



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.A. (MD)No.1136 of 2008

- 1.Sethu Manickam (Died)
- 2.Sankareswari
- 3.P.Savithri
- 4.M.Sanjeevi Kumari
- 5.E.Kalyani

... Appellants

(A2 to A5 are brought on record as LRs., of the deceased sole appellant Vide Court order dated 12.10.2020 made in M.P.(MD)Nos.1 to 3 of 2013 in C.M.A. (MD)No.1136 of 2008).

Vs.

- 1.Canara Bank,
Keelamasi Veethi Branch,
Madurai, rep.by its Branch Manager.
- 2.M/s.Karthik Industries,
rep.by Proprietor,
S.Parthiban, S/o.Srinivasan,
D.No.20, DRO Colony, K.Pudur Main Road,
Madurai.
- 3.The District Collector,
Virudhunagar District, Virudhunagar.
- 4.D.Shanthi
- 5.V.Amutha Kumari

... Respondents

(R4 and R5 are brought on record as LRs., of the deceased sole appellant Vide Court order dated 12.10.2020 made in M.P.(MD)Nos.1 to 3 of 2013 in C.M.A. (MD)No.1136 of 2008).

Prayer: This Civil Miscellaneous Appeal is filed under Order 43 Rule 1(na) R/w Section 104 of C.P.C., to set aside the fair and final order in I.A.No.93 of 2005 in unnumbered A.S.No. Of 2005, dated 13.03.2008 on the file of the Principal District Court, Virudhunagar District at Srivilliputhur.

For Appellants	: Mr.S.Venkatesh
	For Mr.A.Sivaji
For R1	: Mr.C.Jawahar Ravindran
For R2	: Died vide Court order dated 25/06/2018



For R3 : Mr.D.Gandhiraj,
Special Government Pleader.
For R4 and R5 : No Appearance

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JUDGMENT

The challenge in the appeal is to the order of the appellate Court rejecting the application seeking permission to file an appeal as an indigent person.

2.The appellant, who was the second defendant in the suit in O.S.No.270 of 2011 sought to challenge the decree granted in the appeal. She sought for permission to sue as an indigent person saying that her husband is no more and she has no other property, except the property which has been attached by the Bank in the very suit. The Court Fee payable is Rs.79,329.50/-.

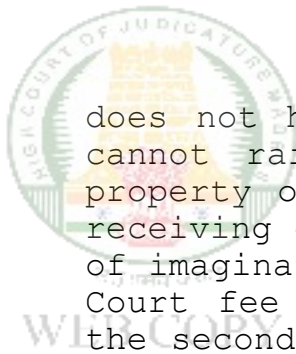
3.This application was resisted by the Bank contending that the petitioner is not an indigent person and she has means to pay the Court fee. The third respondent, District Collector has also filed a counter affidavit stating that she is receiving pension of Rs.1,800/- per month as pension and therefore, she is not entitled to file an appeal as an indigent person.

4.The learned Trial Judge accepted the defence to the effect that the appellant is in possession of the property though the said property is under attachment. On the said conclusion, the learned trial Judge held that the appellant is not living under indigent circumstances and hence she is not entitled to file an appeal as an indigent person.

5.Heard Mr.S.Venkatesh, learned counsel appearing for the appellant and Mr.C.Jawahar Ravindran, learned counsel appearing for the first respondent and Mr.D.Gandhiraj, learned Special Government Pleader appearing for the third respondent.

6.The appeal has been dismissed as against the second respondent, the original borrower. Notice sent to the fourth respondent has been returned with an endorsement no such person. The second respondent is the original borrower and the fourth respondent is one of the Legal Heirs of the deceased appellant. Hence, notice to them is unnecessary.

7.I am unable to endorse the reasons of the learned Trial Judge for having dismissed the application. Admittedly, the property of the appellant is under attachment. The Court fee payable is about Rs.79,329.50/- and she is receiving a sum of Rs.1,800/- as family pension. In order to get permission to sue as an indigent person, it is not necessary for a person to be a real pauper ie., a person who



does not have any asset. It is enough if it is shown that he/she cannot raise money to pay the Court fee. Admittedly, the only property of the appellant is under attachment and the appellant is receiving only a sum of Rs.1,800/- as family pension. At any stretch of imagination it cannot be held to be sufficient for her to pay the Court fee of Rs.79,329.50/-. The other appellants are children of the second appellant. It is not claimed that they are possessed any other property. Hence, I am unable to sustain the view of the appellate Court. The order of the appellate court is set aside. The application in I.A.No.93 of 2005 will stand allowed. The appellants are permitted to sue as Indigent persons.

8.Accordingly, this Civil Miscellaneous Appeal is allowed.
No costs.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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To

1.The District Collector,
Virudhunagar District, Virudhunagar.

2.The Principal District Judge,
Virudhunagar District.

3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

C.M.A. (MD)No.1136 of 2008

16.02.2022

_RD(10.03.2022) 3P 4C