

(1928) 05 PAT CK 0005
In the Patna High Court

Mt. Bibi Sogra

APPELLANT

Vs

Radha Kishun

RESPONDENT

Date of Decision : 09-05-1928

Acts Referred:

Citation : AIR 1929 Patna 27

Hon'ble Judges : Macpherson, J;Kulwant Sahay, J

Bench : Full Bench

Judgement

kulwant Sahay, J.—These are applications for leave to appeal as a pauper. Notice was ordered to be issued on 28th October 1927, calling upon the respondents and the Government Pleader to show cause why the applications should not be granted.

2. Mr. Manohar Lal appears for the respondents but the Government Pleader says that he has no instructions to oppose the application. Mr. Manohar Lal admits that he has got no cause to show as regards pauperism but he says that the applications were not presented in accordance with law. His argument is that the presentation ought to have been made either by the applicant in person or by an authorized agent if the applicant can show that she was exempted from appearing in person. The applications appear to have been presented by Syed Shah Khairat Ahmad who swore the affidavit and described himself as the husband of the petitioner. The question is "whether he is the authorized agent and whether he was under the law entitled to present the applications. The applicant is one Mt. Bibi Soghra and apparently she is a pardahnashin lady. There is nothing on the side of the respondents to show that she is not a pardahnashin lady and in the case of pardahnashin ladies it is the settled practice that application for leave to appeal in forma pauperis are presented by an authorized agent.

3. Mr. Manohar Lal then argues that the "husband was not the authorized agent and he refers to Order 3, Rule 2, which gives the definition of recognized agents. The legislature, however, does not use the expression "recognized agent" in

Order 33, Rule 3, but uses the expression "authorized agent" and, therefore, the definition of recognized agent as given in Order 3, Rule 2, is not of much help to us in deciding whether Syed Shah Khairat Ahmad who presented the applications was an authorized agent. There is no definition of the term "authorized agent" in the Code. The person who presented the present applications was the husband of the applicant and presumably he was authorized on her behalf to present the applications. It is contended that there was nothing in writing to show that he was her authorized agent. The law, however, does not require that the authority should be in writing. The applications, therefore, must be taken to have been presented as prescribed by Order 33, Rule 3, the provisions whereof are made applicable to applications for leave to appeal in forma pauperis by Order 44, Rule 1. The applications having been admitted it has to be presumed that the Court which admitted the applications and ordered the issue of notice was satisfied that the conditions requisite for the issue of notice were present, namely, that the Court saw good reason to think that the decree was contrary to law or to some usage having the force of law. It is not open to the respondents at the present stage to argue that there was no question of law involved in the case. These applications must therefore be granted and the applicant is allowed to appeal in forma pauperis.

Macpherson, J.

5. I agree. At the same time I think that agents who present application to appeal in forma pauperis should ordinarily produce at the time of presentation something to show that they are in fact authorized.