



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 10TH DAY OF FEBRUARY 2025 / 21ST MAGHA, 1946

RFA NO. 18 OF 2015

AGAINST THE DECREE AND JUDGMENT DATED 30.09.2014 IN O.S. NO.922 OF 2011

OF THE PRINCIPAL SUB COURT, KOLLAM

APPELLANT/PLAINTIFF:

G.GIRI
AGED 58 YEARS
S/O.GANGADHARAN, GAMGO HOUSE, UDAYAMARTHANDAPURAM MURI,
MUNDAKKAL WEST, KOLLAM DISTRICT.

BY ADV SRI.VINOY VARGHESE KALLUMOOTTILL

RESPONDENT/DEFENDANT:

G.GEETHA
AGED 62 YEARS
D/O.GANGADHARAN, ROOPASREE, UDAYAMARTHANDAPURAM, MURI,
MUNDAKKAL WEST, KOLLAM DISTRICT-691001.

(REPRESENTED BY POWER OF ATTORNEY HOLDER, HARILAL, S/O
UNNIKRISHNAN, PANDALAYIL, NO.60, DIVYA NAGAR, PATTATANAM,
KOLLAM

THE CAUSE TITLE OF THE RESPONDENT IS AMENDED BY
INCORPORATING THE NAME OF THE POWER OF ATTORNEY HOLDER AS
PER ORDER DATED 14.01.2015 IN I.A.NO.81/2015)

BY ADV SRI.THYPARAMBIL THOMAS THOMAS

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 04.02.2025,
THE COURT ON 10.02.2025 DELIVERED THE FOLLOWING:

**“C.R.”****JUDGMENT****Dated this the 10th day of February, 2025**

This regular first appeal has been filed under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 [hereinafter referred as ‘CPC’ for short], by the plaintiff in O.S. No.922 of 2011 on the files of the Principal Sub Court, Kollam, assailing rejection of plaint for non-payment of balance court fee and the order dated 27.08.2014 in I.A. No.1982 of 2013 in the above suit, whereby the petition filed by the appellant herein under Order XXXIII Rules 1 and 2 of CPC, was dismissed. The appellant herein is the plaintiff and the respondent is the defendant in the above suit.

2. Heard the learned counsel for the appellant and the learned counsel appearing for the respondent. Perused the verdict under challenge and the records of the trial court.

3. Parties in this appeal shall be referred as



“plaintiff” and “defendant” with reference to their status before the trial court.

4. In this matter, the suit has been filed for realization of an amount of Rs.11,63,600/- with interest from the defendant. At the time of filing the suit, the plaintiff had remitted Rs.11,149/- being $\frac{1}{10}$ of the court fee payable. Then, he was directed to pay the balance court fee to the tune of Rs.1,00,339/-. On such direction, the plaintiff filed I.A. No.1982/2013, stating that he had no means to pay the balance court fee. Therefore, he sought permission to sue as an indigent person without paying the balance court fee. According to the plaintiff, he has no regular employment and income to pay the balance court fee.

5. This plea was opposed by the defendant, contending that the plaintiff is the owner of an extent of 93 cents of land and a hotel complex and he has been running real estate business. Therefore, the plaintiff has the capacity to pay the balance court fee.

6. In support of the contentions raised in the petition, the plaintiff got examined as PW1. Taking into account the evidence given by PW1, the trial court found



that the plaintiff suppressed material aspects regarding ownership of 4.5 cent of land and also 76 cent of land and a building worth Rs.1 Crore constructed by the plaintiff, in the petition, though the said facts were admitted by the plaintiff during his examination as PW1. Accordingly, the trial court dismissed the petition finding suppression of material aspects and also holding that the plaintiff, in the said circumstances, is capable of paying Rs.1,00,339/- as court fee.

7. After the dismissal of the petition on 27.08.2014, when the plaintiff was directed to pay the balance court fee again, instead of paying the balance court fee, he had filed I.A. No.1713/2014 to keep the proceedings in the suit in abeyance, so as to enable the plaintiff to challenge the order in I.A. No.1982/2013 before this Court. But, the trial court dismissed the same and rejected the plaint, with cost of the otherside, as per the judgment dated 30.09.2014.

8. Assailing the order and judgment passed by the trial court, the learned counsel for the plaintiff argued that, as per the ratio of the decision of this Court in ***Basil Thomas v. Joseph*** reported in ***[2013 (2) KLJ 644]***, when



it is shown that the litigant is unable to pay the due court fee, the provisions of Order 33 would apply and there is no rigid formula, which confines the relief under Order 33 to only persons, who are essentially striving on the poverty line. In paragraph No.3 of the ***Basil Thomas***'s case (supra) this Court held as under:

"3. Fundamentally, the provisions in Order 33 are to be utilised, when it is shown that a litigant is unable to pay the due court fee. Those provisions apply also to payment of balance court fee. There is no rigid formula, which confines the relief under Order 33 to only persons, who are essentially striving on the poverty line. Even availability of assets or wealth does not necessarily mean that a person will have the sufficient means to pay the court fee. This provision is well settled by the Apex Court and this Court. In our view, the court below ought to have adopted a softer approach and the plaintiff ought to have been granted an opportunity to tender evidence, after the revenue places its views on record since, ultimately, payment of court fee is treated primary as a matter between the litigant and the State. This is so because the relief granted under Order 33 is only to defer payment of court fee and not exemption from payment of court fee,



unless by judicial order the court directs so, on the basis of the provisions of Act X of 1960.”

9. The learned counsel for the defendant submitted that the plaintiff owns an extent of 4.5 cent of land and also 76 cent of property and a building worth Rs.1 Crore. That apart, he is a business man earning sufficiently to pay the court fee. Thus, the plaintiff could very well pay the balance court fee. Therefore, dismissal of I.A. No.1982/2013 and consequential rejection of the plaint by the trial court are perfectly justified and the same do not require any interference.

10. In the instant case, the question arises for consideration is whether the trial court is justified in rejecting the plaint and also dismissing I.A. No.1982/2013 at the instance of the plaintiff thereby he sought permission to continue the suit as an indigent person?

11. In the decision in ***Thachireth Matathil Abdul Sathar v. Manoj Kumar and Others*** reported in ***[2021 (6) KHC 694 : 2024 KHC OnLine 817]***, this Court considered the impact of Order 33 and Order 44 Rule 1 of CPC and observed that, *O.33 R.5 deals with rejection of an*



application for permission to sue as an indigent person. Sub-rule (b) of R.5 permits the Court to reject an application when the applicant is not an indigent person. But such a power can be exercised either by examining the applicant or his agent, if the Court may think fit and recording a finding that the petitioner has no sufficient means to pay the required court - fee. It is true that, if a person is having sufficient means as his own, the Court can reject an application of this nature. However, when the ownership of movables attached from the residential house of the petitioner is the plank on which the question of sufficient means is arrived at, proof of ownership is absolutely necessary. It may happen sometimes that in a dwelling house where the petitioner along with other family members are residing, may have many movables purchased by other family members also, particularly when other earning members are also residing therein. In such cases, without proving the ownership of the movables in a satisfactory manner, it is not fair to dismiss an application of this nature merely on that ground. In this



context, it is observed further that the mere no objection raised by the other side also is not a ground to allow an application of this nature as payment of court - fee is a matter in between the petitioner and the Court involving some procedural formalities also. However, ultimately, the Court should consider the question regarding the capability of the petitioner on the touch stone of 'sufficient means' to pay the required court fee independently.

12. No doubt, Order 33 of CPC deals with suits instituted by indigent persons. Any suit may be instituted by an indigent person, subject to the provisions of explanation I of Order 33 Rule 1 of CPC. The same read as under:

Any person is an indigent person,-

(a) if he is not possessed of sufficient means (other than property exempt from attachment in execution of a decree and the subject-matter of the suit) to enable him to pay the fee prescribed by law for the plaint in such suit, or

(b) where no such fee is prescribed, if he is not entitled to property worth one thousand rupees other than the property exempt from attachment in execution of a decree, and the



subject-matter of the suit.

13. Explanation II of Order 33 provides that, any property which is acquired by a person after the presentation of his application for permission to sue as an indigent person, and before the decision of the application, shall be taken into account in considering the question whether or not the applicant is an indigent person. Similarly, explanation-III provides that, where the plaintiff sues in a representative capacity, the question whether he is an indigent person shall be determined with reference to the means possessed by him in such capacity.

14. Order 33 Rule 1A deals with inquiry into the means of an indigent person, in the first instance, by the chief ministerial officer of the Court, unless the Court otherwise directs.

15. The contents of the application to sue as an indigent person is described in Order 33 Rule 2 of CPC and it is provided that, every application for permission to sue as an indigent person shall contain the particulars



required in regard to complaints in suits; a schedule of any movable or immovable property belonging to the applicant, with the estimated value thereof, shall be annexed thereto; and it shall be signed and verified in the manner prescribed for the signing and verification of pleadings.

16. As per order 33 Rule 3, the application to sue as an indigent person shall be presented to the Court by the applicant in person, unless he is exempted from appearing in Court, in which case the application may be presented by an authorised agent who can answer all material questions relating to the application, and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person.

17. Order 33 Rule 4 provides for examination of 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. Order 33 Rule 4(2) provides for examination of the applicant, if presented by the



agent, by appointing commission.

18. Order 33 Rule 5 deals with rejection of application. The same is as under:

5. Rejection of application.- *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

[(d1) where the suit appears to be barred by any law, 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,



[or]

[(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]

19. Thus, an application to sue as an indigent person can be rejected for the reasons (a) to (g) enumerated hereinabove. Order 33 Rule 5(b) specifically authorises the Court to reject an application, when the applicant is not an indigent person.

20. While dissecting the scope and implementation of Order 33 Rule 5(b), when the plaintiff files a petition under Order 33 Rule 1 of CPC or an appellant files an application under Order 44 Rule 1 of CPC (subject to Rule 3 of Order 44), wherein the provisions of Order 33 and the Rules thereunder are applicable, the petition shall contain a schedule of all movable/s or immovable property/ies belong to the applicant with the estimated value thereof and it shall be signed and verified in the manner prescribed for the signing and verification of the pleadings, as mandated under Order



33 Rule 2. When a party in possession of movable/s and immovable property/ies fails to disclose the details of movable/s or immovable property/ies, which is mandated under Order 33 Rule 2, the same would throw light on the fact that he had suppressed material facts about movable/s and immovable property/ies, with a view to mislead the court and play fraud on Court by suppressing his assets, which would disclose his capacity to pay the Court fee. To put it differently, suppression of the assets held by the person, who wants to sue as an indigent person is a clear indication to hold that the said person hid his assets, knowing fully well that disclosure of his assets would show *prima facie*, his capacity to pay the Court fee. In such cases, by invoking Order 33 Rule 5(b), the Court has the power to reject the application filed under Order 33 Rule 1 of CPC. Similarly, an application filed under Order 44 Rule 1 of CPC, subject to Order 44 Rule 3, also liable to be rejected for non-disclosure of all the assets of the plaintiff/appellant.

21. In the instant case, the trial court found suppression of immovable assets held by the plaintiff, as against the mandate of Order 33 Rule 2 and eventually the



Court found that the plaintiff herein is a person capable of paying the court fee to the tune of Rs.1,00,339/-, where the plaintiff initially paid Rs.11,149/- being $\frac{1}{10}$ of the court fee payable.

22. In view of the discussion, in the instant case, the trial court rightly dismissed I.A. No.1982/2013 and also rejected the plaint subsequently for non payment of balance court fee. Therefore, the order and the verdict of the trial court are only to be justified.

23. However, in the interest of justice and in order to facilitate the plaintiff/appellant to proceed with the suit after paying the balance court fee, I am inclined to grant two weeks time from today to the plaintiff/appellant to pay the balance court fee before the trial court. On payment of balance court fee, within two weeks as directed, the suit rejected by the trial court will stand revived for adjudication. If the court fee as directed is not paid within time, the order rejecting the suit shall become final.

24. In the result, this appeal stands dismissed, without any order as to cost.

25. All interlocutory applications pending in this



regular first appeal stand dismissed.

Registry is directed to forward this judgment to the trial court, forthwith, for information and further steps.

Sd/-

**A. BADHARUDEEN
JUDGE**

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