

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

FAO.No. 70 of 2015 ()

AGAINST THE ORDER IN POP 74/2008 of I ADDL SUB COURT, THRISSUR DATED
06-11-2014

APPELLANT/PETITIONER:

T.D. ANTONY @ ANTHONY AGED 47 YEARS
S/O.DEVASSY, THAROOKKARA HOUSE, POOTHOLE
THRISSUR.

BY ADV. SMT.P.K.PRIYA

RESPONDENT/RESPONDENT:

K.A RAVEENDRA KUMAR, S/O.AYYAPPAN
KALATHIL HOUSE, THOPPANS ROAD, KUNNAMKULAM
THRISSUR 680 001.

BY ADV. SRI.P.RADHAKRISHNAN (1)
BY ADV. SRI.MADHU RADHAKRISHNAN

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 20.07.2015,
THE COURT ON 05.08.2015 DELIVERED THE FOLLOWING:

**THOTTATHIL B. RADHAKRISHNAN &
SUNIL THOMAS, JJ.**

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F.A.O.No.70 of 2015

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Dated this the 5th day of August, 2015

JUDGMENT

Sunil Thomas, J.

The petitioner, aggrieved by the rejection of his application P.O.P.No.74 of 2008, seeking permission to sue as an indigent person, is the appellant herein.

2. Appellant filed an application seeking permission to institute a suit against the respondent on the strength of a cheque for a total sum of Rs.3,00,000/-. He claimed that the cheque on presentation was dishonoured and the money was not paid in spite of demand. Claiming that petitioner did not have sufficient means to pay the court fee of Rs.30,550/-, a petition was filed under Order XXXIII Rule 1 of the C.P.C. Pursuant to the notice issued, respondent appeared and contested the proceedings. Petitioner himself was examined as PW1. Exts.A1 to A4 were marked. On the side of the respondent, Exts.B1 to B4 were marked.

3. On an evaluation of the available materials, the Court concluded that the petitioner failed to prove that he did not have sufficient means to pay the court fee and rejected his application

seeking permission to institute the suit. This order is assailed in this appeal.

4. Heard and examined the records. The documents produced by both sides before court below were produced before this Court for perusal.

5. The court below held that the available materials indicated that the appellant was working in a photostat shop. It was also brought out that he had advanced a sum of Rs.71,00,000/- to the respondent herein. Another suit was filed by the petitioner along with another person, for specific performance of an agreement of sale in relation to the property of the respondent herein, for a total amount of Rs.3,00,000/-, of which Rs.2,75,000/- had been given as advance. The court fee was paid in that case. Further, the house of the petitioner was sold and he received a consideration of Rs.35½ lakhs. On the basis of the above materials, court below concluded that the appellant herein had sufficient means to pay the court fee of Rs.30,550/-.

7. A perusal of the evidence tendered by PW1 in the light of Exts.A1 to A4 and Exts.B1 to B4 indicates that the appellant herein had earlier been working as a Manager in an establishment in the year 2006. Thereafter, that business concern was stopped and he

lost his job. Thereafter, he was employed in a photostat shop on a part time basis. Petitioner had deposed that he did not get enough salary from that shop. His children were studying and their entire expenses were met by him. It has also come out in evidence that the court fee payable in the connected suit O.S.No.882 of 2007 was remitted by the co-plaintiff. Hence, the finding of the court below that petitioner had remitted the court fee is not correct. It has also come out in evidence that he had sold his property and obtained a sum of Rs.35,50,000/-. However his evidence in Ext.B3 shows that inclusive of that amount, a total sum of Rs.71,00,000/- was allegedly advanced by him to respondent herein for which another litigation is pending. These transactions took place prior to the institution of the present case. It is on record that petitioner has got involved in few transactions involving huge amounts and that, he himself has got entangled in various litigations.

8. It is clear that had he been in affluent condition, he would not have worked in the photostat shop. He has to look after his family. It is true that he has not mentioned that though he had reasonable funds at one point of time, at present, he is not in possession of sufficient means. Courts should essentially take into consideration the situation, as it exists at the time of institution of

the suit.

9. Considering the above facts, we feel that the Court ought to have granted permission to the appellant to institute the suit as an indigent, as there was no material to show that he had sufficient means to pay the requisite court fee. Hence, the impugned order is not legally sustainable and is liable to be set aside.

In the result, the appeal is allowed, impugned order is set aside and P.O.P.No.74 of 2008 stands allowed. Petitioner is permitted to sue as an indigent person. Both sides shall appear before the court below on 03.09.2015. The court below shall thereafter proceed in accordance with law.

THOTTATHIL B. RADHAKRISHNAN
Judge

SUNIL THOMAS
Judge

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