

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 14TH DAY OF DECEMBER 2015/23RD AGRAHAYANA, 1937

FAO.No. 152 of 2015

AGAINST THE ORDER IN IA 1702/2015 IN O.S. . . /15 of II ADDL.D.C.,TRIVANDRUM DATED 18-05-2015

APPELLANTS/PETITIONERS:

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1. RAJENDRAN @ RAJU
S/O.SREENIVASAN, RAJBHAVAN, C.R.A.900
CHAYAKUDIROAD, PETTAH P.O., THIRUVANANTHAPURAM.
 2. SINDHU K.
W/O.RAJU, RAJ BHAVAN, CRA 900
CHAYAKUDI ROAD, PETTAH P.O, THIRUVANANTHAPURAM.

BY ADVS.SRI.S.BALACHANDRAN (KULASEKHARAM)
SRI.V.R.GOPU

RESPONDENTS/COUNTER PETITIONERS:

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1. REV. FATHER JOSEPH
VALLIPALAM, S/O.JOSEPH
HAVING ADDRESS AT THAZATH VALLIPALAM VEEDU
ONIPALLYKARA, MONIPALLI VILLAGE, MEENACHAL TALUK
KOTTAYAM AND NOW RESIDING AT SOCIAL CENTRE
GREEN GARDENS, WEST POONKULAM, MUTTACADU DESOM
KALLIYOOR P.O, THIRUVANANTHAPURAM-695042.
 2. STATE OF KERALA
REPRESENTED BY DISTRICT COLLECTOR
THIRUVANANTHAPURAM-695 001.

R1 BY ADV. SRI.V.G.ARUN (K/795/2004)
R1 BY ADV. SRI.ANOOP BHASKAR
R BY GOVERNMENT PLEADER

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 14-12-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & P.V.ASHA, JJ.

F.A.O.No.152 of 2015

Dated this the 14th day of December, 2015

JUDGMENT

Antony Dominic, J.

Heard the counsel for the appellants and the learned counsel appearing for the first respondent and the Government Pleader appearing for the second respondent.

2. This appeal is filed challenging the order dated 18th May 2015 in I.A.No.1702/15 in unnumbered O.S. Of 2015 on the file before the Vacation Court Judge, Thiruvananthapuram, (Additional District Judge-II). I.A. 1702/15 was filed under Order 33 Rule 1 of CPC seeking permission to sue as an indigent person. By the order impugned, the application was dismissed by the vacation court. It is this order, which is under challenge before us.

3. The suit was filed by the appellants for recovery of Rs.1,22,60,000/-. Though the order impugned shows that the appellants had received Rs.61 lakhs from the first respondent in three instalments, according to the first respondent, the total amount received is 92 lakhs. One reason stated by the court below for dismissing the application under

Order 33 Rule 1 is the receipt of substantial amount by the appellants and according to the court, having received such amounts, it cannot be contended that the appellants are indigent persons. The court also referred the provisions of Order 33 Rule 5(b) in support of the above finding. Court has further made reference to Order 33 Rule 5(e) to reject the I.A.

4. Having heard the counsel for both sides, we are inclined to think that first of all the order having been passed by the vacation court, which is only empowered under Section 19(2) of the Civil Court to pass provisional orders is untenable. This view is supported by the judgment of this court in *Viswambharan v. Damodaran Nair* [1988 (2) KLT 32]. Secondly, on the facts that are disclosed, we are also of the opinion that the provisions of Rule 5(e) that is relied on by the court did not have any relevance.

In such circumstances, we are unable to sustain the order passed by the vacation Judge, Thiruvananthapuram in I.A.No.1702/15 and the

order is accordingly set aside. The matter will stand remitted to the Sub Court, Thiruvananthapuram which will consider the I.A. on merits and pass orders in accordance with law.

SD/-
ANTONY DOMINIC
JUDGE

SD/-
P.V.ASHA
JUDGE

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