

therefore, he contended that section 8 gives additional security to a tenant inducted after the Act. This argument is again fallacious. Section 7-A has been enacted to meet a totally different situation, and that is the reason why no mention is made of this provision in section 8. The only object of section 8 was to fix a minimum period for which a tenant if inducted by a landowner with a permissible area after the Act could hold on the land. It does nothing more than that, and that is why only section 8 was made subject to section 7 because if a tenant breached any of the provisions of section 7 he could be evicted, even within the period fixed by section 8.

For the reasons recorded above, we see no force in any of these appeals and the same are dismissed. There will be no order as to costs.

GOPAL SINGH, J.—I agree.

B.S.G.

REVISIONAL CIVIL

*Before Prem Chand Pandit, J.*

DYAL KAUR,—*Petitioner*

*versus*

UJAGAR SINGH, ETC.,—*Respondents.*

**Civil Revision No. 535 of 1970**

January 6, 1971.

*Code of Civil Procedure (V of 1908)—Order 33, rules 1 and 9—Maintenance allowance of a person—Whether can be taken into consideration for finding whether he or she is able to pay the prescribed Court-fee for a suit—Receipt of arrears of maintenance by a pauper plaintiff—Whether sufficient to dispauper him.*

*Held*, that maintenance allowance of a person cannot be taken into consideration for finding out whether he or she is possessed of sufficient means to enable him or her to pay the fee prescribed by law for the plaint in a pauper suit and for determining whether he or she is a pauper within the meaning of order 33, rule 1 of the Code of Civil Procedure. Maintenance allowance is primarily for day-to-day expenses. It cannot be utilized for

paying court-fee on a suit. Simply because the person gets the arrears of maintenance, he or she cannot be dispaupered under Order 33, rule 9 of the Code on the ground of having in possession sufficient means to pay the Court fee on the suit. (Para 4)

*Petition under Section 44 of Act IX of 1919 and 115 C.P.C., for revision of the order of Madan Lal Gupta, Sub-Judge, 1st Class, Kharar, dated 25th March, 1970, refusing to allow the applicant to sue as pauper under Order 33, Rule 7 of the Civil Procedure Code, and dismissing the application.*

Y. P. GANDHI, ADVOCATE, for the petitioner.

BALWANT SINGH, ADVOCATE, for the respondents.

### JUDGMENT

PANDIT, J.—(1) This is a plaintiff's revision petition filed under section 115, Code of Civil Procedure, against the order of the Court below refusing to allow the petitioner to sue as a pauper.

(2) Dyal Kaur instituted a suit against her husband Ujagar Singh for the recovery of Rs. 3,000 on the ground that she needed this amount for the marriage of her daughter Pal Kaur. Along with the plaint, she filed an application that as she was not possessed of sufficient means to pay the requisite court-fee, she might be permitted to file the suit in *forma pauperis*. It appears that previously this application was allowed, but subsequently the record containing the evidence and the order to that effect was lost and could not be traced. This would be clear from the fact that on 13th August, 1969 Ujagar Singh moved an application under Order 33, rule 9, Code of Civil Procedure, for dispaupering the plaintiff. The impugned order dated 25th March, 1970, had been passed on that application. It was stated therein that the plaintiff had filed a suit against him in *forma pauperis* and she had been declared a pauper. She had recovered about Rs. 600 on account of maintenance from him and now she was in a position to pay the court-fee. It was, therefore, prayed that she be dispaupered and asked to pay the court-fee.

(3) The petitioner had produced two witnesses Ranjit Singh and Surjan Singh, A.Ws. 1 and 2, to show that she was a poor lady possessing nothing and was unable to pay the court-fee. She herself also appeared as A.W. 3 and deposed that neither she nor her daughter, aged 21 years, had any source of income. Both of them were living with the petitioner's brother. She admitted to have received Rs. 700 as maintenance allowance from Ujagar Singh during two years. She

used to take money on credit and when the maintenance allowance was paid by her husband, the debt was paid off. She had no ornaments, household goods or any cash amount. She admitted in cross-examination that she received Rs. 210 on that day as maintenance allowance and further that Rs. 530 were deposited in Court by her husband for her. It is somewhat curious that the husband did not appear in the witness-box and it was the petitioner's father-in-law Sarwan Singh, who did so as R.W. 1. He admitted in cross-examination that the maintenance of Dayal Kaur was fixed at Rs. 40 and that of her daughter at Rs. 30 per month. Both of them, according to him, had no property anywhere.

(4) The trial Judge accepted the husband's application and dispaupered the petitioner, though in the impugned order he had mentioned that the petitioner was not allowed to sue as a pauper under Order 33, rule 7, Code of Civil Procedure, primarily on the ground that the petitioner had been paid Rs. 700 in cash and Rs. 530 stood deposited in Court for her and, therefore, she was possessed of sufficient means to pay the court-fee on the suit. As already mentioned above, all this was the maintenance amount given by Ujagar Singh for his wife and her daughter. Both of them used to maintain themselves on credit and when the maintenance allowance was later on paid by Ujagar Singh, they used to clear their debts in that way. Learned counsel for the respondent could not show that this maintenance allowance, which was primarily for the day-to-day expenses of the petitioner and her daughter, should be utilised for paying the court-fee for this suit. The maintenance of a person, in these circumstances, cannot, in my view, be taken into consideration for finding out whether he or she is possessed of sufficient means to enable him or her to pay the fee prescribed by law for the plaint in a pauper suit and for determining whether he or she is a pauper within the meaning of Order 33, rule 7, Code of Civil Procedure. Simply because it was proved on the record that the petitioner got the arrears of maintenance, she could not be dispaupered. The impugned order of the Court below, therefore, deserves to be set aside.

(5) The result is that this petition succeeds and the order under revision is quashed. There will, however, be no order as to costs. Parties have been directed to appear before the Court below on 25th January, 1971, for further proceedings in the case.

---

B. S. G.