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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 06.03.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. (MD) No.184 of 2017

and

C.M.P (MD) No.2045 of 2017

1.Sujatha Venkatesan

2.M.N.Venkatesan

... Appellants/ Petitioners

Vs.

1. Manjula Srinivasan

2. K.Srinivasan

3. R.Kannan

4. K.Sumathi

5. M/s.Lotus Fly Ash Bricks,
represented by its
Managing Partner,
R.Kannan

6. Ashok Kumar

7. Ravi

8. Manimala

9. The State of Tamil Nadu,
represented by its District Collector.

10. The Tahsildar,
Manachanallur,
Taluk Office,
Manachanallur, Trichy District.

11. The Sub Registrar,
Manachanallur,
Sub Registration Office,
Manachanallur, Trichy.

12. The District Registrar of Firms,
Office of District Registrar of Firms,
Cantonment, Trichy.

13. The Branch Manager,
Indian Overseas Bank,
Thillai Nagar Branch,
Trichy - 620 018.

... Respondents/Defendants

PRAYER: Appeal filed under Section 104 read with order 43 Rule 1 (na) of the Code of Civil Procedure, against the fair and decreetal order dated 23.11.2016 in Indigent O.P.No.17 of 2014 on the file of the Principal District Court, Trichy.

For Appellants

: Mr.Raguvaran Gopalan

for M/s.U.Nirmala Rani

JUDGMENT

<https://hcservices.hcprts.gov.in/hcservices/> the appellants/petitioners filed the suit for recovery of money in Indigent O.P.No.17 of 2014, seeking to permit them to



file the suit without paying the Court fee due on the plaint by adjudging them as indigent persons.

2. For the sake of convenience, the parties are referred to, according to their litigative status before the trial Court.

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3. Brief facts of the case of the petitioners are as follows:

3.1. According to the petitioners, they do not have means to pay the Court fee of Rs.5,12,923.50 (Rupees Five Lakhs Twelve Thousand Nine Hundred and Twenty Three and Paise Fifty only) and hence, they filed Indigent O.P.No.17 of 2014 before the Principal District Court, Trichy. In the schedule to the Indigent O.P.No.17 of 2014, they have given the list of immovable properties and movable properties owned by them. The house property was purchased by the parents of the first petitioner in the name of the first petitioner and her parents are residing in the said house. The second item of the house property was purchased by her parents in her name and in the names of her sisters. The petitioners have no independent saleable interest in the suit properties. The jewels were pledged to raise funds for the business purpose and on receipt of Rs.14,00,000/- (Rupees Fourteen Lakhs only) from the respondents, the jewels were redeemed and the creditors were paid and the balance amounts were kept for utilising the same towards family necessity.

3.2. The respondents filed an application in I.A.No.394 of 2014 under Order 33 Rule 5 C.P.C., to reject the Indigent O.P.No.17 of 2014 filed under Order 33 Rule 1 read with Order 7 Rule 1 of the Code of Civil Procedure, on the ground that the petitioners have sufficient means to pay the Court fee. The respondents filed a Memo to treat the averments made in I.A.No.394 of 2014 as the counter affidavit in the Indigent O.P.No.17 of 2014. The respondents have stated that the petitioners have admitted that they received a sum of Rs.14,00,000/- (Rupees Fourteen Lakhs only) and out of the said amount, they can pay the Court fee. The petitioners can alienate or encumber any one of the immovable properties easily and they can pay the Court fee.

3.3. On the side of the petitioners, no oral evidence was let in, however, Exs.P.1 to P.4 were marked. R.W.1 and R.W.2 were examined and Exs.R.1 to R.65 were marked on the side of the respondents.

3.4. The trial Court, considering the averments in the Indigent O.P.No.17 of 2014, the objections raised by the respondents and the evidence let in by either side in I.A.No.394 of 2014, dismissed the Indigent O.P.No.17 of 2014 holding that the petitioners are not indigent persons and they are capable of paying the Court fee and they cannot be permitted to file the suit as indigent persons and directed them to pay the Court fees on or before 22.12.2016.



3.5. Aggrieved over the same, the present Civil Miscellaneous Appeal has been filed.

4. The learned Counsel for the appellants/petitioners reiterated the grounds raised in the appeal and submitted that the possession of immovable properties and movable properties, like, the jewels, will not amount to capacity of the appellants/petitioners to pay the Court fee and that the trial Court failed to see that from and out of the properties owned by the petitioners, they cannot raise funds to pay the Court fee.

5. Further, it is submitted by the learned Counsel for the appellants/petitioners that one of the immovable properties is purchased by the parents of the first petitioner and her parents are residing in the said house and therefore, they are not getting any rental income and the other properties are in the joint names of the first petitioner and her sister and hence, they cannot raise funds by mortgaging the properties or they cannot sell the same.

6. It is also contended that the learned Judge erred in holding that the appellants/petitioners have capacity to pay the Court fee on the ground that they are in possession of electronic appliances and other immovable properties and that the learned Judge failed to see that the possession of properties does not mean that the petitioners are able to pay the Court fee and moreover, the District Collector did not file any report with regard to the financial status of the petitioners.

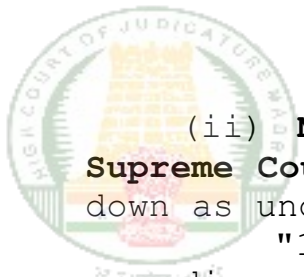
7. It is the further submission of the learned Counsel for the petitioners that the learned Judge, while dismissing the application filed under Order 33 Rule 5 and Section 151 of the Code of Civil Procedure, to reject the Indigent O.P.No.17 of 2014, ought not to have dismissed the Indigent O.P.No.17 of 2014 filed by the appellants/petitioners and therefore, he prayed for allowing this appeal.

8. In support of the same, the learned Counsel for the appellants/petitioners relied upon the following decisions:

(i) **Sanjeevayya Nagar Co-operative House Building Society v. S.Malla Reddy alias Parvathalu and others** reported in **(2005) 5 ALT 745 (DB)**, wherein the Andhra Pradesh High Court held as follows:

"21. From the above, it is obvious that the status of the plaintiff as regards its means/capacity to pay court-fee need not necessarily be static although the pendency of the proceedings. It may get varied or modified, subject to various contingencies during the course of litigation, at any point of time.

It is only way there would not be any apparent prejudice to the revenue to the State."



(ii) **Mathai M. Paikeday v. C.K. Antony** reported in (2011) 13 Supreme Court Cases 174, wherein the Honourable Supreme Court laid down as under:

"16. The concept of indigent person has been discussed in Corpus Juris Secundum (20 C.J.S. Costs ' 93) as following: " ' 93. What constitutes indigency: The right to sue in forma pauperis is restricted to indigent persons. A person may proceed as poor person only after a court is satisfied that he or she is unable to prosecute the suit and pay the costs and expenses. A person is indigent if the payment of fees would deprive one of basic living expenses, or if the person is in a state of impoverishment that substantially and effectively impairs or prevents the pursuit of a court remedy. However, a person need not be destitute. Factors considered when determining if a litigant is indigent are similar to those considered in criminal cases, and include the party's employment status and income, including income from government sources such as Social Security and unemployment benefits, the ownership of unencumbered assets, including real or personal property and money on deposit, the party's total indebtedness, and any financial assistance received from family or close friends. Not only personal liquid assets, but also alternative sources of money should be considered."

17. The eligibility of person to sue in forma pauperis has been considered in American Jurisprudence (20 Am. Jur. 2d Costs ' 100) as thus:

"100. Eligibility to sue in forma pauperis; generally: The burden of establishing indigency is on the defendant claiming indigent status, who must demonstrate not that he or she is entirely destitute and without funds, but that payments for counsel would place an undue hardship on his or her ability to provide the basic necessities of life for himself or herself and his or her family. Factors particularly relevant to the determination of whether a party to a civil proceeding is indigent are: (1) the party's employment status and income, including income from government sources such as social security and unemployment benefits; (2) the ownership of any unencumbered assets, including real or personal property and monies on deposit; and finally (3) the party's total indebtedness and any financial assistance received from family or close friends. Where two people are



living together and functioning as a single economic unit, whether married, related, or otherwise, consideration of their combined financial assets may be warranted for the purposes of determining a party's indigency status in a civil proceeding."

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9. Heard the learned Counsel for the appellants/petitioners and perused the materials available on record.

10. A careful perusal of the schedule to the Indigent O.P.No.17 of 2014 that the petitioners have furnished the list of immovable and movable properties owned by them and from the said list, it is seen that the petitioners are owning the house properties as well as jewels and two house sites. Apart from the said immovable properties, the petitioners are owning 450 grams of gold jewels and the value of the properties is more than Rs.1,000/- (Rupees One Thousand only) and the said properties are not the subject matter of the suit.

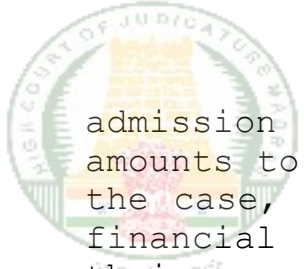
11. The contention of the learned Counsel for the petitioners is that under Order 33 Rule 1 of the Code of Civil Procedure, the terms 'not possessed of sufficient means' cannot be considered to be the same as 'not possessed of sufficient properties'. The said rule is very clear that when it has been specifically mentioned that the other properties exempted from attachment in execution of the decree are not subject matter of the suit, they cannot be taken into consideration.

12. It is not the case of the petitioners that the properties owned by them are exempted from attachment in execution of the decree or those properties are not the subject matter of the suit properties. Further, the petitioners have admitted that they received a sum of Rs.14,00,000/- (Rupees Fourteen Lakhs only) from the respondents and they have stated that the said amount was used for redeeming the properties and the remaining amounts were kept for the family necessity and the petitioners have not used for payment of interest to the creditors. Further, they have not furnished as to how much money was paid to the bank for redeeming the jewels and kept the balance amount for family necessity, but they have not furnished the details as to how much money was paid to the creditors and how much money is with them from and out of Rs.14,00,000/- (Rupees Fourteen Lakhs only).

13. From the materials available on record, it is seen that the petitioners can raise funds to pay the Court fee by utilising the jewels and the immovable properties mentioned in the schedule to the Indigent O.P.No.17 of 2014.

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14. In any event, they cannot be termed as the persons not having sufficient means to pay the Court fee on their own



admission that they owned the properties worth more than the amounts to be paid as Court fee. In the facts and circumstances of the case, the report of the District Collector with regard to the financial status of the petitioners is not necessary, in view of their own admission that they owned the properties more than the amounts mentioned under Order 33 Rule 1 of the Code of Civil Procedure.

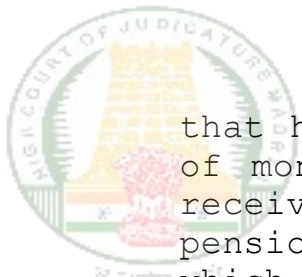
15. In **Mathai M.Paikeday v. C.K.Antony** reported in (2011) 13 Supreme Court Cases 174, the Honourable Supreme Court held as follows:

"18. To sum up, the indigent person, in terms of explanation I to Rule 1 of Order 33 of the Code of Civil Procedure, is one who is either not possessed of sufficient means to pay court fee when such fee is prescribed by law, or is not entitled to property worth one thousand rupees when such court fee is not prescribed. In both the cases, the property exempted from the attachment in execution of a decree and the subject-matter of the suit shall not be taken into account to calculate financial worth or ability of such indigent person. Moreover, the factors such as person's employment status and total income including retirement benefits in the form of pension, ownership of realizable unencumbered assets, and person's total indebtedness and financial assistance received from the family member or close friends can be taken into account in order to determine whether a person is possessed of sufficient means or indigent to pay requisite court fee. Therefore, the expression "sufficient means" in Order 33 Rule 1 of the Code of Civil Procedure contemplates the ability or capacity of a person in the ordinary course to raise money by available lawful means to pay court fee.

19. Admittedly the respondent is a retired Deputy Conservator of Forest, Government of Kerala and drawing a pension of `10,500/-. It was also stated by him in his deposition before the High Court on 03.01.2008 that his son is employed abroad and does not regularly send him money and in response to a suggestion, whether his bank account discloses the amount of money sent by his son, he does not deny the suggestion. However, it is noteworthy to mention that respondent has never denied that his son sends him money. Furthermore, the respondent had failed to establish that the amount of money received from his son is not substantial or insufficient to pay court fee by not producing passbook of his bank account. In our considered opinion, non-production of bank account transaction details, amounts

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adverse inference can be drawn against the respondent



that he is receiving a substantial or sufficient amount of money from his son. Therefore, the amount of money received by the respondent from his son and by way of pension amounts to a sufficient means to pay court fee which disentitles him to be an indigent person under Order 33 Rule 1 and Order 44 Rule 1 of the Code of Civil Procedure.

20. In the light of above discussion and facts and circumstances of the present case, the respondent cannot be declared as an indigent person in order to prosecute Regular First Appeals before the High Court. Accordingly, the present appeals are allowed and the impugned final order of the High Court dated 11.08.2008 is set aside. However, the respondent is granted 45 days time from today to deposit the court fee if he desires to prosecute Regular First Appeals filed before the High Court. Costs are made easy."

16. The judgment of the Andhra Pradesh High Court relied on by the learned Counsel for the appellants/petitioners is not applicable, but, the judgment of the Honourable Supreme Court is squarely applicable to the facts of the present case.

17. Keeping in mind the dictum laid down by the Honourable Supreme Court in the aforesaid decision, this Court finds that the petitioners have not proved that they are not having sufficient amounts to pay the Court fee and hence, the appellants/petitioners cannot be termed as indigent persons.

18. In the result, this Civil Miscellaneous Appeal fails and the same is dismissed. The appellants/petitioners are directed to pay necessary Court fee within a period of four weeks from today. No costs. Consequently, the connected civil miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar

To

1. The Principal District Court, Trichy.

+1 cc to M/S. Nirmalarani, ADVOCATE, SR NO: 12840

**C.M.A. (MD) No. 184 of 2017
and**

**C.M.P (MD) No. 2045 of 2017
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