Assistant Collector. They entered on the land as tenants and they will continue to be so either till they are accommodated on the surplus area by the Collector or perhaps if and when it is proved on the record that the Collelctor had made available some surplus area for their settlement, but they had refused to go there. This, in my opinion, is the difference between the consequencs of a simple decree of ejectment and a conditional one of the present nature. The two cases relied upon by the learned counsel for the respondents talk of the former type of a decree and, therefore, the rule laid down therein cannot apply to the facts of the instant case. Finding, as I do, that Hira Singh and Harmukh remained the tenants of the land and did not lose their status of being so merely by the passing of the order by the Assistant Collector, they had, indisputably, a right of pre-emption, being the tenants of a part of the land sold. The case, on this finding, will, admittedly, be then covered by section 15(1) (a) Fourthly of the Punjab pre-emption Act, 1913. That being so, according to the learned counsel, Hira Singh and Harmukh would be entitled to pre-empt, out of the land sold, only 59 Bighas, which was under their tenancy. They will, however, get possession of this land on paying proportionate share of the sale consideration together with the conveyance charges and this amount, according to the learned counsel, comes to Rs. 8,792.

(10) The consequence is that this appeal is accepted, the judgments and decrees of the Courts below reversed and the suit of only Hira Singh and Harmukh decreed on payment of Rs. 8,792. This amount has to be deposited by them in the trial Court for payment to the vendees on or before 4th February, 1974, failing which their suit will stand dismissed. In the circumstances of this case, however, I wil leave the parties to bear their own costs in this Court as well.

N. K. S.

REVISIONAL CIVIL

Before P. C. Pandit, J.

SANYUKTA WIFE OF PREM KUMAR MADAN,—*Petitioner.*

versus

PREM KUMAR MADAN, ETC.,—*Respondents.*

Civil Revision 380 of 1974.

November 2, 1973.

Code of Civil Procedure (Act V of 1908)—Order 33 Rule 1 and 2—"Pauper"—Meaning of—Suit by a wife in receipt of maintenance

allowance in lumpsum—Such allowance not spent and no money borrowed for maintenance—Suit—Whether can be filed in forma paupris.

Held, that according to the explanation appended to rule 1 of Order 33, Code of Civil Procedure, a person is a pauper when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit, or, where no such fee is prescribed, when he is not entitled to property worth one hundred rupees other than his necessary wearing apparel and the subject-matter of the suit. This definition is in two parts. The first part applies to a case where in a suit fee has been prescribed by law for the plaint and the second part deals with a case where no such fee is so prescribed. In cases, which are covered by the first part, only that person will be declared to be a pauper, who is not possessed of sufficient means to enable him to pay the prescribed fee. It is significant to mention that the word used in this part is "means" and not "property". It has, therefore, to be seen whether he possesses sufficient property, which can enable him to pay the prescribed fee, or whether he has sufficient "means" for this purpose. He may or may not have the requisite amount with him, but if he can raise the requisite money or some property, he will not be considered to be a pauper, because then he has "means" to pay the Court-fee.

Held, that the maintenance amount in lump sum in hands of the wife, neither spent towards her maintenance or payment of any dues on account of her maintenance, nor any money borrowed for maintenance, is completely within her control and becomes her sole property which can be utilized for paying the requisite court fee for filing a suit. She cannot be held a pauper within the meaning of the explanation to rule 1 of Order 33 of the Code and cannot file a suit in *forma paupris*.

Petition under section 44 of Act IX of 1919 and 115 of the Civil Procedure Code, for revision of the order of the Senior Sub-Judge, Karnal, dated 7th March, 1973, rejecting the application of the applicant for permission to sue as a pauper and allowing one month's time to pay the court fee on the plaint and ordering to come up on 7th April, 1973.

Y. P. Gandhi, Advocate, *for the petitioner.*

S. P. Goyal, Advocate, *for the respondents.*

JUDGMENT

PANDIT, J.—This is a revision petition filed by Shrimati Sanyukta, wife of Prem Kumar Madan, against the order of the

trial Judge, dismissing her application under Order 33, rule 2, Code of Civil Procedure, seeking permission to sue her husband as a pauper for the recovery of the articles of her dowry, which she had mentioned in the Schedule attached with the plaint. In the alternative, she claimed Rs. 26,090 as the value of those articles.

(2) The brief facts relevant for determining this petition are these. The parties were married in May, 1966, at Karnal. Both of them lived together for about three years and then differences arose between them, with the result that according to her, she was turned out by her husband and started living with her father, who was an Advocate, at Karnal. In September 1969, the husband filed a petition against her in Delhi for restitution of conjugal rights under section 9 of the Hindu Marriage Act, 1955. It remained pending for about two years and, thereafter, it was withdrawn. In September/ October 1971, he brought a petition against her for judicial separation under section 10 of the Act, again in Delhi. It appears that the said petition was still pending, when the present pauper application was filed on 14th December, 1971, in Karnal. According to the wife, she was not in possession of any movable or immovable property and was unable to pay the court-fee and had, therefore, to file the said application.

(3) It was contested by the husband, whose case was that his wife was not a pauper and she was possessed of sufficient means to pay the court-fee. She had intentionally not brought all the facts before the Court. A sum of Rs. 3,480 was deposited by him for her and it was lying in the Court of the Subordinate Judge, 1st Class, at Delhi. A cheque for Rs. 2,480 was actually issued to her, which, according to the husband, she must have recovered and the rest of the money was still lying. She had also a Savings Fund account in Oriental Bank of Commerce at Delhi and Rs. 400 were there to her credit. While leaving him, she had taken away all the jewellery and costly clothes with her.

(4) In support of her application, apart from herself going into the witness-box, she produced her father, Mr. Gian Chand Gulati, Advocate, A.W. 1, Mr. Prem Datt, Advocate, A.W. 2 and Mr. S. S. Nalwa, Retired Superintendent of Police, A.W. 3. In rebuttal, the husband alone appeared in evidence as R.W. 1.

(5) After considering the evidence, the trial Judge came to the conclusion that the husband had deposited Rs. 5,480 in the Delhi Court since March 1970 for payment to his wife, who had so far

taken only Rs. 1,000. She had not disclosed as to when the said amount was received by her, but the remaining amount of more than Rs. 4,000 was still lying in deposit for payment to her. This amount represented the maintenance of Rs. 200 per month, which the husband had to pay to the wife. There were Rs. 400 to the credit of the wife in her Savings Bank Account in the Oriental Bank of Commerce, Delhi. But, according to her, she had withdrawn Rs. 400 after September 1969. She did not mention the exact date of the said withdrawal. The balance in the account, according to her, was Rs. 10 or Rs. 12. The learned Judge also found that she was being maintained by her father and that she was not spending anything out of the amount of maintenance granted to her. It was further found that the husband had given a list of the clothes, utensils etc., belonging to his wife, which, according to him, she could take charge of from him. These articles included a radiogram, a sewing machine, a Godrej almirah, Press, Kettle, Dinner Set and other utensils and beddings. She had, however, not taken these articles from the husband. The learned Judge held that although it was true that those things had not been taken by the wife, but the husband had offered to return them and, therefore, they were within the control of the wife, which she could utilise for the payment of the court-fee. The wife had not explained whether or not she had spent Rs. 1,000 received from the husband and Rs. 400 withdrawn from her Savings Bank account. Taking all these facts into consideration and also the circumstance that the Collector had not recommended the case of the wife for permission to sue as a pauper, the learned Judge dismissed her application on 7th March, 1973, and she was allowed one month's time to pay the court-fee on the plaint. This order is being challenged by her in the present revision petition.

(6) According to the evidence of the husband as R.W. 1, he was paying maintenance of Rs. 200 per mensem to his wife since March 1970 till the day he gave evidence on 3rd February, 1973. He had deposited Rs. 5,480 in Court, with regard to which he had brought the receipts with him. The details of those receipts were as under:—

Rs. 1,490 on 13th October, 1970.

Rs. 990 on 22nd April, 1971.

Rs. 800 on 10th January, 1972.

Rs. 200 on 1st February, 1972.

Rs. 400 on 12th April, 1972.
Rs. 200 on 16th May, 1972.
Rs. 400 on 16th August, 1972.
Rs. 400 on 20th October, 1972.
Rs. 400 on 22nd November, 1972.
Rs. 200 on 18th January, 1973.

(7) From these receipts, it would be seen that the husband had deposited Rs. 2,480 before 14th December, 1971, when the pauper application was filed by the wife and the rest, i.e., Rs. 3,000 was deposited subsequently., but before the decision of this application on 7th March, 1973. According to the evidence of the wife, she was getting maintenance *pendente lite* from the husband, but it was not cashed. This maintenance was Rs. 160 per month in the beginning and later on it was Rs. 200. But she had not received any amount except Rs. 1,000, which she got only a few months back. She gave her evidence on 1st December, 1972, and that meant that Rs. 1,000 were taken by her a few months before December 1972. This amount was, therefore, received by her several months after she had filed the application under Order 33, rule 2, Code of Civil Procedure. She also stated in her evidence that after September 1969, she had not withdrawn any amount from any Bank, except Rs. 40 from the Oriental Bank of Commerce, Delhi. This amount, therefore, was withdrawn much before the date of the filing of the pauper application. The articles, out of the dowry, which the husband was offering to return to her, were still with the husband. Both the counsel are agreed that the court-fee, which the wife had to pay on the plaint, was Rs. 2,197.60 paise. These being the facts, the question for determination is whether the learned Judge was right in dismissing the wife's application for permission to sue in *forma pauperis*.

(8) Who is a pauper, has been defined in the explanation appended to rule 1 of Order 33, Code of Civil Procedure. It reads:

> "A person is a pauper when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit, or where no such fee is prescribed, when he is not entitled to property worth one hundred rupees other than his necessary wearing apparel and the subject-matter of the suit."

(9) As will be seen from the explanation, there are two parts thereof. The first part applies to a case where in a suit fee has been prescribed by law for the plaint and the second part deals with a case where no such fee is so prescribed. In cases, which are covered by the first part, only that person will be declared to be a pauper, who is not possessed of sufficient means to enable him to pay the prescribed fee. It is needless to mention the requirements of cases, to which the second part applies, because, admittedly, in the present case, the fee for the plaint has been prescribed by law. What do we mean when we say that a person is not possessed of sufficient means to enable him to pay the prescribed fee ? It is significant to mention that the word used in this part is "means" and not "property". In other words, the question to be seen is not whether he possesses sufficient property, which can enable him to pay the prescribed fee, but whether he has sufficient means for this purpose. He may or may not have the requisite amount with him, but if he can raise the requisite money on some property, he will not be considered to be a pauper.

(10) The next question is on what date is it to be considered whether he is possessed of sufficient means to enable him to pay the prescribed fee? Is it on the date of the filing of the application under Order 33, rule 2, Code of Civil Procedure, or on the date of its decision ?

(11) There is difference of judicial opinion between some High Courts on this point. Some, viz. the Calcutta and Bombay High Courts, have held that the date of filing the application is the material date and while others, e.g. Madras and Patna High Courts, are taking a different view. It is needless to discuss this point in the instant case, because even if the date of filing is to be seen, then it is common ground that the husband had deposited Rs. 2,480 by way of maintenance before the said date and this amount would have been enough for paying the court-fee, which was Rs. 2,197.60 paise.

(12) There is also difference of opinion between some Courts as to whether or not the value of the property claimed in the suit should be taken into consideration for deciding the question of pauperism. I am mentioning this point, because, during the course of arguments before me, it was contended by the learned counsel for the respondent that the husband had given a list of the articles,

which were the subject-matter of the suit, which, according to him, his wife could take charge of from him, though she had not availed of that offer and taken those articles from him. This point also need not be decided, because the amount deposited, namely, Rs. 2,480, according to the respondent, was sufficient for paying the requisite court-fee on the plaint.

(13) So the only matter left to be considered is whether the said amount, namely, Rs. 2,480, could be taken into consideration for giving a finding as to whether the plaintiff was a pauper or not. It was the contention of the petitioner that this amount which, admittedly, represented her maintenance, which the husband was depositing at the rate of Rs. 160 in the beginning and later on at the rate of Rs. 200 in the two earlier petitions—one for restitution of conjugal rights under section 9 of the Hindu Marriage Act, 1955, which was filed in September 1969, and withdrawal after about two years, and the second for judicial separation under section 10 of the Act, which was brought by the husband in September/October 1971, and was still pending—could not be taken into consideration for determining the question as to whether or not she was possessed of sufficient means to enable her to pay the perscribed court-fee. The submission was that the said amount was for her maintenance and had to be spent towards the same and not for paying the court-fee.

(14) Both the counsel agree that there is no authority on this point. As at present advised, I am, however, of the opinion that there would have been merit in the contention of the learned counsel for the petitioner if it could be shown that the amount of maintenance deposited by her husband, was being spent by her for maintaining her. One can conceive of a case where the wife does not possess any kind of property and the maintenance is paid by the husband in the beginning of the month and she spends the same for her day-to-day expenses. One can also imagine another case where in similar circumstances, the maintenance amount is deposited later on, but in the meantime, the wife continues taking money on credit for her maintenance and the debt is paid when the maintenance amount is subsequently deposited by the husband. I had an occasion to deal with such a situation in *Dyal Kaur* v. *Ujagar Singh and another* (1). There the amount was being deposited by the husband for the maintenance of his wife and daughter and the wife used to take money on credit and when the maintenance money

(1) A.I.R. 1972 Pb. & Hr. 18.

was paid by her husband, the debt was paid off. Both the wife and the daughter used to maintain themselves on credit and they used to clear off their debts on the deposit of the maintenance amount by the husband. Under those circumstances, I held that the maintenance amount could not be taken into consideration for finding out whether she was possessed of sufficient means to enable her to pay the fee prescribed by law and whether or not she was a pauper.

(15) Such a situation has not, however, arisen in the present case. It is in evidence that the petitioner's father is practising as an Advocate at Karnal and it was he, who was maintaining her all through. The petitioner has appeared in the witness-box and she produced her father also as a witness, apart from some other persons. None of them has stated that she had borrowed any money for her maintenance, which had to be paid out of the maintenance amount deposited by the husband. All that has been said is that up-til date the petitioner's father has been maintaining her. The maintenance amount, which has been deposited before the date of the filing of the pauper application, has, therefore, become her sole property, out of which she owes nothing to anybody. This amount is completely within the control of the petitioner and can be utilised for paying the requisite court-fee on the plaint. Under these circumstances, it is not possible to say that she is not possessed of sufficient means to enable her to pay the prescribed court-fee. That being so, she cannot be held to be pauper within the meaning of the explanation to rule 1 of Order 33, Code of Civil Procedure.

(16) In view of what I have said above, this petition fails and is dismissed. There will, however, be no order as to costs. She is, however, allowed a period of three months to pay the necessary court-fee on the plaint.

N. K. S.

SALES TAX REFERENCE

Before Harbans Singh, C.J., and Prem Chand Jain, J.

MESSRS PYARE LAL KHUSHWANT RAI—*Appellant.*

versus

THE STATE OF PUNJAB—*Respondent.*

Sales Tax Reference No. 40 of 1971.

November 6, 1973.

Punjab General Sales Tax Act (XLVI of 1948)—Section 4(1) and (2)—The word 'manufacture'—Meaning of—Assessee purchasing