IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 1937

FAO.No. 62 of 2009 ( )

AGAINST THE ORDER IN POP 35/2004 OF PRINCIPAL SUBORDINATE JUDGE'S COURT, IRINJALAKUDA DATED 06-02-2009

APPELLANT/PETITIONER IN P.O.P 35/2004:

CHALAMANA INDUSTRIES
KUNDOOR DESOM, THIRUMUKULAM VILLAGE
MUKUNDAPURAM TALUK, REP. BY MANAGING PARTNER
JOY CHALAMANA, S/O. CHALAMANA KOCHUVARKEY
KUNDOOR DESOM.

BY ADV. SRI.MOBIN JACOB

RESPONDENTS/RESPONDENTS IN P.O.P 35/2004:
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1. KERALA FINANCIAL CORPORATION
   REP. BY MANAGING DIRECTOR
   KERALA FINANCIAL CORPORATION, HEAD OFFICE
   VELLAYAMBALAM, THIRUVANANTHAPURAM.

2. DISTRICT MANAGER,
   K.P.C DISTRICT OFFICE, K.M.M COMPLEX, KOLLALE- 680020.

3. ANTU, S/O. EDATTUKARAN THARIATH,
   VADAMA VILLAGE, KOTTAMURI DESOM, MUKUNDAPURAM TALUK.

R1 & 2 BY ADVS. SRI.S.SREEKUMAR,SC,K.F.C.
SRI.M.M.SAYED MUHAMMED, SC, KFC
SRI.T.V.GEORGE, SC, KFC
R3 BY ADV. SRI.BABU CHERUKARA

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 26-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

shg/

T.R. RAMACHANDRAN NAIR & K.P. JYOTHINDRANATH, JJ.

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F.A.O.No.62 of 2009

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Dated this the 26th day of May, 2015

J U D G M E N T

Ramachandran Nair, J.

This appeal is filed from the order in P.O.P.No.35/2004 on the file of the Principal Subordinate Judge's Court, Irinjalakuda. The appellant claimed to be a managing partner of a firm by name 'Chalamana Industries'. The suit is one filed to set aside the sale of the property of the firm to the third respondent herein. The court fee to be paid is to the tune of Rs.4,98,490/-. Alleging that the appellant has no means to pay the court fee, this application has been filed.

2. The learned Judge, after following the dictum laid down in **M/s. Grand Buoy Enterprises v. National Insurance Co. Ltd. [1994 (2) KLT 697]**, rejected the application.

3. It is clear from the order that PW1 was examined

in support of the applicant. He claimed to be the managing director of the firm, which was started in the year 1984 and was registered as a small scale industry. The firm availed a loan to the tune of Rs.3,55,000/- from the Kerala Financial Corporation. It appears that the partnership firm could not start business and the first respondent Corporation sold the item of property and the third respondent purchased it in tune with the condition under which the loan was granted.

4. We are only on the question with regard to the legality of the finding that the appellant has not made the other partners parties. In paragraph 7 of the order, the learned trial judge observed that no evidence was adduced to show that he is the managing director of the firm and going by the averments in the petition there are other partners also. The assets of the said partners have not been shown by the appellant in the application.

5. In the decision cited supra in paragraphs 7 & 8 a Division Bench of this court held as follows.

> "7. What O.30 R. 1 of the Code enables is that

> partners in a firm can sue in the name of the firm. They can also be 'Sued against in the name of the firm. None of the provisions in Order 30 would equip a firm to be a legal entity, but a litigative convenience is provided to the partners of the firm for instituting the action in a civil court. So when a firm figures as the plaintiff in a suit, the real persons behind are the partners of the firm and the firm name is only a facade. A firm as such cannot, therefore, claim to be an indigent person under O.33 of the Code.
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> 8. When a firm is the plaintiff and a request for permission under O.33 is made the requirement is that the partners of the firm should be shown as indigent persons. We do not find anything in O.33 which enables the firm to sue as an indigent person by merely showing that the firm as such is not possessed of sufficient assets to raise the court fee.”

Therefore, legal position explained by the Division Bench would show that the partners of a firm should be shown as indigent persons and Order 33 which enables the firm to sue as an indigent person by merely showing that the firm as such is not possessed of sufficient assets to raise the court fee.

6. As rightly pointed out by the learned counsel for the respondents herein the appellant has not disclosed who are the partners even though it was stated that there are other members in the family who are partners. There is no

disclosure as to their assets or a contention has not been raised that they are not having means to pay the court fee.

In that view of the matter, we are satisfied that no interference is called for and accordingly the appeal is dismissed. We grant six weeks time from the date of receipt of certified copy of this judgment for the appellant to pay the court fee.

Sd/-

T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-

K.P. JYOTHINDRANATH
JUDGE

shg/