made to (1) *C. Veera Chowdaiah* v. *State of Mysore and another* (1) and *Alakendu Sarkar* v. *State of West Bengal and others* (2), I am in agreement with the aforesaid two decisions and conclude that withholding of increments with cumulative effect would not be covered by sub-rule (iv) and may fall under sub-rule (v) and therefore, would not be a minor penalty.

(8) The learned counsel for the State has relied upon a Full Bench judgment of this Court in *Malvinderjit Singh* v. *State of Punjab and others* (3). There the only point considered was whether Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952 provided adequate opportunity to defend or not. It was ruled that it was with regard to the imposition of minor penalties and opportunity to make representation was considered to be sufficient and it was not necessary that the employee should be supplied with the copy of the report or the substance of the adverse findings or the material on which they were based, which procedure was to be followed for imposition. of major penalties. It is true that there the punishment awarded was for withholding of increments with cumulative effect but the precise point which is before me was not even remotely raised or decided and, therefore, that decision is of no assistance in deciding the present case.

For the reasons recorded above, I answer the point in the affirmative and hold that the stoppage of increments with cumulative effect is a major punishment. Accordingly, the appeal is dismissed with costs.

N.K S

Before M. M. Punchhi, J.

SHANTI DEVI and others,—*Petitioners.*

versus

DHARAM PAL and others,—*Respondents.*

Civil Revision No. 278 *of* 1982

May 4, 1982.

Code of Civil Procedure (*V of* 1908) *as amended by Act* 104 *of* 1976—*Section* 60 *and Order* 33 *Rule* 1—*Indigent person—Determination of—Property exempt from attachment in execution of a decree,*

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(1) 1973 (1) S.L.R. 241.

(2) 1981 (2) S.L.R. 33.

(3) 1970, S.L.R. 660.

subject matter of the suit and wages of labourers and domestic servants—Whether to be taken into account in determining 'sufficient means' to pay the court fee.

Held, that the significant change which has been brought about by the amending Act of 1976 in the Code of Civil Procedure, 1908 is that whatever be the interpretation of the expression 'sufficient means', it cannot inclue (i) property which is exempt from attachment in execution of a decree, and, (ii) the subject matter of the suit. In other words, the property which the applicant is possessed of which is not liable o attachment in execution of a decree is not to be reckoned for the purposes of finding out whether he has sufficient means to pay the court fee. Under section 60, proviso (h), the wages of labourers and domestic servants, whether payable in money or in kind, are not liable to attachment. Similarly, salary to the extent of the first Rs. 400 and two-thirds of the remainder is not to be attached in execution of an ordinary decree under section 60, proviso (i) and, therefore, these amounts are not to be taken into account in determining whether the applicant has 'sufficient means' to pay the court fee. (Para 4).

Petition under section 115 *C.P.C. for revision of the order of Shri N. S. Rao, District Judge, Karnal, dated 8th January,* 1982 *dismissing the application with no orders as to costs.*

I. K. Mehta, Advocate, *for the Petitioner.*

C. B. Goel, Advocate, *for the Respondents.*

JUDGMENT

M.M. Punchhi, J. (oral).—

(1) The four petitioners have challenged, in revision, the order of Shri N. S. Rao, District Judge, Karnal, dated 8th January, 1982, whereby he refused them the permission to appeal as indigent persons.

(2) The skeletal facts which have given rise to this petition are these. Dharam Pal respondent brought a suit for specific performance of an agreement of sale in respect of agricultural land measuring 45 Kanals 4 Marlas fully detailed in the plaint. The suit is directed against Phula. Phula is now dead and is succeeded by the four petitioners as also the *pro forma* respondents other than Dharam Pal, the contesting respondent. This suit was decreed by the trial court on 30th October, 1980. Feeling aggrieved, the petitioners filed appeal

and prayed for permission to do so as indigent persons as according to them they did not possess sufficient means to enable them to pay the court fee prescribed by law. On calculation, the court fee comes to Rs. 6,970. The learned District Judge took the view that out of the four petitioners, Bhim, Subhash and Puran were workmen earning their livelihood. With regard to the fourth petitioner, Shmt. Shanti, widow of Phula, he observed that she was an able-bodied person and as ruralite she would be working in the fields. Since the four petitioners were treated to be earning their livelihood, it was a factor which went towards holding that they had the means to pay the court fee. The other factor which weighed with the District Judge was that in the year 1972, the land in dispute measuring 45 Kanals 4 Marlas had fetched Rs. 5,000 as lease money and since the land was canal and tubewell-irrigated, it was fetching sufficient income. On these two factors he disbelieved the petitioners and held that they were not indigent persons and hence refused them permission to prefer the appeal as such. It is to challenge this order that the present revision petition has been filed.

(3) Mr. I. K. Mehta, learnel counsel for the petitioners, has challenged the legality and propriety of the impugned order on the premises that the learned District Judge has nowhere found that the petitioners have, at present, the means to pay Rs. 6,970 as court fee. According to him, the mere fact that all the petitioners were able-bodied persons and earning their livelihood, as also that the land was productive of agricultural income, alone do not go to show that the petitioners are having sufficient means to pay the court fee. He sought to support his argument by relying on judicial pronouncements which are in the field prior to the amendment of Order 33, Code of Civil Procedure, which came into effect on 1st February, 1977. I do not think those precedents would be of much use for the decision of this petition. Sufficedly, reference may be invited to *Sanyukta* v. *Prem Kumar and others* (1), wherein P. C. Pandit, J., had held that under Order 33, Rule 1, C.P.C., the question to be seen is not whether the applicant possesses sufficient property which can enable him to pay the court fee but whether he has sufficient means for this purpose. It was also observed that the applicant may or may not have the requisite amount with him but if he can raise the requisite money on some property he will not be considered to be a pauper. This precisely is the line of reasoning as

(1) 1974 P.C.R. 5.

given by the learned District Judge while interpreting the present Order 33, Rule 1. It would be appropriate to juxtapose the old and the new provision.

Prior to 1-2-1977	After 1-2-1977
ORDER XXXIII	ORDER XXXIII
Suits by Paupers	(Suits by indigent persons)
1. *Suits may be instituted in* forma pauperis.—Subject to the following provisions, any suit may be instituted by a pauper.	1. *Suits may be instituted in* forma pauperis.—Subject to the following provisions any suit may be instituted by an indigent person.
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 one hundred rupees other than his necessary wearing—apparel and the subject-matter of the suit.	*Explanation I.*—A person is an indigent person,— (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 the subject-matter of the suit.

Explanation II.—Any property which is acquired by a person after the presentation of his application for permission to sue as an indigent person, and before the decision of the application shall be taken into account in considering the question whether or not the applicant is an indigent person.

Explanation III.—Where the plaintiff sues in a representative capacity, the question whether he is an indigent person shall be determined with reference to the means possessed by him in such capacity.

(4) The significant change which has been brought about is that whatever be the interpretation of the expression 'sufficient means', it cannot include (i) property which is exempt from attachment in execution of a decree, and, (ii) the subject-matter of the suit. In other words, the property which the applicant is possessed of which is not liable to attachment in execution of a decree is not to be reckoned for the purpose of finding out whether he has sufficient means to pay the court fee. In the instant case, Shmt. Shanti, widow of Phula has been found to be an able-bodied person capable of working in agricultural fields. *Ex facie;* her earnings would be exempt from attachment in execution of a decree under section 60, proviso (h), which says that the wages of labourers and domestic servants, whether payable in money or in kind, are not liable to attachment. Similarly, Subhash, petitioner, is reported to be working as a gardener at Uchana Lake, District Karnal, fetching Rs. 400 per mensem as salary. This income, too, is exempt from attachment under section 60, proviso (i) which provides that the salary to the extent of the first Rs. 400 and two-thirds of the remainder is not to be attached in execution of an ordinary decree. In the same strain, Puran, petitioner, is said to be working as a labourer at a sheller in Karnal and his emoluments could well be covered under provisos (h) and (i) afore-referred. Bhim, petitioner, is stated to be working as a driver and possibly a salaried person, again coming

within the mischief of provisos (h) and (i) afore-referred. Explanation IV to section 60, Code of Civil Procedure of 1908, makes it clear that a labourer includes a skilled, unskilled or semi-skilled labourer. The learned District Judge does not seem to have invited his attention to these salutary provisions of law while computing the means of the petitioner towards judging them as indigent persons.

(5) So far as the case of income from land is concerned, it may well be that the land is capable of fetching rich income. All the same, section 60, proviso (b) says that a portion of agricultural produce, or of any class of agricultural produce, as may have been declared to be free from liability under the provisions of the next following section is exempt from attachment. Section 61, C.P.C., empowers the State Government to declare that such portion of agricultural produce, or of any class of agricultural produce, as may appear to the State Government to be necessary for the purpose of providing until the next harvest for the due cultivation of the land and for the support of the judgment-debtor and his family, shall, in the case of all agriculturists or of any class of agriculturists, be exempted from liability to attachment or sale in execution of a decree. Neither counsel is in a position to say whether there is a declaration of the State Government of the kind or not. But even this needs probe and the learned District Judge's attention was not invited to this aspect of the case. It has also to be seen if any such declaration as envisaged under section 61, C.P.C., has been made, how would sub-clause (b) be operative for the purpose. And in the context, Explanations V and VI to section 60 would not be out of place which define an agriculturists, and whether the petitioners would come within the purview thereof or not.

(6) Without going into the question, whether in view of the amendment, the concept of 'sufficient means' as interpreted by various judgments inclusive of *Sanyukta's case* (supra) has come to be changed or not, the decision in this petition is solely confined to the exceptions given in rule 1, order 33. Since the learned District Judge would now be required to examine the matter afresh in the light of the observations made heretofore, it would be unnecessary to dwell on the other aspect for the present. It is clarified that nothing said herein would, however, affect the merits

of the case and any reference made thereto is only explanatory for the legal issues involved in the case.

(7) For the foregoing reasons this petition is allowed, the impugned order is set aside and the matter is remitted back to the learned District Judge, Karnal, who will reconsider the matter in accordance with law.

(8) The parties, through their counsel, are directed to appear before the District Judge, Karnal, on 24th May, 1982. In the circumstances of the case, however, there will be no order as to costs.

N.K.S.

Before M. M. Punchhi, J.

MANGAT,—*Petitioner*

versus

RAM PIARI and another,—*Respondents.*

Civil Revision No. 360 *of* 1982.

May 12, 1982.

Code of Civil Procedure (*V of* 1908)—*Order* 6 *Rule* 17—*Suit filed challenging a joint decree—Some of the decree holders not impleaded as defendants—Application for amendment to implead the left out decree holders—Amendment opposed on the ground that the suit was barred by time against the left out decree holders—Question of limitation—Whether should be decided after allowing the amendment.*

Held, that the principle is well settled that the question of limitation has to be settled on the bare reading of the plaint. If on the frame of the plaint, the suit is within limitation but some of the alternate prayers made therein are not so, the plaint cannot be rejected outright for being barred by limitation. In such a situation, it is not just a question of law but raises a mixed question of law and fact. A decree under challenge may be void *ab initio* or voidable capable of being avoided on the establishment of some facts. It is, therefore, not correct for the court to reject the prayer for amendment of the plaint without impleading the parties to the decree. (Para 4).

Petition Under Section 115 *C.P.C. for the revision of the order of Shri D. D. Yadav, Sub-Judge* 1st *Class, Kurukshetra, dated* 6th *January,* 1982, *dismissing the petition.*

Claim:—Suit for possession.

V. K. Bali, Advocate, *for the Petitioner.*

S. S. Rathore, Advocate, *for the Respondents.*