

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 25TH DAY OF NOVEMBER 2015/4TH AGRAHAYANA, 1937

FAO.No. 61 of 2015 ()

AGAINST ORDER DATED 13.2.2015 IN IA.1427/2013 IN OS 316/2009 OF THE
SUB COURT, ATTINGAL

APPELLANT/PETITIONER/PLAINTIFF:

T.V.THOMAS AGED 58 YEARS
SON OF VARGHESE, THEKKEKUDIYIL
BAPPUJI ROAD MUVATTUPUZHA - 686 661, MARADY VILLAGE
MUVATTUPUZHA TALUK, ERNAKULAM DISTRICT.

BY ADVS.SRI.B.ASHOK SHENOY
SMT.C.G.PREETHA
SRI.K.V.GEORGE
SRI.P.N.RAJAGOPALAN NAIR
SRI.P.S.GIREESH

RESPONDENT(S)/RESPONDENTS/RESPONDENTS:

1. KILIMANOOR BLOCK PANCHAYAT
KILIMANOOR BLOCK PANCHAYAT OFFICE
KILIMANOOR, THIRUVANANTHAPURAM DISTRICT-695 601 REPRESENTED
BY ITS SECRETARY.

2. THE SECRETARY
KILIMANOOR BLOCK PANCHAYAT OFFICE
KILIMANOOR, THIRUVANANTHAPURAM DISTRICT-695 601

3. THE DISTRICT COLLECTOR
COLLECTORATE, ERNAKULAM, KOCHI-682 020.

SRI.P.FAZIL, GOVERNMENT PLEADER
R1&2 BY ADV. SRI.R.GOPAN
R1&2 BY ADV. SRI.SHAJIN S.HAMEED

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
25-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

RKC

**ANTONY DOMINIC &
P.V.ASHA, JJ.**

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Dated this the 25th day of November, 2015

JUDGMENT

Antony Dominic, J.

This appeal is filed by the plaintiff in O.S.No.316 of 2009 on the file of the Sub Court, Attingal challenging the order dated 13.2.2015 in I.A.No.1427 of 2013 filed under Order XXXIII rule 1 of CPC seeking permission to prosecute the suit as an indigent person. We heard the learned counsel appearing for the appellant, the learned Government Pleader and the learned counsel appearing for other respondents.

2. O.S.No.316 of 2009 was filed by the appellant, a Contractor by profession, seeking recovery of an amount of Rs.21,23,437/- (Rupees Twenty one lakhs twenty three thousand four hundred and thirty seven only) from the defendants allegedly due towards the work done by him. The suit was filed in 2009, remitting 1/10th of the court fee. Subsequently, in 2013, the appellant filed I.A.No.1427 of 2013 under Order XXXIII rule 1 of CPC seeking permission to prosecute the suit as an indigent

person contending that due to change of circumstances, he became incapacitated to raise funds for payment of balance court fee.

3. We have gone through the affidavit filed by the appellant. From this affidavit, we find that no change of circumstances after the institution of this suit, rendering the appellant incapable of remitting the balance court fee, has been made out by him. On the other hand, the report submitted by the Tahsildar shows that the appellant is possessed of three items of immovable properties. Although it is the case of the appellant that one of the items has been disposed of by him, that fact is not substantiated by any material. The appellant admits that he still possesses the remaining two items, though one of the items is mortgaged to the bank. It is also admitted that, subsequent to the institution of the suit, the appellant has acquired a car for his personal use, by availing of a loan from the bank. This would indicate that the pecuniary circumstances of the appellant has not changed to his detriment after the institution of the suit.

In the light of these facts, we have to necessarily agree

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with the court below that the appellant has failed to establish any change of circumstances incapacitating him from payment of the balance court fee and entitling him for an order under Order XXXIII Rule 1 of CPC, to prosecute the suit as an indigent person.

Appeal fails and is dismissed.

Sd/-
ANTONY DOMINIC,
JUDGE.

Sd/-
P.V.ASHA,
JUDGE.

rkc

true copy

PA to judge