

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(PD)No. 2612 of 2018

and

C.M.P.No. 15649 of 2018

1.D.Gunasekaran
2.G.Ramesh Kumar
3.G.Suresh Kumar
4.G.Maheswaran

...Petitioners

Vs.

P.Sankaranarayanan

..Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 27.04.2018 in Pauper O.P.No. 44 of 2016 on the file of the Principal District Judge, Cuddalore.

For Petitioners : Mrs.A.L.Ganthimathi

For Respondents : Mr.RMD.Nasuralla

ORDER

This revision is as against an order allowing the plaintiff in the suit namely, O.S.NO. 85 of 2018 to sue as a indigent person.

2. The plaintiff sued for recovery of money of sum of Rs.30,00,000/- along with interest at 12% per annum from the date of payment till date of recovery. The amounts sought to be recovered in the suit was Rs.44,80,000/-. The Court fee payable is Rs.3,36,000.50/-. The plaintiff claimed that he has no means to pay the Court fee and sought for permission to sue as an indigent person. The learned Principal District Judge, Cuddalore as by the order impugned in this revision dated 27.04.2018 allowed the said petition and directed the suit to be numbered as an original suit. Since the perusal of the order did not reveal that notice was served on the Government Pleader as required under Order 33 Rule 6 of C.P.C, I had called for the records from the Trial Court.

3. A perusal of the records shows that no notice was issued to the Government Pleader in the application filed seeking permission to sue as a indigent person in Pauper O.P.NO. 44 of 2016. Order 33 Rule 6 of C.P.C., reads as follows:-

"Where the Court sees no reason to reject the application on any of the grounds stated in rule 5, it shall

fix a day (of which at least ten day's clear notice shall be given to the opposite party and the Government pleader) for receiving such evidence as the applicant may adduce in proof of his indigency, and for hearing any evidence which may be adduced in disproof thereof."

A plain reading of the above provision shows that a duty is cast on the Court to serve notice on the Government Pleader before granting permission. The said mandatory requirement has not been complied with. This renders the order of the Trial Court materially irregular.

4. This civil revision petition is therefore, allowed. The order of the Trial Court is set aside, the original petition is remitted to the Trial Court. The Trial Court is directed to issue notice to the Government Pleader and dispose of the original petition strictly in terms of the provisions of Order 33 Rule 6 of C.P.C. No costs.

सत्यमेव जयते

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15.10.2020

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R.SUBRAMANIAN, J.
KKN

To:

The Principal District Judge,
Cuddalore.



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