can be with respect to his pauperism as well as for the purpose of determining whether a cause of action exists or not. Such person can be cross-examined by the other party. Persons other than the applicant may be examined.

**REJECTION OF APPLICATION:**

This rule lays down the circumstances in which an application for permission to sue in forma pauperis may be rejected. The rule is not exhaustive of the circumstances in which the application may be rejected. It can be rejected in the circumstances to secure the ends of justice or prevent abuse of the process of the court. The rejection under this rule should take prior to an inquiry into the applicant's pauperism, and prior to notice. Where an application is rejected for want of compliance with formalities, a fresh application can be presented. The doctrine of lis pendens is applicable pending such application. The grounds given in this rule are not exhaustive.

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