

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.12.2017

CORAM

THE HON'BLE MR. JUSTICE M.DURAISWAMY

C.M.A.No.123 of 2016

Manivannan ... Appellant/Petitioner
Vs.

1.Erode Institute of Technology (E.I.T.)
rep by its Correspondent K.K.Balusamy,
Kavundapadi, Bhavani Taluk, Erode District.

2.S.Balaarasu

3.State Government of Tamil Nadu
rep by its District Collector,
Erode.

4.C.K.Ramanathan ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Order 43 Rule 1 N
(a) of the Code of Civil Procedure against the fair and
decreetal order dated 30.10.2015 made in P.O.P.No.44 of 2013
on the file of the I Additional District Judge, Erode.

For Appellant : Mr.R.Marudhachalamurthy

For Respondents : Mr.N.Manokaran (R1)
Mr.D.Balachandran (R2)
R3 - no appearance

J U D G M E N T

Challenging the order passed in P.O.P.No.44 of 2013 on
the file of the I Additional District Judge, Erode, the
plaintiff has filed the above appeal.

2.The plaintiff filed the un-numbered suit before the
Principal District Court, Erode for recovery of a sum of Rs.50
lakhs as compensation for the death of his daughter. Along
with the suit, the appellant has also filed a petition in
P.O.P.No.44 of 2013 under Order 33 Rule 1 of the Code of Civil
Procedure to permit him to file the suit as in forma pauperis.
In the affidavit filed in support of the petition, the
appellant has stated that he is a pauper and he has no
sufficient means to pay the necessary Court fees as prescribed
to be payable on the suit. Further, he has also stated that he
has been dispossessed from his movable and immovable
properties and he has no income at all.

3.The 1st respondent filed their counter wherein they have stated that the averments stated in the affidavit filed in support of the petition are false and that the appellant himself had admitted that his income is Rs.48,000/- per annum, which was filed by him at the time of admission of his daughter. Further, the appellant was examined as P.W.1 and he has also admitted that he is earning Rs.48,000/- per annum.

4.Since the appellant was earning Rs.48,000/- per annum, which has not been disclosed in the affidavit filed in support of the petition, the trial Court has rightly dismissed the petition. The petition filed by the appellant to prosecute the suit as in forma pauperis cannot be allowed for the reason that he is earning Rs.48,000/- per annum. That apart, the appellant has also not stated about the income earned by him in the affidavit filed in support of the petition. He has stated that he is not earning any income at all. That being the case, the trial Court has rightly dismissed the petition.

5.In these circumstances, I do not find any error or irregularity in the order passed by the trial Court. The appeal is liable to be dismissed. Accordingly, the same is dismissed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

va
To

The I Additional District Judge,
Erode.

+ 1 cc to MR. N. Manokaran, Advocate SR. 90270
+ 1 cc to MR. D. Balachandran, Advocate Sr.90076
+ 1 cc to Mr. R. Marudhachalamurthy, Advocate SR.90411

C.M.A.No.123 of 2016

ssd(CO)
EU(05/01/2018)