



**IN THE HIGH COURT OF UTTARAKHAND AT**

**NAINITAL**

**Civil Revision No.50 of 2026**

Late Shri Sanjay Negi (deceased) though legal heirs  
.... Revisionists

**Versus**

State of Uttarakhand and another ..... Respondents

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Presence:-

Mr. Tejas Agarrwal, learned counsel for the revisionists.

Mr. M.S. Bisht, learned Brief Holder for the State.  
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**Hon'ble Siddhartha Sah, J. (oral)**

This Civil Revision has been preferred against the order dated 18.03.2026 passed by the Learned Civil Judge (Senior Division), Kotdwar, District Pauri Garhwal, in Civil Suit No. 44 of 2022, Saroj Bala Gaur vs. Sanjay Negi & Others, whereby the Learned Civil Judge has rejected Application No. 60-Ga filed by the defendants/revisionists with costs of Rs. 500/-. By way of the said application, the defendants/revisionists had prayed for a direction to the plaintiff/respondent no. 2 to deposit the requisite court fee before leading the remaining evidence on behalf of the plaintiff.

2. Brief facts of the case are that a suit was instituted by the plaintiff/respondent no. 2 in the year 2021, initially registered as Misc. Case No. 26 of 2021, against the present revisionists/defendants for recovery



of Rs. 32,69,700/- (Rupees Thirty-Two Lakhs Sixty-Nine Thousand Seven Hundred Only) and for declaring the sale deed dated 21.05.2015 executed between the revisionists and respondent no. 2 as null and void in the Court of Civil Judge (Senior Division), Kotdwar, Pauri Garhwal. Along with the plaint, the plaintiff/respondent no. 2 also filed an application dated 02.12.2021 under Order XXXIII read with Section 151 of the Code of Civil Procedure, 1908, seeking to be declared an indigent person and be exempted from depositing the applicable court fee at the time of institution of the suit.

3. Pursuant to the said application, the Civil Judge (Senior Division), Kotdwar, Pauri Garhwal passed an order dated 02.12.2021 directing an inquiry regarding the financial status of the plaintiff/respondent no. 2. Thereafter, pursuant to the said order, the Assistant District Government Counsel (Civil), Kotdwar, Garhwal addressed a letter to the Tehsildar, Kotdwar directing submission of an inquiry report regarding any property registered in the name of the plaintiff/respondent no. 2 within his jurisdiction before the Civil Judge (Senior Division), Kotdwar, Pauri Garhwal on the next date of hearing. Subsequently, the plaintiff/respondent no. 2 also filed an affidavit before the Trial Court stating that she had no assets anywhere in India either in her own name or in the name of her husband and prayed to be declared a pauper for the purpose of institution of the suit.

4. Thereafter, considering the inquiry report submitted by the revenue authorities of Tehsil Kotdwar, the Civil Judge (Senior Division), Kotdwar, Pauri Garhwal



passed an order dated 30.05.2022 holding the plaintiff/respondent no. 2 to be an indigent person and permitting her to institute the suit without payment of the applicable court fee.

5. Thereafter, the aforesaid Misc. Case was registered as Civil Suit No. 44 of 2022, and summons were issued to the defendants/revisionists, who contested the suit by filing their written statement. During the trial on 19.02.2026, PW-1, namely the power of attorney holder/daughter of the plaintiff/respondent no. 2, was cross-examined on behalf of the defendants/revisionists, wherein she stated that her father had served as a constable in the Police Department and that after his death, the plaintiff/respondent no. 2 was receiving pension.

6. She further stated that her parents used to reside in their house at Dehradun before shifting to the suit property at Kotdwar. Pursuant to the disclosures made by PW-1 regarding the financial status of the plaintiff/respondent no. 2, the defendants/revisionists filed an Application No. 60-Ga dated 17.03.2026 praying therein that the plaintiff/respondent no. 2 be directed to deposit the applicable court fee before leading the remaining plaintiff's evidence.

7. The said Application No. 60-Ga dated 17.03.2026 was heard by the trial court, and vide order dated 18.03.2026, the trial court rejected the said Application No. 60-Ga on the premise that since permission for suing as an indigent person was granted, the issue cannot be reopened at this stage.



8. Assailing the impugned order dated 18.03.2026, learned counsel for the defendants/revisionists submits that the application was filed with a prayer to direct the plaintiff to deposit the requisite court fee before leading the remaining evidence. It was contended that the said application has been rejected merely on the premise that once permission has already been granted to the plaintiff to sue as an indigent person, the issue cannot be reopened at this stage. According to the learned counsel, the Trial Court has rejected the application on the incorrect assumption that the matter had already been adjudicated at the preliminary stage after due inquiry.

9. Learned counsel for the defendants/revisionists further invited the attention of this Court to the provisions of Order XXXIII Rule 9 CPC, which provide for withdrawal of permission granted to sue as an indigent person in appropriate circumstances.

10. However, when Application No. 60-Ga dated 17.03.2026, was shown to the learned counsel for the defendants/revisionists, he fairly conceded that the said application does not contain any specific prayer seeking withdrawal of permission granted to the plaintiff to sue as an indigent person. Rather, the prayer made therein is limited only to directing the plaintiff to deposit the court fee before recording of the remaining evidence.

11. A perusal of the impugned order dated 18.03.2026 reveals that, at the initial stage, the Learned Trial Court had summoned an inquiry report and caused an inquiry to be conducted through the Rajaswa Nirikshak/Revenue Official, who submitted a report



stating that the plaintiff did not possess any immovable property other than the property in dispute. On the basis of the said report, the Learned Trial Court, vide order dated 30.05.2022, found the plaintiff to be an indigent person and granted permission to sue without payment of the requisite court fee.

12. Further, in the impugned order dated 18.03.2026, the Learned Trial Court recorded that the issue sought to be raised by way of the subsequent application had already been considered and decided at the preliminary stage of the proceedings. The Trial Court also observed that the defendants appeared to be filing such applications only with the intention of delaying disposal of the suit and, accordingly, held that the application deserved rejection.

13. A perusal of Application No. 60-Ga dated 17.03.2026 further reveals that defendant nos. 1/1 to 1/3 specifically pleaded therein that the plaintiff had represented herself to be poor and without sufficient means and, on that basis, sought exemption from payment of court fee. However, during the cross-examination of the plaintiff's daughter, who was also acting as the power of attorney holder of the plaintiff, it was stated that the plaintiff's husband, namely her father, had retired from government service while serving in the police department, and that the pension payable after his retirement was being received by the plaintiff.

14. On the strength of the said statement, the defendants alleged that the plaintiff had obtained waiver of court fee by misleading the court through suppression of material facts and, therefore, prayed that before the



plaintiff leads the remaining evidence, she be directed to deposit the requisite court fee.

15. In this context, it would be apposite to refer to the provisions of Order XXXIII Rule 9 CPC, which are reproduced hereinbelow:

*“ORDER XXXIII [SUITS BY INDIGENT PERSONS]*

**9. *Withdrawal of permission to sue as an indigent person.***—*The Court may, on the application of the defendant, or of the Government pleader, of which seven days, clear notice in writing has been given to the plaintiff, order that the permission granted to the plaintiff to sue as an indigent person be withdrawn—*

*(a) if he is guilty of vexatious or improper conduct in the course of the suit;*

*(b) if it appears that his means are such that he ought not to continue to sue as [an indigent person]; or*

*(c) if he has entered into any agreement with reference to the subject-matter of the suit under which any other person has obtained an interest in such subject-matter.”*

16. Thus application No. 60-Ga dated 17.03.2026 is, in substance, in the nature of a consequential application.

17. At this stage, learned counsel for the State, Mr. M.S. Bisht, submits that the plaintiff has neither sought



recall of the order dated 30.05.2022 nor has the said order been assailed before any higher forum. He further submits that the order dated 30.05.2022 was passed only after the Learned Trial Court had summoned an inquiry report and, upon receipt and consideration of the said report, found the plaintiff to be an indigent person and accordingly permitted her to sue without payment of court fee.

18. It is thus contended that, since neither any recall application has been filed against the order dated 30.05.2022 nor the said order has been challenged before a superior court, Application No. 60-Ga filed at this belated stage was not maintainable, and therefore the Learned Trial Court has committed no illegality in rejecting the same.

19 A perusal of the provisions of Order XXXIII Rule 9 CPC reveals that it specifically provides for withdrawal of permission granted to sue as an indigent person. The Court may, on an application moved by the defendants, withdraw such permission if it appears that the plaintiff's means are such that he or she ought not to continue to sue as an indigent person if the contingencies contemplated under clauses (a), (b), and (c) of Rule 9 are attracted. However, in the present case, Application No. 60-Ga dated 17.03.2026 does not contain any prayer seeking withdrawal of permission granted to the plaintiff to sue as an indigent person. Rather, the only relief sought therein is a direction to the plaintiff to deposit the requisite court fee before leading the remaining evidence.



20. In view of the scheme of Order XXXIII Rule 9 CPC, it is evident that unless the permission to sue as an indigent person is first withdrawn by the Court in accordance with law, no direction can be issued requiring the plaintiff to deposit court fee merely on the basis of an application. Therefore, since the defendants/revisionists did not seek withdrawal of the earlier permission and instead filed an application only for directing the plaintiff to tender court fee, the said application was not legally tenable. Consequently, the impugned order does not suffer from any jurisdictional error or material illegality warranting interference in revision. In fact, Application No. 60-Ga dated 17.03.2026 was merely consequential in nature and could have been maintainable only after an appropriate application under Order XXXIII Rule 9 CPC seeking withdrawal of permission had first been allowed, if at all.

21. In view of the aforesaid discussion, this Court does not find any illegality, perversity, or jurisdictional error in the order passed by the Trial Court, though for reasons different from those assigned in the impugned order.

22. At this stage, learned counsel for the defendants/revisionists fairly submits that the defendants may be granted liberty to file a fresh application under the provisions of Order XXXIII Rule 9 CPC seeking withdrawal of permission granted to the plaintiff to sue as an indigent person.

23. In response, learned counsel for the State submits that although the defendants may be at liberty to file such application, as may be advised, considering



2026:UHC:3337

the peculiar facts and circumstances of the case, particularly that the plaintiff is an elderly lady aged about 83 years, any such application, if filed, ought to be decided within a time-bound period.

24. Accordingly, in the interest of justice, it is observed that in the event an application under Order XXXIII Rule 9 CPC is filed by the defendants/revisionists before the Learned Trial Court, the same shall be considered and decided expeditiously, preferably within a period of two months from the date of its filing.

25. Subject to the aforesaid observations, the present revision stands dismissed accordingly.

**(Siddhartha Sah, J.)**  
02.05.2026

BS