

---

**(1985) 05 P&H CK 0006**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Revision No. 1490 of 1984**

Birender Kumar

APPELLANT

Vs

Mohinder Singh and Others

RESPONDENT

---

**Date of Decision :** 23-05-1985

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 2, Order 33 Rule 3

**Citation :** (1985) 05 P&H CK 0006

**Hon'ble Judges :** J.V. Gupta, J

**Bench :** Single Bench

**Advocate :** M.M.S. Bedi, for the Appellant; Naubat Singh, for Respondent No. 1. and Mr. Ashok Kumar, for Respondents No. 2 to 4, for the Respondent

**Final Decision :** Dismissed

---

## Judgement

J.V. Gupta, J.—This order will dispose of Civil. Revision Petitions Nos. 1490 and 2928 of 1984, as the question involved is the same in both the revision, petitions.

2. The petitioner Birender Kumar filed the suit seeking possession, by partition of one-fourth share in the suit property. Along with the suit, he filed the application seeking permission to file the suit as an indigent person. That application was contested on behalf of the defendants-respondents. Ultimately, the trial Court dismissed the said application vide order dated April 15, 1983, holding that the petitioner was not an indigent person and that the application was not in accordance with the provisions of order XXXIII, CPC (hereinafter called the Code), as it was not verified at all. Dissatisfied with the same, the petitioner filed an appeal in the Court of the District Judge, Rohtak, wherein the learned Additional District Judge found that without affording any opportunity to the petitioner, it could not be held that he was not an indigent person and, therefore, the finding of the trial Court in this behalf was set aside. However, it was found that the application was liable to be dismissed otherwise on the ground that it was not properly verified, signed and presented by the applicant, as required under Order XXXIII rules 2 and 3 of the Code. Ultimately, the appeal was

dismissed. Dissatisfied with the same, the applicant filed Civil Revision Petition No. 1490 of 1984. Meanwhile, he moved an application in the trial Court for permission to amend his original application to sue as an indigent person which was dismissed by the trial Court vide order dated May 7, 1984. Aggrieved against the same, he has filed Civil Revision Petition No. 2928 of 1984 in this Court which was ordered to be heard along with Civil Revision Petition No. 1490 of 1984.

3. It is not disputed that the application to sue as an indigent person was not presented in person by the petitioner, as required under Order XXXIII rule 3 of the Code. If that is so, then the application filed by him was liable to be rejected under Order XXXIII rule 5 of the Code. It was such a defect which could not be rectified by even seeking amendment of the original application. Under the circumstances, I do not find any force in both the revision petitions. The proper remedy for the applicant would be to file a fresh application seeking permission to file the suit as an indigent person. Moreover, no limitation is involved in filing the suit for partition as such.

4. Consequently, the revision petitions fail and are dismissed with no order as to costs.