**(1978) 03 AHC CK 0027**

**In the Allahabad High Court**

**Case No :** Civil Revision No. 320 of 1973

Kalka Prasad Ram Lal APPELLANT

Vs

Rammo Mal RESPONDENT

**Date of Decision :** 08-03-1978

**Acts Referred:**

**Citation :** (1978) AWC 337

**Hon'ble Judges :** C.S.P. Singh, J

**Bench :** Single Bench

**Advocate :** S.P. Gupta, for the Appellant; Beni Prasad Agarwal, for the Respondent

**Final Decision :** Dismissed

## Judgement

C.S.P. Singh, J.—This revision is directed against an order refusing permission to file an appeal as a pauper.

2. A decree had been obtained against a firm, which consisted of two partners, one Sri Ram Lal and the other Sri Moonga Ram. Ram Lal filed an appeal to the District Judge on behalf of the firm and sought permission to file the appeal as pauper. The matter was sent for inquiry to the Civil Judge. The Civil Judge found that Ram Lal who had preferred the appeal on behalf of the firm had no means to pay the court fee. He, however, found that there was no evidence on record that Moonga Ram the other partner did not have sufficient means to pay the court fee, and further that as the firm had been carrying on business of Dal Mill before it was closed, it could not be said that the Appellant firm did not have any assets out of which the court fee could be paid. After recording these findings, the matter went back to the District Judge. The District Judge took the same view.

3. Counsel for the applicant contended that the relevant inquiry in the pauper proceedings was as to whether Ram Lal, the partner who had filed the appeal was a pauper or not, and not as to whether the other partner had any assets or the firm was possessed of means to pay the court-fee. I am of the view that the

contention is not sound. The decree appealed was against the firm. The firm as such had a right to file the appeal. It is true that the appeal had to be filed through one of the partners but that does not mean that while taking into account, the capacity of the Appellant to pay the court fee, the assets of the firm had to be ignored altogether. Moreover, all that the Civil Judge found was that Ram Lal did not have means to pay the Court-fee, without, however, taking into account the value of the share which Ram Lal had in the assets of the firm. As there was nothing on the record to indicate that the firm had no assets, it was not be established that the value of tile share of Ram Lal in the firm was not realizable, would not be sufficient to pay the court-fee. In this view of the matter, even if one confines the inquiry as to the pauperism of Ram Lal, it cannot be said that Ram Lal was a Pauper. Counsel for the applicant has drawn my attention to the case of Sundarathammal v. Paramaswami Asari AIR 1933 Madras 883 and has contended that only the assets of Ram Lal should be looked into while deciding the question of pauperism, and the assets of the firm should be ignored altogether. In my view that ease is distinguishable. The facts in that case were that a husband executed a will under which the widows get a life interest in the properties of their husband nothing more. One of the properties comprised in the will was mortgaged and the widow sought permission to file a suit in forma pauperis on the mortgage. It was held that the estate left behind by the husband did not consist of such realisable assets as would be sufficient to raise the court-fee. In the alternative, it was held that in case where a person occupies a fiduciary position qua some property, inquiry regarding pauperism should be confined to the pauperism of the applicant not as to the value of the estate which the persons applying holds in fiduciary position. In the present case, Ram Lal did not hold a fiduoiary position qua the partnership assets. He was owner of the assets along with other partners. Further, there is nothing on the record to indicate that the partnership assets did not consist of realisable items sufficient to pay the court-fee. There is no obvious difference in a case where a person is the owner of properties and one in which he holds a fiduciary position, for in the latter type of case, the power of alienation of the property is restricted by the nature of the rights which the person has in respect of property held in a fiduciary position. Apart from this consideration, litigation started by a person holding a fiduciary position is started in his own name, although in his capacity as a trustee or otherwise, and thus primarily his assets alone become relevant for an enquiry into pauperism. In the case of litigation on behalf of a firm, as the firm is recognised by the CPC as being able to sue, the main party to the cause, is the firm and the assets of the firm cannot be Ignored altogether.

4. For all these reasons, the revision fails and is dismissed. There shall be no order for costs.

 