

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 6TH DAY OF JULY 2015/15TH ASHADHA, 193

FAO.No. 76 of 2014 ()

(AGAINST THE ORDER/JUDGMENT IN OP (INDIGENT) NO. 7/2012 of SUB COURT,
TIRUR)
DATED 21-08-2013)

APPELLANT(S) /PETITIONER:

CHUNGATH MUHAMMEDKUTY, AGED 51 YEARS,
S/O. MUHAMMED, P.O. PADINHARANGADI
REPRESENTED BY KUKTHYAR AGENT T. ABDUL RAHMAN,
S/O. ABOOBACKER, THADIYAN VEEDU, P.O. VETTATHUR.

BY ADVS.SRI.SAJU.S.A
SMT.P.A.SHEEJA
SMT.MEENA.A.

RESPONDENT(S) /RESPONDENT:

MUHAMMED ABDUL NOOR, AGED 36 YEARS,
S/O. AMBAIA ABDULLA MUSLIAR, P.O. KUTTIPPURAM
PIN-679571.

R1 BY ADV. SRI.LAL K.JOSEPH
R1 BY ADV. SRI.A.A.ZIYAD RAHMAN
R1 BY ADV. SRI.V.S.SHIRAZ BAVA

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON
06-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

F.A.O. No.76 of 2014

Dated this the 6th day of July, 2015

JUDGMENT

Sunil Thomas, J.

This appeal is filed by the petitioner in O.P.(Indigent) No.7/2012 of the Sub court, Tirur, aggrieved by the rejection of the petition seeking permission to sue as an indigent person.

2. The petitioner filed the above application seeking realization of a sum of Rs.16,75,000/- from the defendant. It was stated that he has unemployed and had gone abroad in search of a job. He had no sufficient means to pay the court fee and hence, he sought permission to file the suit in forma pauperis. The defendant remained ex parte. The power of attorney holder of the petitioner was examined and on an evaluation of the available materials, the court below held that

the power of attorney was not competent to depose the facts, which were within the knowledge of the petitioner, and there was insufficient evidence to prove the indigency. The petitioner was directed to pay the court fee and for non payment of the court fee, by a subsequent order dated 10th September 2013, the petition was rejected. Hence, this appeal.

3. Heard the appellant. The respondent remained absent. Examined the records.

4. Evidently, a huge amount is liable to be paid as court fee. In the petition, the petitioner has specifically pleaded sufficient ingredients to claim indigency. It is an admitted fact that the State did not file any evidence to show that the appellant had sufficient means to pay the court fee. The defendant also did not appear and contest the proceedings. The appellant had mentioned that he had no permanent job.

5. Even though the court below held that the facts, which were within the exclusive knowledge of a person, cannot be deposed by the power of attorney, when the power of attorney holder offers himself as a witness regarding the facts which were known to him, there was no reason as to why it should be

rejected, especially when it was an uncontroverted one. The claim of indegacy based on a benovalent provision, could have been exercised in a more liberal manner, especially when ultimately the petitioner is successful, court fee can be recovered. Even otherwise at any point of time if it was proved that the appellant had sufficient means to pay the court fee, the court would have reviewed its own order. In the above circumstances, we feel that the impugned order cannot be sustained. The appeal is liable to be allowed.

6. In the result, the appeal is allowed. The impugned order in O.P.(Indigent) No.7/2012 dated 21/8/2012 and the consequent order rejecting the petition dated 10th September 2013 are liable to be set aside. O.P.(Indigent) No.7/2012 is allowed. The court below shall take back the records on file and permit the petitioner to proceed in accordance with law.

7. It is clarified that if at any point of time during the course of proceedings the State or the defendant brings up sufficient evidence to prove the means of the appellant, the court can order reconsideration.

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8. The parties shall appear before the court below on 20/8/2015.

Sd/-
THOTTATHIL B.RADHAKRISHNAN
Judge

Sd/-
SUNIL THOMAS
Judge

dpk

/true copy/ PS to Judge.