

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

RFA.No. 636 of 2013 ()

AGAINST THE JUDGMENT IN OS 120/2012 of SUB COURT, SULTHAN BATHERY
DATED 28-02-2013

APPELLANT/PLAINTIFF:

SECRETARY, THE MANANTHAVADI MINING & MARAMATH WORKERS
INDUSTRIAL CO-OPERATIVE SOCIETY
PANAMARAM, MANANTHAVADY TALUK, WAYANAD DISTRICT.

BY ADVS.SRI.ABRAHAM P.GEORGE
SRI.K.VINODKUMAR (707/89)
SMT.M.SANTHY

RESPONDENT/DEFENDANT:

SECRETARY, MULLANKOLLY GRAMA PANCHAYAT
MULLENKOLLY, PADICHIRA AMSOM DESOM
SULTHANBATHERY TALUK.

R1 BY ADV.SRI.MANOJ RAMASWAMY
R1 BY ADV.SMT.SANJANA R.NAIR

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 20-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.N.RAVINDRAN & ANIL K.NARENDRA, JJ.

R.F.A. No.636 of 2013

Dated this the 20th day of March, 2015

J U D G M E N T

P.N.Ravindran, J.

The appellant is the plaintiff in O.S.No.120 of 2012 on the file of the Court of the Subordinate Judge of Sulthanbathery. The respondent is the defendant therein. The suit instituted by the appellant is one for realisation of the sum of Rs.21,04,732/- from the defendant with interest and costs. Issues in the suit were framed on 9.1.2013. The suit thereafter stood posted to 11.2.2013 for payment of the balance court fee. Since the balance court fee was not paid on that day, it was adjourned to 28.2.2013. On that day, the plaintiff filed I.A.No.254 of 2013 seeking leave to prosecute the suit as an indigent person. The said application was dismissed as defective and consequently, the plaint was rejected under Order VII rule 11 of the Code of Civil Procedure by judgment delivered on 28.2.2013. The plaintiff has aggrieved thereby filed this appeal.

2. We heard Sri.Abraham P.George, learned counsel appearing for the appellant and Sri.Manoj Ramaswamy, learned counsel appearing for the respondent. After hearing the learned counsel on

both sides and on going through the pleadings and the materials on record, we are of the opinion that the appellant should be afforded an opportunity to pay the balance court fee and to prosecute the suit.

We accordingly allow the appeal, set aside the impugned judgment, restore the suit to file and grant the appellant time till 9.4.2015 to pay the balance court fee payable on the plaint. The parties shall appear in the court below through counsel on 9.4.2015. The court below shall on the plaintiff paying the balance court fee, try and dispose of the suit on the merits. Needless to say in the event of default, the plaint shall be liable to be rejected again for non payment of the balance court fee.

**P.N.RAVINDRAN,
(JUDGE)**

**ANIL K.NARENDRA,
(JUDGE)**

vps