

(2011) 03 UK CK 0086

In the Uttarakhand High Court

Case No : Appeal From Order No. 98 of 2011

Kalam Singh and Another

APPELLANT

Vs

Chairman/Managing Director Uttarakhand Power Corporation
and Another

RESPONDENT

Date of Decision : 14-03-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 1

Citation : (2011) 03 UK CK 0086

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.S. Verma, J.—Heard learned Counsel for the Appellants and perused the record.

2. This appeal is directed against the order dated 3-2-2011 passed by the District Judge, Tehri Garhwal in Misc. Case No. 28 of 2007, Kalam Singh v. Chairman/Managing Director, Uttarakhand Power Corporation and another, whereby the application of the Appellant moved under Order 33, Rule 1 CPC has been rejected on the ground that the Appellant is having land measuring 0.137 Hectare in Khata No. 124 of village Bharpur and he has sufficient means to pay the court fee and that the Appellant is not a person falling within the definition of indigent person. The Appellant-Plaintiffs were also directed to pay the court-fee as per Munsarim's report within a period of 15 days.

3. It appears that the Appellants presented a suit in forma paupris for recovery of amount of Rs. 5,00,000 as damages against the Respondents before the court below and along with the plaint, they also moved application under Order 33, Rule 1 CPC paper No. 8-C for permission of the court to institute the suit as an indigent person. The application was resisted on behalf of the Respondents herein by filing their objections.

4. An inquiry as contemplated under Order 33, Rule 1-A of the CPC appears to

have been made and the report of Patwari Khetpali and Tehsildar Pratap Nagar were filed before the court below.

5. Learned Counsel for the Appellant has contended that he is a B.P.L. card holder and comes within the definition of indigent person and the Appellant has no sufficient income from the land.

6. After perusal of the report of Tehsildar as well as that of Patwari concerned, the court below arrived at the conclusion that the Appellant has sufficient means and he is not an indigent person.

7. Before the court below the Appellants-applicants themselves have admitted that Appellant No. 1 Kalam Singh is doing work in the hotel of his elder brother in district Uttarkashi. Applicant Kalam Singh also admitted that he has land near his residence.

8. Having heard the submissions of the learned Counsel for the Appellants and having perused the material placed before the Court, I am of the view that the court below has not committed any error in rejecting the application of the Appellants. The learned District Judge has elaborately dealt with the provision of Order 33, Rule 1 CPC in the impugned order and has rightly held that the Appellants are not indigent persons. The trial court has rightly directed the Appellant-Plaintiffs to pay the court-fee.

9. In the result, the appeal has no force and the same is liable to be dismissed outright at the threshold.

10. The appeal is dismissed summarily.