

APPELLATE CIVIL.

Before Kulwant Sahay and Macpherson, JJ.

MUSSAMMAT BIBI SOGRA

v.

RADHA KISHUN.*

1928.

May, 9.

Code of Civil Procedure, 1908 (Act V of 1908), Order III, rule 2, Order XXXIII, rule 3, Order XLIV, rule 1—leave to appeal—Application in forma pauperis—by husband—“ authorised agent ”—whether written authority necessary. The law permits an application for leave to appeal in forma pauperis to be presented by an “ authorised agent ” of the applicant and there is nothing to show that the authority of the agent must be in writing.

Where notice of an application for leave to appeal in forma pauperis has been issued it is no longer open to the respondent to resist the application on the ground that it does not involve a question of law.

The facts of the case material to this report are stated in the judgment of Kulwant Sahay, J.

Khurshaid Hasnain, for the petitioner.

Manohar Lal (and with him *A. K. Mitra*) for the opposite party.

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

*Pauper Applications nos. 4 and 5 of 1928.

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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 authorised 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 authorised agent and whether he was under the law entitled to present the applications. The applicant is one Musammatt Bibi Soghra and apparently she is a pardah-nashin lady. There is nothing on the side of the respondents to show that she is not a pardah-nashin lady and in the case of pardah-nashin ladies it is the settled practice that applications for leave to appeal in forma pauperis are presented by an authorised agent. Mr. Manohar Lal then argues that the husband was not the authorised agent and he refers to Order III, rule 2, which gives the definition of recognised agents. The legislature, however, does not use the expression "recognised agent" in Order XXXIII, rule 3, but uses the expression "authorised agent" and therefore the definition of recognised agent as given in Order III, rule 2, is not of much help to us in deciding whether Syed Shah Khairat Ahmad who presented the applications was an authorised agent. There is no definition of the term "authorised agent" in the Code. The person who presented the present applications was the husband of the applicant and presumably he was authorised on her behalf to present the applications. It is contended that there was nothing in writing to show that he was her authorised 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 XXXIII, rule 3, the provisions whereof are made applicable to applications for leave to appeal in forma pauperis by Order XLIV, 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.—I agree. At the same time I think that agents who present applications to appeal in forma pauperis should ordinarily produce at the time of presentation something to show that they are in fact authorised.

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Civil Procedure Code, 1908 (Act V of 1908), Order XLI, rule 22—cross-objection, application to file in forma pauperis—limitation. The limitation of one month provided for an application to file a memorandum of appeal in forma pauperis does not apply to an application for leave to file a memorandum of cross-objection in forma pauperis, which can be admitted at any time under Order XLI, rule 22, Code of Civil Procedure, 1908.

Gobinda Rani Dasi v. Radha Ballabh Das, (1) followed.

Where notice of an application for leave to file a cross-objection in forma pauperis has been issued it is no longer open to the opposite party to resist the application on the ground that there is no substantial question of law involved.

*Pauper Application no. 1 of 1928.

(1) (1910) 12 Cal. L. J. 173.