BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 10.10.2022

PRONOUNCED ON: 31.10.2022

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.950 of 2021

R.Esther Jeyarani ... Appellant / Plaintiff

Vs.

1.M/s Nishigandha Polymers Pvt Ltd.,
represented by its Whole Time Director,
Rohitkantilal Ravani.
Rustom Building,
3rd Floor, 29, Veeranariman Road,
Mumbai-400 058,
Maharastra State.

2.Rohit Kantilal Ravani

3.Sunil More

4.Ganga Devi More

5.Kiran More

6.Anil More

7.M/s Dharti Dredging and Infrastructure Ltd.,
represented by Managing Director,
A.Rajendra.

8.A.Rajendra

9.The District Collector,
Tuticorin District,
Koramballam,
Tuticorin. : Respondents / Defendants

PRAYER:- Civil Miscellaneous Appeal is filed under Order 43 Rule (na) of the Code of Civil Procedure, against the order dated 06.09.2021 passed in Pauper Original Petition in P.O.P.No.180 of 2016, on the file of the Principal District Judge, Thoothukudi.

For Appellant : Mr.T.Lajapathi Roy

For Respondents :Mr.N.Muthu Vijayan
Special Government Pleader
for R.9
: Mr.T.S.R.Venkataraman
for R.1 to R.3, R.5 and R.6
: Mr.g.Mohan Kumar
for R.7 and R.8
: No Appearance for R.4

JUDGMENT

The Civil Miscellaneous Appeal is directed against the order passed in P.O.P.No.180 of 2016, dated 06.09.2021, on the file of the Principal District Judge, Thoothukudi, in dismissing the petition filed under Order 33 Rule 1 of the Code of Civil Procedure.

2. The appellant is the proposed plaintiff and she filed a suit under Order 33 Rule 1 and Order 7 Rule 1 C.P.C., to declare her as an indigent person and to permit her to institute the suit without paying Court fees. The case of the appellant/plaintiff is that she is the proprietress of RBJ Blue Star Enterprises, Tuticorin doing the business of underwater rock drilling, blasting, mining and transport operations, that the seventh defendant entered into a contract with the Visakapattinam Port Trust for dredging works, that the eighth respondent/defendant – Managing Director of the seventh respondent/defendant issued a work order on 18.05.2013 to the appellant/plaintiff to carry out the underwater rock drilling and blasting works connected with the dredging works at Visakapattinam Port, that the appellant/plaintiff submitted certified

invoice for claiming mobilization charges of Rs.7,00,00,000/- and the said amount was sent to the appellant/plaintiff by the eighth respondent/defendant and instructed the appellant/plaintiff to send Rs. 6,00,00,000/- to the second respondent/defendant for mobilization of further materials and equipments, that the appellant/plaintiff was then forced to mobilize the materials and equipments from her own resources and as such, she suffered a financial setback, that the appellant/plaintiff has then requested the first respondent/defendant to return back the money, but the eighth respondent infuriated by the same, terminated the earlier work order and due to the abrupt termination of the work order, the appellant has suffered heavy financial loss to the tune of Rs. 22,00,00,000/- and that the appellant was forced to file the present suit for recovery of Rs.6,00,00,000/- and interest at Rs.3,11,10,000/- totalling at Rs.9,11,10,000/-. It is the further case of the appellant that she owns a house bearing Door No.2F/1379A, at P&T Colony, 12th street west, Tuticorin, that only by mortgaging the said house with the State Bank of India, SME Branch, Tuticorin, she invested in their business, that since the appellant was not able to settle the money borrowed from the Bank, possession notice was issued under the SARFAESI Act, that though the market value of the house property is Rs.

66,00,000/-, the liability over it is more than Rs.80,00,000/-, that the appellant/plaintiff has suffered a lot monetarily and she does not have the capacity to pay the court fees for filing the suit and that therefore, she is constrained to file the above suit as informa-pauperis.

3. The respondents 1 to 6 in their counter statement have taken a stand that the appellant claims to be the owner of the RPJ Blue Star Enterprises which had a dealing contract with the seventh respondent for Rs.32.53 Crores, that she has been alleging that she is now owning 10 sarees, one mobile phone, one watch and 10 chudithars worth about Rs.1000/-, that the house is worth about Rs.12,00,00,000/-, but grossly undervalued for the purpose of this case, that the above O.P., has been filed only to threaten the respondents to make an unjust and unlawful gain and to avoid breach of contract and actions by the first respondent.

4. The respondents 7 and 8 have filed a counter statement raising objections to declare the appellant as an indigent person and further stated that the appellant/plaintiff has not completed the work order within the time stipulated in the work order dated 18.05.2013 and as such, the work order was terminated, that the appellant, with *malafide* intention

filed Arbitration O.P., No.832 of 2014, which is still pending before the Court of Chief Judge, City Civil Court, Hyderabad, that the appellant has come with the unclean hands and with malicious intention to lodge a criminal complaint against the second and eighth respondents and that the present petition has been filed only to protract and prolong the matter and the same is liable to be dismissed in *limine*.

5. The appellant/plaintiff has filed reply statement disputing the averments raised in the counter statements and further stated that the appellant has not undervalued her house, that her house property has already been attached by Debts Recovery Tribunal, Madurai and that in order to avoid the house property is being auctioned, she has sold her car and mobilized the loan amount from private parties and that the petitioner has no other movable or immovable properties.

6. During enquiry, the appellant/plaintiff has examined herself as P.W.1 and examined her husband – Thiru.Ravindren as P.W.2 and exhibited seven documents as Exs.P.1 to P.7. The respondents have not chosen to adduce any oral evidence, but exhibited three documents as Exs.R.1 to R.3.

7. The learned Principal District Judge, Tuticorin, upon considering the evidences adduced and on hearing the arguments of both sides, has passed the impugned order dated 06.09.2021, dismissing the petition. Aggrieved by the said order of dismissal, the appellant/plaintiff has come forward with the present Civil Miscellaneous Appeal.

8. The learned Counsel for the appellant would submit that the trial Court had completely forgotten the principle laid down under Order 33 Rule 1 C.P.C., that the said provision provides access to justice as an inherent in the concept of justice, that legal aid is a noble approach to help the deprived and underprivileged, that the trial Court had completely failed to consider the fact that though she is the owner of the house property, due to the default in repayment of the loan amount, the State Bank of India had proceeded under the provisions of the SARFAESI Act and took symbolic possession and control of the house property and a case in S.A.NO.217 of 2016 is pending before the Debts Recovery Tribunal, Madurai, that the trial Court has also erred and ignored another one flaw that the District Collector, Tuticorin remained ex-parte in the proceedings before the trial Court and as such, the trial Court cannot

infer adversely against the appellant, that a bare reading of the Income Tax returns produced by the appellant would reveal that the petitioner had suffered enormous loss and is not in a position to show transactions to establish or even fall under the slab to pay any taxable source of income, that the appellant is a weaker sex and a woman belonging to the working clause and who believes that women empowerment plays a vital role in the balanced economy, but the appellant was subjected to the corporate terms made by the respondents and as such, she had suffered huge loss and that therefore, the appeal is liable to be allowed.

9. The learned Counsel for the respondents 1 to 6 would submit that though the Court fees payable was at Rs.68,33,251/-, but after passing of the Tamil Nadu Act 6 of 2017, the court fee was reduced from 7.5% to 3% with effect from 01.03.20017 and as such, the appellant/plaintiff has to pay the reduced Court fee of Rs.27,00,000/- and that the appellant herself had admitted that she was having two houses and special machines worth about Rs.1,00,000/-.

10. The learned Counsel for the respondents 7 and 8 would submit that though the house property has been mortgaged with the State Bank

of India for Rs.72,00,000/-, the value of the said property is between Rs. 1,25,00,000/- and Rs.1,45,00,000/-, that the appellant has also admitted that she was owning vehicles worth about Rs.12,00,000/- and that the appellant has filed the above petition by suppressing the material facts.

11. Whether the trial Court erred in dismissing the indigent O.P., despite the production of sufficient evidence to show that the appellant/plaintiff had no sufficient means to pay the Court fees for the suit filed by her? is the point of consideration.

12. No doubt, as rightly contended by the learned Counsel for the appellant, access to justice cannot be denied to an individual merely because he does not have the means to pay the prescribed fee. Order 33 of the Code of Civil Procedure permits the destitute, impoverished and downtrodden, who meet the criteria of an indigent person as provided by the said Order to seek justice by exempting them from paying the required Court fees. The dictionary meaning of the word 'indigent person' refers to a person who is suffering from extreme poverty, impoverishment, or who lacks the basic resources required in normal life,

but in legal parlance, an indigent person is one does not possess the financial capacity to pay the court fee. The above provision is an enabling provision that allows the indigent person to file a suit without paying Court fees at the initial stage and this is only a provision for the deferred payment of the Court fee and this benevolent provision is intended to help the poor litigants, who are unable to pay the requisite court fee to file a suit because of their poverty.

13. In the case on hand, admittedly the appellant/plaintiff in the plaint has introduced herself as the proprietress of RBJ Blue Star Enterprises, Tuticorin, doing the business of underwater rock drilling, blasting, mining and transport operations. It is pertinent to note that even according to the appellant/plaintiff, she was issued with a work order on 18.05.2013 to carry out the underwater rock drilling work at Visakapatinam Port and the estimated contract value of the work is Rs.32.53 Crores. As rightly contended by the learned Counsel for the respondents, even in the plaint, the appellant/plaintiff has admitted that Rs.7 Crores was paid to her and out of the said amount, she had paid Rs.6 Crores to the second respondent. The appellant/plaintiff as P.W.1 would admit in her cross-examination that for dredging work at

Visakapattinam Port, she was paid Rs.7 Crores by the seventh respondent, that she had paid Rs.6 Crores in three instalments to the first respondent and that she had retained the remaining amount of Rs.1 Crore, but subsequently she would add that she had utilized that amount also for her business. The appellant's husband – P.W.2 in his evidence would say that the respondents 7 and 8 had paid Rs.6,84,00,000/- and out of the said amount, they had paid Rs.6 Crore to the first respondent and that he was possessing the remaining amount of Rs.84,00,000/-. As already pointed out, though the appellant/plaintiff had alleged that she had spent the remaining amount of Rs.1 Crore for her business, she has not elaborated anything further. But on the other hand, her husband – P.W.2 would categorically admit that he was possessing the remaining amount of Rs.84,00,000/-.

14. No doubt, the appellant/plaintiff in her plaint itself has specifically admitted that she is owning a house property worth about of Rs.66,00,000/-, but the liability over the said property was more than Rs.80,00,000/-, even at the time of filing of the suit. But in the counter statement, the respondents 1 to 6 have taken a specific stand that the house property of the appellant/plaintiff is worth about

Rs.12 Crores, but grossly undervalued for the purpose of the present case. In the counter statement, they have also alleged that first of all, the Court should appoint a Valuer to value the house. But in the reply counter, the appellant/plaintiff has stated that she has not undervalued her house and as such there is no need to appoint the valuer. The appellant/plaintiff has alleged that she had obtained a loan of Rs.65,67,504/- from the State Bank of India, SME Branch, by mortgaging the house property and in her chief-examination affidavit, she has shown the balance at Rs.71,81,551/- allegedly due by her to the State Bank of India, SME branch. But P.W.2, in his cross-examination, would say that he is owning house property and also several vehicles, that he was not owning any other property, except the properties shown in the petition, but the other properties were under mortgage and that the value of the mortgaged properties is from Rs.1,25,00,000/- to Rs.1,45,00,000/-. He would further admit that the house property was mortgaged for Rs.72,00,000/- and that the mortgaged house is worth about Rs.75,00,000/-. As rightly observed by the learned trial Judge, the appellant/plaintiff has not produced any documents or records to show the value of the house property.

15. The plaintiff in her chief examination affidavit has listed out five loans due by her and she would admit in her cross-examination that out of five loans, four were relating to vehicle loans and she was having loans to the tune of Rs.1,25,00,000/- towards vehicle loans. But she would say in her cross-examination that all the vehicles were already attached by the Finance Companies and she does not know as to when the vehicles were seized from her and that she has not disclosed about the vehicle loan particulars in the main petition. As already pointed out, P.W. 2 would also admit that he is owning house property and several vehicles. P.W.1, in her chief examination, would admit that she had purchased one Taurus Tipper lorry through Sakthi Finance, that a police compliant was lodged against her for allegedly selling the engine and the main parts of the said Taurus Tipper lorry and that she had paid Rs. 7,00,000/- and obtained loan for Rs.7,00,000/- for purchasing the said lorry. As rightly observed by the learned trial Judge, the plaintiff has not furnished the particulars as to when and to whom and for what price, she sold the engine and other material parts of the Taurus Tipper lorry and as to how she has paid Rs.7,00,000/- for purchasing the lorry.

16. It is pertinent to note that in reply counter statement, the appellant/plaintiff has specifically averred that in order to avoid her property is being auctioned, she has sold her car and mobilized the loan amount from private parties, but, she has not elaborated anything further. During enquiry, the appellant/plaintiff has not chosen to furnish the particulars regarding the amount for which the car was sold and the amount she had mobilized from parties and the amount which was paid to the creditors in order to avoid the house property was being auctioned. In the chief examination affidavit, the plaintiff has stated that she had obtained loan of Rs.42,50,000/- from one Joes Arul Silia. In cross-examination, she would admit that she had obtained loan of Rs.42,50,000/- from her friend Joes Arul Silia and her husband without any security and according to her, both of them were her family friends.

17. It is settled law that the possession of sufficient means does not mean possession of sufficient property and that sufficient means would not mean sufficient property, but includes such means ie., capacity to raise funds by normal and available lawful means. Sufficient means in Order 33 Rule 1 C.P.C., contemplates the ability or capacity or

wherewithal of a person to raise money. In the case on hand, as already pointed out, the appellant/plaintiff herself would admit that she had taken a hand loan of Rs.42,50,000/- from her friend and her husband without any security.

18. No doubt, the appellant/plaintiff has produced the income tax returns for the period of 2009-2010 to 2012-2013, 2016-2017 to 2018-2019. Admittedly, she has not produced the income tax returns for the period 2013-2014 and 2014-2015 and 2015-2016. The respondents 1 to 6 in their counter statement have specifically pleaded that the appellant/plaintiff is a rich and wealthy lady and that, that can be established by production of all documents listed therein ie., her company's profit and loss account for five years ending with 31.03.2016, company's balance sheet; personal bank account, company's bank account, income tax return for the last 5 years and etc. But the appellant/plaintiff has not chosen to produce the income tax return for the three years period and other documents above referred. The appellant/plaintiff has not offered any explanation for non-production of the same.

19. The appellant/plaintiff in her evidence would admit that she is not having any personal account in the bank accounts, that she has only bank account in her company name, but perusal of Ex.P.6 would show that the appellant/plaintiff herself had produced two bank account statements relating to two accounts bearing Nos.30352741025 and 32816011500 and both stand in the name of the appellant/plaintiff in her individual capacity. As rightly observed by the learned trial Judge, in the account statements, two different addresses were shown for the appellant/plaintiff. It is evident from Ex.P.,6 bank statements, that there was a balance of Rs.11,11,461/- as on 20.06.2016 in the account No. 30352741025 and the balance of Rs.27,59,478/- as on 10.12.2018 in the bank account No. 30352741025. It is pertinent to note that there was a balance of Rs.10,96,241/- available as on 03.05.2016 in the first account and a sum of Rs.27,59,478/- was available as on 05.10.2015 and subsequently, on 01.01.2017 in the second account. But admittedly, the above O.P., came to be filed on 29.04.2016. The appellant/plaintiff has not furnished the above account particulars and the amount available in her account. Though the appellant/plaintiff has filed the above suit as proprietress of RBJ Blue Star Enterprises, she has not produced the company bank statements. Admittedly, the appellant/plaintiff has filed a

petition under Section 9 of the Arbitration and Conciliation Act against the seventh respondent and Visakapattinam Port Trust before the City Civil Court, Hyderabad in O.P.No.832 of 2014 and it is evident from Ex.R.1 – copy of the petition that the appellant/plaintiff has specifically stated that as per the contract, she has to mobilize all the required drilling machines including the accessories, all equipment and the relevant passage is extracted hereunder:

> *" 2. It is further submitted that as per the contract petitioner shall mobilize all required drilling machines including accessories, all equipment related to drilling and blasting works, all experienced personnel like, Supervisors, Operators, seamen, Drivers with equipment, helpers etc., for executing the Drilling and Rock Blasting works in order to suitably fragmenting the rock required by respondent."*

20. In the present plaint, the appellant/plaintiff has stated that having received a sum of Rs.6,00,00,000/-, the first respondent/defendant has failed to mobilize the materials and equipment to the appellant/plaintiff and hence, the appellant/plaintiff was forced to mobilize the materials and equipment from her own resources, but the appellant/plaintiff has not elaborated anything further. The

appellant/plaintiff has neither averred nor produced any documents to show as to from what resources, she had mobilized the materials and equipment.

21. As rightly contended by the learned Counsel for the respondents, the appellant/plaintiff being the proprietress of RBJ Blue Star Enterprises, doing business of underwater rock drilling, blasting, mining and transport operations from the year 2000 onwards and that too by undertaking work orders for huge amounts and having the necessary capacity and wherewithal for raising the funds, has come forward with the present O.P., to declare her as an indigent woman suppressing the material aspects and with unclean hands.

22. Considering the pleadings of the parties and the evidence adduced, this Court has no hesitation to hold that the plaintiff has miserably failed to prove that she is not having sufficient means to pay the Court fees, but on the other hand, there is ample evidence to show that the appellant/plaintiff has got sufficient means and necessary capacity and wherewithal to raise the funds and as such, the finding of the trial Court that the appellant/plaintiff who is doing business in crores

of rupees, could not be declared as indigent person and could not be exempted from payment of Court fees, cannot be found fault with. Hence, this Court concludes that the above Civil Miscellaneous Appeal is devoid of merits and the same is liable to be dismissed.

23. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. One month time is granted to the appellant/plaintiff for payment of Court fees.

31.10.2022

Index : Yes : No
Internet : Yes : No
SSL

To

1. The Principal District Court, Thoothukudi.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

K.MURALI SHANKAR,J.

SSL

PRE-DELIVERY JUDGMENT MADE IN

C.M.A(MD)No.950 of 2021

31.10.2022