

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case No.:- CM(M) No. 140/2022
CM No. 6878/2022

Dr. Anita Baroo, age 68 years
W/o Dr. Kulbhushan Pandotra
R/o 84/1, Channi Himmat, Jammu.

.....Petitioner(s)

Through: Mr. A.P. Singh, Advocate.

Vs

1. Nahida Bibi
W/o Mohd. Hanif
R/o Nallian Gorda, Tehsil and District Jammui.
2. UT of Jammu and Kashmir through Chief Secretary
Govt., of J&K Civil Secretariat, Jammu.
3. Commissioner Secretary to Govt., Medical Department
Govt./ of J&K, Civil Secretariat, Jammu.
4. Principal Govt. Medical College Hospital, Jammu.
5. Superintendent SMGS Hospital Medical College, Jammu.

..... Respondent(s)

Through:

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER
01.07.2025

1. The petitioner-Dr. Anita Baroo came to be named as defendant No. 5 in a civil suit preferred by the respondent No. 1-Nahida Bibi wherein five other defendants are the respondents No. 2 to 5 herein.

2. The respondent No. 1 instituted the civil suit for recovery of Rs. 6,00,000/- (rupees six lacs) as damages for medical negligence whereupon court fees of Rs. 19,600/- with respect to the valuation of the said civil suit for court fees was payable.
3. The respondent No. 1 invoked Order 33 of the Jammu and Kashmir Code of Civil Procedure, Svt., 1977 for suing as an indigent person.
4. The application filed by the respondent No. 1 which was to be treated as a suit, for being allowed to sue as an indigent person, did not bear essential particulars/averments as envisaged under Order 33 of the Jammu and Kashmir Code of Civil Procedure, Svt., 1977 on the basis of which the claim of indigency is meant to be examined by the trial court but nevertheless the trial court, acting in a mechanical manner by virtue of an order dated 28.02.2014, came to hold the respondent No. 1 as an indigent, thus, entertained her application as a civil suit.
5. The defendants No. 3 and 4 in the civil suit are the respondents No. 4 and 5 herein i.e., Principal Govt. Medical College Hospital, Jammu and the Superintendent, SMGS Hospital Medical College, Jammu who came forward with their written statement filed in the civil suit whereas, the

defendants No. 1 and 2 as well as the defendants No. 5 and 6 were proceeded as ex parte by the trial court without following the mandate of Order 5 of the Jammu and Kashmir Code of Civil Procedure, Svt., 1977 which requires service to be effected in the manner as prescribed.

6. The petitioner, as being the defendant No. 5, came forward with the institution of the present petition under article 227 of the Constitution of India for assailing the order dated 28.02.2014 whereby the respondent No. 1 came to be permitted to maintain the civil suit as an indigent person.
7. Considering the fact that the institution of the civil suit had taken place on 16.03.2012 and the civil suit has not advanced post the stage of filing of written statement by the defendants No. 3 and 4 as such, this Court is inclined to dispose of this matter without indulging in examination of the validity and legality of the order dated 28.02.2014 by preserving the right of the petitioner as well and therefore, disposes of this petition with the following directions:
 - (i) The petitioner, as the defendant No. 5, is directed to file written statement to the plaint within the period of six weeks from the date of passing of this order;
 - (ii) The trial court is directed to effect service of the defendants No. 1, 2 and 6 afresh in terms of the mandate of Order 5 of the Jammu and Kashmir Code

of Civil Procedure, Svt., 1977 given the fact that institution of the civil suit had taken place under the aegis of the Jammu and Kashmir Code of Civil Procedure, Svt., 1977 and

(iii) The petitioner, as defendant No. 5, shall have the right to invoke the provisions of Order 33 Rule 9 of the Jammu and Kashmir Code of Civil Procedure, Svt., 1977 for seeking recall of the permission granted in favour of the respondent No. 1 as plaintiff to sue as an indigent person whereupon the trial court shall be bound to decide the application on merits of the submissions.

(iv) The petitioner as well as the respondent No. 1 are directed to appear before the trial court on 07.07.2025.

8. The trial court record be sent back.

9. Connected application(s) also stands disposed of accordingly.

(RAHUL BHARTI)
JUDGE

JAMMU
01.07.2025
Naresh/Secy.