

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. 131 of 2009 ()

**AGAINST THE ORDER IN I.A. 284/2007 IN OP (INDIGENT) 5/2007 OF SUB COURT,
PATHANAMTHITTA DATED 29.2.2009
APPELLANT/PETITIONER/PLAINTIFF:**

**M/S.VAS PHARMACEUTICALS (INDIA) LTD.,
OWNERS PESTICIDES CORPORATION (INDIA)
REPRESENTED BY ITS MANAGING DIRECTOR, VASUDEVAN.K.P.
THOPPIL GARDEN, VYTTLA, KOCHI.**

BY ADV. SRI.P.J.JOSEPH PANIKKASSERY

RESPONDENTS/RESPONDENTS/DEFENDANTS:

- 1. KERALA TRANSPORT CORPORATION,
(REGD) (KTC) REPRESENTED BY ITS MANAGING
DIRECTOR/MANAGING PARTNER, P.V.CHANDRAN, YMCA ROAD
CALICUT.**
- 2. K.RAMACHANDRAN PILLAI,
KERALA TRANSPORT CORPORATION (REGD)
BRANCH PATHANAMTHITTA, PATHANAMTHITTA P.O.**
- 3. MR.RAVEENDRAN,
KERALA TRANSPORT CORPORATION (REGD)
BRANCH AMBALAMUGAL, AMBALAMUGAL P.O.
ERNAKULAM DISTRICT.**
- 4. STATE OF KERALA, REPRESENTED
BY THE DISTRICT COLLECTOR, ERNAKULAM.**

**R1 BY ADV. SRI.T.G.RAJENDRAN
R2 &3 BY ADVS. SRI.K.S.MOHAMED HASHIM
SMT.CAROLIN SINDHU VAZ
R4 BY GOVERNMENT PLEADER SRI. K.K. SAIDALEVI**

**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.

F.A.O.No.131 of 2009

Dated this the 26th day of May, 2015

J U D G M E N T

K.P. Jyothindranath, J.

This appeal is preferred against the order in I.A.No.284/2007 in O.P.(Indigent) No.5/2007 on the file of the Sub Court, Pathanamthitta. As per the impugned order the court below dismissed the application to institute the suit as an indigent person.

2. When the appeal came up for hearing, the learned counsel for the appellant submitted before us that the appellant is a company incorporated and the managing director filed the petition on behalf of the company. The suit is filed for realisation of Rs.4,02,262/- with interest and costs. It is also the submission made before us that when the order is perused it can be seen that there is no clear cut finding by the court below to the effect that the company is

having sufficient wealth and also a finding to the effect that the company is having liquid amount to pay the court fee. We perused the order. The relevant paragraph is stated as follows:

“The evidence of PW1 would show that the petitioner/plaintiff company is having sufficient wealth and also the evidence of PW1 would show that what is averred in the affidavit is not correct. On going through the evidence of PW1 it is seen that the petitioner/plaintiff company has sufficient means to pay the court fee. If that be so, the petition to institute the suit as an indigent person is liable to be dismissed and accordingly I.A.284/07 is dismissed.”

3. It is true that when PW1 was examined it came out that there is above Rs.36 lakhs wealth for the plaintiff company. But PW1 has explained the same as that the majority of the same is landed property and it is also on lease and there is also dispute between the Forest department. It is also the case that the very same company is prosecuting O.S.124/2002 on the file of the Sub Court, Ernakulam as an indigent person and the financial situation of the company is not yet changed. After considering the totality of the case and also considering the submission of

the appellant that more evidence has to be adduced, the impugned order is hereby set aside. The lower court is hereby directed to dispose of the matter afresh. Surely, the parties are at liberty to adduce evidence. It is also open for the parties including the respondents to raise their contentions. Untrammelled by any of the observations made herein, the court below can dispose of the matter.

Sd/-

**T.R. RAMACHANDRAN NAIR
JUDGE**

Sd/-

**K.P. JYOTHINDRANATH
JUDGE**

shg/