

---

**(1992) 03 GUJ CK 0003**  
**In the Gujarat High Court**

Shankerbhai C. Baria

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

---

**Date of Decision :** 05-03-1992

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 4, Order 33 Rule 4, Order 33 Rule 5, Order 33 Rule 7

**Citation :** (1993) 1 GLR 132

**Hon'ble Judges :** A.N. Divecha, J

**Bench :** Single Bench

---

## Judgement

A.N. Divecha, J.—Is the examination of the applicant under Rule 4 of Order 33 of the Code of Civil Procedure, 1908 ("the Code" for brief) an idle formality when neither the opponent nor the Government Pleader chooses to contest the application made by the applicant to sue as an indigent person ? This is the main question arising in this Appeal from Order challenging the legality and validity of the judgment and order passed by the learned Civil Judge (S.D.) at Bhuj in Civil Miscellaneous Application No. 40 of 1979.

2. The facts giving rise to this application may be summarised thus: The appellant herein was appointed in the establishment of respondent No. 1 herein as Assistant Purchase Officer by one order of 19th February, 1973 on the monthly pay of Rs. 425/-. On 9th March, 1976 he was on duty upto 1 p.m. and thereafter he submitted a report for half a day's casual leave as he was not feeling well. He extended his casual leave on medical ground upto 13th March, 1976. He reported for duty but he was not allowed to resume under the pretext that his services came to be terminated by one order of 9th March, 1976. He therefore filed one suit in the Court of the Civil Judge (J.D.) at Gandhidham challenging the order of his termination of service. His suit came to be transferred to the Court of the Civil Judge (J.D.) at Bhachau. It was re-numbered as Regular Civil Suit No. 49 of 1979. It was carried to its logical conclusion and it ended in his favour by the judgment and the decree passed on 27th February, 1979 by the Civil Judge (J.D.) at Bhachau in Civil Suit No. 49 of 1979. It appears

that the order of termination of 9th March, 1976 was declared illegal and invalid. Thereafter he reported for duty but he was not allowed to resume. He therefore thought of filing one suit for recovery of Rs. 86,700/- from the respondent herein pursuant to the judgment and the decree passed by the Civil Judge (J.D.) at Bhachau on 27th February, 1979 in Civil Suit No. 49 of 1979. According to him, he had no funds to pay the Court-fees in that suit to the tune of Rs. 3,140/-. He therefore made one application to the Court of the Civil Judge (S.D.) at Bhuj for permission to sue him as an indigent person. His application came to be registered as Civil Miscellaneous Application No. 40 of 1979. It is the case of the present appellant that his statement was recorded on oath by the Civil Judge (J.D.) at Bhuj with respect to his application for permission to sue as an indigent person. It appears that thereafter the learned trial Judge caused to issue one notice to be served to the respondent herein and to the Government Pleader presumably under Rule 6 of Order 33 of the Code. Neither the respondent herein nor the Government Pleader filed any reply to contest the application. It appears that the applicant did not examine any witness nor did the respondent herein nor did the Government Pleader to disprove the case of the present appellant as set up in his application for permission to sue as an indigent person. The applicant himself also does not appear to have stepped into the witness box again after the notice contemplated under Order 33 Rule 6 of the Code was issued. Thereupon, the learned Civil Judge (S.D.) at Bhuj, by his judgment and order passed on 20th April, 1981 in Civil Miscellaneous Application No. 40 of 1979, was pleased to reject the present appellant's application for permission to sue as an indigent person. The aggrieved applicant has thereupon preferred this Appeal from Order against the aforesaid judgment and order passed by the learned Civil Judge (S.D.) at Bhuj on 20th April, 1981 in Civil Miscellaneous Application No. 40 of 1979.

3. Shri Ajmera for the appellant has submitted that it was not necessary for the present appellant to re-step into the witness box once his statement on oath with respect to the contents of the application was recorded under Order 33 Rule 4 of the Code. According to Shri Ajmera for the appellant, the learned Trial Judge was in error in not considering the evidence taken under Rule 4 of Order 33 of the Code. As against this, Shri Mehta for respondent No. 2 has submitted that, in view of the scheme of Rule 7 of Order 33 of the Code, the applicant has to prove that he is an indigent person despite his examination by the Court under Rule 4 of Order 33 of the Code. According to Shri Mehta for respondent No. 2, once the notice, contemplated under Rule 6 of Order 33 of the Code is issued, the matter is at large for the enquiry into indigency of the applicant. At the stage of examination of the applicant under Rule 4 of Order 33 of the Code, runs the submission of Shri Mehta for respondent No. 2, neither the opponent nor the Government Pleader has any opportunity to cross-examine the applicant as to his deposition in the light of the contents of his application. In this view of the matter, runs the submission of Shri Mehta for respondent No. 2, it is incumbent on the applicant to establish before the Trial Court that his case does not fall

within the purview of Rule 5 of Order 33 of the Code or any ground for rejection mentioned therein.

4. In order to understand and appreciate the rival submissions urged before me, it would be quite proper to look at the relevant provisions contained in Order 33 of the Code. Rule 1 thereof empowers a litigant to sue as an indigent person. Rule 1A thereof enables the Court to make or to cause to make enquiry into the means of such indigent person. Rule 2 thereof specifies what the application for permission to sue as an indigent person should contain. Rule 3 thereof provides for the procedure for presentation of such application. Rule 4 enables the Court to examine the applicant of such application. It is necessary to reproduce the material provision thereof. The material provision is in Sub-rule (1) of Rule 4. It reads thus:

Where the application is in proper form and duly presented, the Court may, if it thinks fit, examine the applicant, or his agent when the applicant is allowed to appear by agent, regarding the merits of the claim and the property of the applicant.

Then comes Rule 5. It requires the Court to reject such application on any of the grounds mentioned therein. It is also material for the purpose of deciding the fate of this appeal. It deserves to be reproduced. It reads thus:

The Court shall reject an application for permission to sue as an indigent person

(a) where it is not framed and presented in the manner prescribed by Rules 2 and 3, or

(b) where the applicant is not an indigent person, or

(c) where he has, within two months next before the presentation of the application, disposed of any property fraudulently or in order to be able to apply for permission to sue as an indigent person: Provided that no application shall be rejected if, even after the value of the property disposed of by the applicant is taken into account, the applicant would be entitled to sue as an indigent person, or

(d) where his allegations do not show a cause of action, or

(e) where he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter,

(f) where the allegations made by the applicant in the application show that the suit would be barred by any law for the time being in force, or

(g) where any other person has entered into an agreement with him to finance the litigation.

Then comes Rule 6. It requires the Court to fix a day for receiving such evidence as the applicant may adduce in proof of his indigency and for hearing any

evidence which may be adduced in disproof thereof and to give the notice of at least 10 clear days to the opposite party and the Government Pleader in that regard. It deserves to be reproduced. It reads:

Where the Court sees no reason to reject the application on any of the grounds stated in Rule 5, it shall fix a day of which at least ten days" clear notice shall be given to the opposite party and the Government Pleader) for receiving such evidence as the applicant may adduce in proof of his indigency and for hearing any evidence which may be adduced in disproof thereof.

Then comes Rule 7, Its interpretation is the subject-matter of debate in the present proceedings. It therefore deserves to be reproduced. It reads as under:

Procedure at hearing:

(1) On the day so fixed or as soon thereafter is may be convenient, the Court shall examine the witnesses (if any) produced by either party and may examine the applicant or his agent, and shall make a full record of their evidence.

(1A) The examination of the witnesses under Sub-rule (1) shall be confined to the matters specified in Clause (b), Clause (c) and Clause (e) of Rule 5 but the examination of the applicant or his agent may relate-to any of the matters specified in Rule 5.

(2) The Court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court under Rule 6 or under this rule, the applicant is or is not subject to any of the prohibitions specified in Rule 5.

(3) The Court shall then either allow or refuse to allow the applicant to sue as an indigent person.

5. It transpires from Rule 7 of Order 33 of the Code that the Court has to decide the fate of such application inter alia on the basis of the evidence taken by it. According to Shri Ajmera, the evidence taken by the Court under Rule 4 of Order 33 of the Cods should also be taken into consideration for the purpose of deciding the fate of the application made under Order 33 of the Code. According to Shri Mehta for respondent No. 2, in view of the clear language employed by the legislature in Sub-rule (2) of Rule 7 of Order 33 of the Code, the Court is not required to take into consideration what is stated by the applicant in his examination by the Court under Rule 4 thereof.

6. It may be mentioned at this stage that Rule 7 as appearing in the Code at present was not what it was prior to its amendment by the CPC (Amendment) Act, 1976 ("the Amending Act" for brief). It will therefore be necessary to look at what Rule 7 of Order 33 of the Code read prior to its amendment by the Amending Act. It read thus:

Procedure at hearing:

(1) On the day so fixed or as soon thereafter as may be convenient, the Court shall examine the witnesses (if any) produced by his either party, and may examine the applicant or his agent, and shall make a memorandum of the substance of their evidence.

(2) The Court shall also hear any argument which, the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court as herein provided, the applicant is or is not subject to any of the prohibitions provided in Rule 5.

(3) The Court shall then either allow or refuse to allow the applicant to sue as a pauper.

7. It may be mentioned at this stage that prior to coming into force of the Amending Act, Order 33 bore the title "Suits by Paupers". In every relevant provision thereunder the word "pauper" was used and it came to be substituted by "an indigent person" by the Amending Act. This is by way of clarification as the unamended provision of Sub-rule (3) of Rule 7 of Order 33 of the Code refers to the word "a pauper" at the end.

8. The controversy centers around interpretation of Sub-rule (2) of Rule 7 thereof. Shri Ajmera for the appellant has submitted that the figure "6" occurring therein appears to be an apparent error on the part of the draftsman while drafting the Amending Act. According to Shri Ajmera, the correct figure in that place should have been "4" in order to avoid any absurd consequences flowing from interpretation of Sub-rule (2) of Rule 7 of Order 33 of the Code. As against this, Shri Mehta for respondent No. 2 has submitted that it is not open to this Court to interpret a provision in such fashion as would amount to its redrafting thereof. Shri Mehta for respondent No. 2 has further submitted that Rule 4 on the one hand and Rules 5 and 7 on the other of Order 33 of the Code are mutually exclusive and independent of each other and it is not necessary to come to the conclusion that there is any error in drafting the Amending Act for amendment of Order 33 Rule 7(2) of the Code. According to Shri Mehta, the "evidence" contemplated in Rule 7 does not include examination of the applicant under Rule 4 thereof. It has also been urged before me by Shri Mehta for respondent No. 2 that no statutory interpretation is warranted in exercise of the limited appellate jurisdiction of this Court under Order 43 of the Code. Shri Mehta has then urged that the Trial Court has rightly exercised the discretion in the instant case and it calls for no interference by this Court in this Appeal under Order 43 of the Code.

9. If the unamended provisions of Rule 7 of Order 33 of the Code are looked at, one thing becomes clear. Thereunder, the Court was not required to make a full record of the evidence of the witnesses examined thereunder. Then, under Sub-rule (2) thereof, the Court was required to take into consideration the evidence (if any) taken by it "as herein provided". It would mean that the Court was required to consider the evidence (if any) taken by it under Rule 7 of Order 33 of

the Code and no other evidence. By the Amending Act for the words "as herein provided" the words "under Rule 6 or under this Rule" are substituted. Now, if Rule 6 is looked at, no evidence is taken thereunder. Shri Mehta for respondent No. 2 has submitted that the word "evidence" has been referred to in Rule 6, and as such it is difficult to come to the conclusion that no taking of evidence is contemplated under Rule 6 of Order 33 of the Code. With respect, the language of Rule 6 does not contemplate taking of evidence at that stage as is found in Rule 7 of Order 33 of the Code. Order 33 Rule 6 of the Code requires the Court, in the first place, to fix a day for receiving such evidence as the applicant may adduce in proof of his indigency and for any evidence which may be adduced in disproof thereof and, in the second place, to issue the notice of at least 10 clear days to the opposite party and Government Pleader in that regard. It means that the opposite party and the Government Pleader are informed of the fact that the applicant has filed one application for permission to sue as an indigent person and the day is fixed for receiving the evidence to be adduced by him in proof of his indigency and the opposite party and the Government Pleader are called upon to adduce any evidence in disproof of the applicant's alleged indigency. It does not speak of taking evidence at that stage. It only fixes the day when such evidence (if any) is given or might be taken. In that view of the matter, reference to Rule 6 in Sub-rule (2) of Rule 7 of Order 33 of the Code appears to be absolutely redundant. Even if the words "Rule 6 or" are omitted from Sub-rule (2) of Rule 7 of Order 33 of the Code, the meaning thereof is not going to change. Without these words, Sub-rule (2) of Rule 7 of Order 33 of the Code may read thus:

The Court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court under this rule, the applicant is or is not subject to any of the prohibitions specified in Rule 5.

10. Thus read, the amendment made in this provision by the Amending Act becomes meaningless. The reason therefore is quite simple. The unamended provision as reproduced hereinabove, conveyed the same meaning as is conveyed by the reproduced amended provision without reference to the words "Rule 6 or" occurring therein. As pointed out hereinabove. Rule 6 does not contemplate taking of any evidence. In that view of the matter, the reference to Rule 6 occurring therein is found, to be redundant.

11. The only other provision in Order 33 of the Code requiring taking of evidence is Rule 4. Thereunder the Court is empowered to examine the applicant regarding the merits of the claim and the property of the applicant. It cannot be gainsaid that, when the Court examines any person, his such statement will be his evidence. Such statement is taken by the Court on oath in view of the relevant provisions contained in the Oaths Act, 1969. Section 8 thereof requires every person giving evidence on any subject inter alia before any Court to state the truth on such subject. In this view of the matter, there is no escape from the

conclusion that the statement recorded by the Court in examination of the applicant under Rule 4 of Order 33 of the Code, would be his evidence.

12. It may be mentioned at this stage that the word "evidence" has not been defined anywhere in the Code. Its definition also does not occur in the General Clauses Act, 1897. Its meaning will have therefore to be gathered from its use in the common parlance. The word "evidence" has been defined in the Concise Oxford Dictionary (8th Edition - 1990) published by Oxford University Press inter alia to mean "statements or proofs admissible as testimony in a law Court". When the Court examines any person on oath with respect to any matter, it becomes his evidence within the meaning of that term as contained in the dictionary referred to here-inabove. In that view of the matter, it is difficult to agree with Shri Mehta for respondent No. 2 in his submission that Rule 4 of Order 33 of the Code does not contemplate taking of any evidence at that stage.

13. The term "evidence" has legally been defined in "A Concise Law Dictionary" by P. G. Osborn (5th Edition - 1964) published by Sweet and Maxwell (London) inter alia to mean "all the legal means, exclusive of mere arguments which tend to prove or disprove any matter of fact, the truth of which is submitted to judicial investigation; as follows; oral; statements made by witnesses in court." This definition of the word "evidence" would make it clear that examination of the applicant under Rule 4 of Order 33 of the Code will be in the nature of statements made by him in the Court and would therefore be his oral evidence. I am therefore of the opinion that Rule 4 of Order 33 of the Code provides for taking of evidence of the applicant by the Court.

14. Reverting to Order 33 Rule 7(2) of the Code, one thing becomes clear from its language (that what the legislature contemplated was that the Court should take into consideration the evidence recorded by it under Order 33 of the Code. Prior to its amendment by the Amending Act; what- was contemplated therein was consideration of the evidence taken thereunder only and not under any other provision occurring in Order 33 of the Code; It appears that the legislature intended that the Court should take into consideration, for the purpose of deciding the fate of the application made under Order 33 of the Code, the evidence taken by it thereunder as also under the provision other than Rule 7 thereof. That appears to be the reason why the words "Rule 6 or under this rule" came to be substituted for the words "as herein provided". Even at the cost of repetition, it may be reiterated that. Rule 6 does not contemplate taking of any evidence. If that provision is read ignoring the words "Rule 6 or" occurring therein, as pointed out hereinabove, the amendment therein by the Amending Act becomes meaningless. If the legislative intent of requiring the Court, to consider the evidence, taken by it under Order 33 of the Code by Amending Act is to, be realised, the only option left is to read "Rule 4" in the place of "Rule 6" occurring in Sub-rule (2) of Rule 7 of Order 33 of the Code.

15. I agree with Shri Mehta for respondent No. 2 that it is not open to his Court to legislate or to re-draft a provision in the guise of its interpretation. It is a

settled principle of law that the Court cannot and need not legislate in the guise of interpretation of any provision of law. It is equally well-settled that the Court has to interpret the provision as it is when its language is clear and unambiguous. But, as pointed out hereinabove, in the present case the interpretation of the language used by the legislature by the amendment introduced by the Amending Act in Sub-rule (2) of Rule 7 of Order 33 of the Code produces absurd consequences or results into frustration of the legislative intent. It leads to, in a way, some absurdity inasmuch as the evidence recorded by the Court under Rule 4 of Order 33 of the Code is reduced to an empty or idle formality even after the amendment brought about by the Amending Act. The question then arises what the Court can or has to do when it finds that there appears an obvious error or mistake on account of some unskilfulness on the part of the draftsman of the concerned piece of legislation.

16. In this connection a reference deserves to be made to the classic observations made by Lord Denning L.J. in the case of *Seaford Court Estates Ltd. v. Asher* reported in 1949 (2) All England Reports 155. The relevant observations are at page 164 thereof. They read:

Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A Judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only- from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give "force and life" to the intention of the legislature. That was clearly laid down (3 Co Rep 7b) by the resolution of the judges (Sir Roger Manwood, C. B., and the other barons of the Exchequer) in *Heydon's case* (1584) 3 Co Rep 7a. and it is the safest guide today. Good practical advice on the subject was given about the same time by Plowden in his note (2 Plowd 465) to *Eyston v. Studd.* (1574) 2 Plowd 463. Put into homely metaphor it is this: A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would, have done. A Judge must not alter the material of which the "Act is woven, but he can and should iron out the creases.

17. The aforesaid observations flowing from the law of Lord Denning, L.J. have received approval from the Apex Court of this country in its rulings in the case of State of Karnataka and Another Vs. Hansa Corporation, and in the case of Hameedia Hardware Stores, represented by its partner S. Peer Mohammed Vs. B. Mohan Lal Sowcar, . In the case of Hansa Corporation (supra) the Supreme Court supplied the required pause and punctuation after the word "ad valorem" occurring in Section 3 of the Karnataka Tax on Entry of Goods into Local Areas for Consumption, Use or Sale therein Act, 1979 so that the expression "as may be specified by, the State Government" would qualify both the expressions "local area" and "such rate". This was obviously done with a view to realising the legislative intent found therein when such realisation could not have been possible if such pause and punctuation was not supplied.

18. In the case of Hameedia Hardware Stores (supra) the Supreme Court practically redrafted Section 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. This was done with a view to avoiding frustration of the legislative intent in enacting the relevant provisions contained in Section 10 thereof.

19. It thus becomes clear that the Court cannot remain with folded hands when confronted with interpretation of the plain language producing absurdity, hardship or frustration of the legislative intent behind such enactment. A cardinal principle of interpretation is that the statutory provision has to be so construed as would advance the legislative intent rather than would frustrate it.

20. Eloquent observations made by the Supreme Court in para 50 at page 1594 in its ruling in the case of Sunil Batra v. Delhi Administration reported in AIR 1980 SCT 579 are also quite relevant in this regard. They read:

The Court is always ready to correct injustice but it is no practical proposition to drive every victim to move the Court for a writ, knowing the actual hardies and the prison realities. "True," technicalities and legal niceties are no impediment to the Court entertaining even an informal communication as a proceeding for habeas corpus if the basic facts are found; still, the awe and distance of Courts, the legalese and mystique, keep the institution unapproachable. More realistic is to devise a method of taking the healing law to the injured victim. That system is best where the remedy will rush to the injury on the slightest summons. So, within the existing, dated legislation, new meanings must be read. Of course, new legislation is the best solution, but when law makers take far too long for social patience to suffer, as in this very case of prison reform. Courts have to make-do with interpretation and carve on wood and sculpt on stone ready at hand and not wait for far away marble architecture. Counsel rivetted their attention on this pragmatic engineering and jointly helped the Court to constitutionalise the Prisons Act prescriptions. By this legal energetics they desired the Court to read into vintage provisions legal remedies.

It is needless to say that the aforesaid observations of the Supreme Court in the

case of Sunil Batra (supra) are binding to this Court. They buttress the view that I have taken in this matter.

21. The same conclusion can be reached even if the scheme of Rule 7 of Order 33 of the Code is examined from a different angle. Sub-rule 1 A thereof has been inserted by the Amending Act. It has been provided therein that the examination of the witnesses under Sub-rule (1) thereof shall be confined to the matters specified in Clauses (b), (c) and (e) of Rule 5 but the examination of the applicant or his agent may relate to any of the matters specified in Rule 5. Clause (b) of Rule 5 pertains to rejection of the application for permission to sue as an indigent person where the applicant is not an indigent person. Any witness examined under Order 33 Rule 7(1) of the Code has to restrict his deposition inter alia with respect to the question whether or not the applicant is an indigent person. It would mean that the witness has to testify whether or not the applicant does not have enough funds to pay the Court-fees payable on his claim made in the suit that he intends to file. As pointed out herein-above, if the Court has examined the applicant under Rule 4 of Order 33 of the Code, the applicant might have certainly stated that he is a person of no means. Whether or not he is a person of means could be within the knowledge of the opposite party or the Government Pleader. The opposite party or the Government Pleader or both may assert that the applicant is possessed of sufficient funds to pay the required Court-fees on his claim made in the suit that he intends to file as an indigent person. It is a settled principle of law that an assertion or a positive fact has to be proved and not a negation or a negative fact (vide the ruling of the Supreme Court in the case of Dr. N.G. Dastane Vs. Mrs. S. Dastane, . The assertion would be that the applicant is possessed of sufficient funds to pay the required Court-fees. The negation would be absence of such funds. It will be for the opposite party or the Government Pleader to prove the assertion that the applicant is possessed of sufficient means. So far as the negation is concerned, the applicant could have certainly said in his examination under Rule 4 of Order 33 of the Code. So will be the case with respect to Clauses (c) and (e) of Rule 5 of Order 33 of the Code. That is perhaps the reason why the legislature has thought it fit to restrict the examination of the witnesses under Order 33 Rule 7(1) of the Code to the grounds of rejection of the application for permission to sue as an indigent person to Clauses (b), (c) and (e) of Rule 5 thereof.-The applicant is however permitted to lead evidence on all the matters that are specified in Rule 5 thereof. In this view of the matter, if neither the opposite party nor the Government Pleader comes forward to adduce evidence with respect to the matters specified in Clauses (b), (c) or (e) of Rule 5 of Order 33 of the Code, the applicant's evidence (if any) recorded under Rule 4 thereof is made relevant by bringing about the amendment by the Amending Act in the relevant provisions contained in Rule 7 of Order 33 of the Code. The purpose of bringing about the amendment by the Amending Act in Sub-rule (2) of Rule 7 of Order 33 of the Code appears to be to require the Court not to ignore the evidence (if any) recorded by it under Rule 4 thereof if there is do other evidence recorded under

Rule 7 thereof.

22. It may be clarified that the evidence of the applicant under Rule 7 need not be insisted when there is practically no contest to his application for permission to sue as an indigent person by the opposite party and/or by the Government Pleader provided his evidence is taken under Rule 4 of Order 33 of the Code. If his evidence is not taken under Rule 4 thereof, the applicant might be required to give evidence under Rule 7 thereof if necessary. Even if his evidence is taken under Rule 4 thereof, he might be required to step into the witness box if the opposite party and/or the Government Pleader wants to cross-examine him with respect to the matters specified in Rule 1A or Rule 7 of Order 33 of the Code read in the light of the relevant clauses contained in Rule 5 thereof.

23. In view of my aforesaid discussion, I am of the opinion that the figures "6" occurring in Sub-rule (2) of Rule 7 of Order 33 of the Code should be read as "4". So read, there is no escape from the conclusion that the Court, while deciding the fate of an application under Order 33 of the Code, has to take into consideration the evidence (if any) recorded by it under Rule 4 thereof if no other evidence is recorded by it under Rule 7 thereof.

24. In the instant case, it is not in dispute that the Trial Court did record the evidence of the present appellant under Rule 4 of Order 33 of the Code with respect to his application for permission to sue as an indigent person. It is also not in dispute that neither the opposite party nor the Government Pleader adduced any evidence with respect to the matters specified in Clauses (b), (c) and/or (e) of Rule 5 thereof. In that view of the matter, the Trial Court was required to consider the evidence recorded by it under Rule 4 thereof while deciding the fate of the application made by the present appellant for permission to sue as an indigent person. The Trial Court has obviously failed in its duty in that regard. It is not in dispute that the applicant in his examination under Rule 4 of Order 33 of the Code has clearly stated that he is an indigent person and that he has satisfied the requirement of law for suing as an indigent person. Since the record in this regard is clear and unambiguous, it is not necessary for me to remand the matter to the Trial Court for the purpose of fresh decision in the light of the observations made in this Judgment. I think the present appellant has been able to establish that he is an indigent person and answers the requirements of law for the purpose of earning the necessary permission from the Court to sue as an indigent person.

25. In the result, the appellant succeeds. This Appeal from Order of his is accepted. The appellant is permitted to sue as an indigent person. His suit may be registered accordingly. Since it is an old matter, the Trial Court is directed to accord the top most priority to its disposal, preferably by 31st December, 1992. There shall however be no order as to costs on the facts and in the circumstances of the case.