



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.02.2016

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.(MD).No.65 of 2016

and

C.M.P.(MD).No.1220 of 2016

Sri P.Selvin Jenifer

... Appellant

Vs.

1.The Tuticorin Port Turst,
Tuticorin through its Chairman
Having his office at Harbour Complex,
Bharathi Nagar, Tuticorin.

2.The Tuticorin Port Trust Welfare Club,
Through it's President,
Having his office at New Harbour Complex,
Bharathi Nagar, Tuticorin.

... Respondent

Civil Miscellaneous Appeal is filed under Order 43 Rule 1(na) of the Code of Civil Procedure, against the judgment and decree dated 20.11.2015 passed in Pauper OP No.50 of 2010 on the file of the Principal District Judge, Thoothukudi.

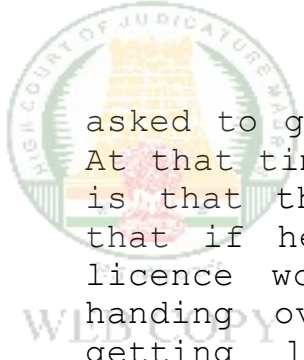
For Appellant

:Mr.G.Prabhu Rajadurai

JUDGMENT

The appellant originally filed Pauper Original Petition in Pau.O.P.No.50 of 2010 before the Principal District Court, Thoothukudi. Subsequently, it was transferred to the Sub-Court, Thoothukudi. During the pendency in Sub-Court, Thoothukudi, the P.O.P was re-transferred to the Principal District Judge, Thoothukudi. The appellant has filed the above said petition under Order 33 Rule 1 of C.P.C., to declare him as an indigent person.

2.The case of the appellant is that the appellant was given the licence to display cable T.V channels by installing Dish Antenna by the first respondent. For the said display, he invested for purchasing of equipments and for putting up temporary structure worth one lakh and few modulations in small numbers. In the first respondent decided to give licence for displaying Satellite T.V Programme for 5 years by calling for tender. In which, tender of the appellant was accepted and he was



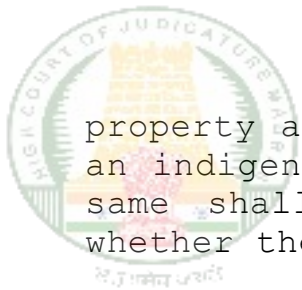
asked to give an undertaking as demanded by the first respondent. At that time, one of the condition imposed by the first respondent is that the appellant should give an undertaking to the effect that if he failed to display the Channel as per contract, his licence would be cancelled and he should vacate the premises handing over all the equipments that was then existence. On getting licence, the appellant spent Rs.12 lakhs for the equipments by borrowing money from Financial Company and installed the equipments. Subsequently, the appellant's licence was cancelled illegally. On 31.01.2009, the appellant issued notice to the first respondent to hand over the equipments and materials and to pay a sum Rs.5,000/- as damages from the date of termination of licence. Though the value as it was then existed at the time of licence is Rs.12 lakhs, the appellant restricts his claim for Rs.10,00,000/- for which, the appellant has to pay a sum of Rs.75,000/- as Court Fees under Section 22 of C.F Act. As the appellant is not possessed of means to pay Court fees, he has filed Pau.O.P.No.50 of 2010 to declare the petitioner/appellant as an indigent person and he has to be exempted from payment of Court fees in the suit.

3.The first respondent filed counter affidavit and submitted that the appellant has got sufficient means to pay the Court fees and he has not produced his salary certificate of his employer. The appellant is having all luxury items at his residence and he has not produced any certificate from the Village Administrative Officer to the effect that he has not got any immovable property and prayed for dismissal of the petition filed by the petitioner.

4.The learned Judge, considering all the materials on record and also facts and circumstances of the case, the arguments and the judgments relied on by the parties, dismissed the petition filed by the petitioner. Against which, the present civil revision petition has been filed.

5.The learned counsel appearing for the appellant contended that the learned Judge erred in law in dismissing the application filed by the appellant on the ground that notice under Section 120 of The Major Port Trust Act, was not issued. The learned Judge failed to consider that his salary was only Rs.5,000/- on the date of filing of the petition. Hence, he prayed for allowing the Civil Miscellaneous Appeal.

6.From the materials, it is seen that at the time of filing the above said suit, according to the appellant, he was earning Rs.6,000/- per month. Subsequently, at the time of evidence to decide the application, the respondent produced documents to show that the appellant was earning Rs.15,000/- per month. As per Order 33 Rule 1 of C.P.C, if a person not possessed of sufficient means to pay Court fees, he is an indigent person. As per Explanation-II of Order 33 Rule 1 of C.P.C., any person acquired



property after filing of the application for permission to sue as an indigent person and before the decision of the application the same shall be taken into account in considering the question whether the person is an indigent person or not.

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7. Applying these principles, the appellant cannot sue as an indigent person, as he is earning Rs.15,000/- per month. The learned Judge has correctly dealt with the matter and dismissed the application filed by the petitioner. There is no illegality and irregularity in the said order, which warrants any interference by this Court.

8. In the result, the C.M.A is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar

To

The Principal District Judge,
Thoothukudi.

+One cc to Mr.G.Prabhu Rajadurai, Advocate, SR.No.8497

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RL/3C/3P/AAL/MPA/4/5/2016

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