
(1984) 11 AHC CK 0044

In the Allahabad High Court

Case No : First Appeal From Order No. 169 of 1984

Kishori Lal Modiani

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 28-11-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 5(a)

Citation : (1984) 11 AHC CK 0044

Hon'ble Judges : Kamleshwar Nath, J

Final Decision : Allowed

Judgement

Kamleshwar Nath, J.—Admit.

2. The point involved in this appeal is a very short one and, therefore, after hearing learned counsel for the appellant and the learned counsel for respondent no. 6, State of U. P., I propose to dispose it of on merits.

3. An application of appellant Kishori Lal for permission to sue as an indigent person was rejected by the order under appeal only on the basis that in his application for permission to sue as such, the appellant had not mentioned the wearing apparels which were on his person at the time of recording of his evidence in court, during the course of enquiry for the purpose.

4. While a court making an enquiry into the application for permission to sue as an indigent person is competent to reject the application under Order 33 rule 5 (a) CPC if the application is not framed and presented in the manner prescribed under rules 2 or 3 of that Order, there is a clear amendment to said clause (a), made by this Court, which contemplates an opportunity to the applicant to amend the petition within a time to be fixed by the court. The application is liable to be rejected only if the applicant fails to make the amendment within the time fixed by the court. The order under appeal is, therefore, illegal and is set aside.

5. The appeal is allowed.

6. The applicantappellant shall be given an opportunity to amend the application and thereafter the court below will proceed in accordance with law.

7. The parties are directed to appear before the lower court on 15121984.

(Appeal allowed)