

(1971) 10 P&H CK 0008
In the Punjab And Haryana At Chandigarh
Case No : C. Misc No. 5705 of 1971

Surjit Singh alias Sita and another	Vs	APPELLANT
Mst. Hardev Kaur and others		RESPONDENT

Date of Decision : 21-10-1971

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1

Citation : (1971) 10 P&H CK 0008

Hon'ble Judges : Prem Chand Pandit, J;Gopal Singh, J

Bench : Division Bench

Advocate : Bahadur Singh, for the Appellant; S.K. Goyal, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Pandit, J.—This is an application made by Surjit Singh and his brother Gurmel Singh under order 43, rule 1 read with order 33, Code of Civil Procedure, for permission to file the appeal in this Court as paupers.

2. Notice of this application was given to the opposite party.

3. A Preliminary objection has been raised by the Learned Counsel for the opposite party to the effect that this application is defective and has not been presented by a duly authorised agent and it should, therefore, be dismissed on that ground alone.

4. Under order 33, rule 3, the application has to be presented to the Court by the applicant in person unless he is exempted from appearing in court, in which case the application can be presented by an authorised agent, who can answer all material questions relating to the application and who can be examined in the same manner as the party represented by him may have been examined, had such party attended in person.

5. The applicants are in jail undergoing imprisonment for life and therefore, they authorised their father Kahan Singh to present this application by means of a

special power of attorney. The said power of Attorney was read out in court and it does not specifically authorise Kahan Singh on behalf of the applicants to appeal in Forma pauperis. The special power of Attorney only gives him power to file and conduct the appeal in this Court. It was ruled by a Division Bench of the Lahore High Court, consisting of Addison and Din Mohammed J., in AIR 1937 318 (Lahore) , that where an agent was authorised by a power of attorney only to conduct an appeal, such agent had no power to file application for leave to appeal in forma pauperis on behalf of the applicant pauper and presentation thereof by him was not proper, No authority taking a contrary view was cited by the Learned Counsel for the applicants.

6. Following the above rulings, we hold that this application has not been properly presented and the same is, consequently, dismissed on that ground alone. The applicants are, however, allowed two month's time to put in the requisite court-fee for the appeal. There will be no order as to costs.