

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

FAO.No. 98 of 2014 ()

**AGAINST THE ORDER DATED 16.1.2014 IN IA NO.278/2010 IN O.S.NO.15/2009
OF THE SUBORDINATE JUDGE'S COURT, KOTTARAKKARA**

APPELLANT(S)/PETITIONER/ PLAINTIFF :

**PRASANAN,
S/O DAMODARAN, RESIDING AT THENGUVILA VEEDU, VALAKKODU
VALAKKODU VILLAGE, FROM SREEVILASAM VEEDU
MANIYAR MURI, PUNALUR VILLAGE, PATHANAPURAM TALUK**

**BY ADVS.SRI.ALEXANDER GEORGE
SRI.C.P.SAJI**

RESPONDENT(S)/RESPONDENT/ DEFENDANT :

**M/S.REHABILITATION PLANTATION LTD.
REPRESENTED BY ITS MANAGING DIRECTOR, PUNALUR
PUNALUR VILLAGE, PATHANAMTHITTA TALUK**

**R1 BY ADV. SRI.SAJI VARGHESE
ADV. SMT.MARIAM MATHAI**

**THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
01-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

VS

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

F.A.O.No.98 of 2014

Dated this the 1st day of July, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

This appeal is against an order by which the court below dismissed an application seeking permission to continue a suit as an indigent as regards the payment of balance court fee. The Revenue did not object to the application in spite of repeated opportunities being given. The defendant which is a public sector company raised objections.

2. We have considered the materials tendered by the applicant before the court below. Ext.A1 is a certificate issued on the basis of available records by the Village Officer. It shows that the annual income of the appellant was Rs.20,000/-. Exts.A2 and A3 which were not acted upon by the court below on the premises that only xerox copies were produced, show that he had certain procedures at the Sree Chithira Thirunal Institute

of Medical Science and Technology, Thiruvananthapuram. That related to certain cardiology issues. The court below appears to have taken the view that the petitioner does not have any explanation as to why he could not sell or mortgage a portion of the immovable property belonging to him to pay the balance court fee. That is not a ground to be put against a person, who says that he is not having the means to pay the court fee. The provisions of Order XXXIII Rule 1 of the Code of Civil Procedure read in the context of Article 32-A of the Constitution of India do not warrant any conclusion that immovable properties have to be sold to generate court fee due on an appeal. This position is well settled by a catena of precedents by the Hon'ble Apex Court and by this Court. The application filed to continue the suit as an indigent as regards the payment of balance court fee deserves to be allowed.

In the result, this appeal is allowed, setting aside the impugned order and as a consequence, allowing I.A.No.278 of 2010. The plaintiff in O.S.No.15 of 2009 of the Sub Court, Kottarakkara will be permitted to continue

with that suit, exempting him from paying the balance court fee. Parties are directed to make appearance before the court below on 05.10.2015.

**THOTTATHIL B.RADHAKRISHNAN
JUDGE**

**SUNIL THOMAS
JUDGE**

VS