

IN THE COURT OF THE DISTRICT JUDGE, PATHANAMTHITTA
 Present: Sri.John.K.Illikkadan,B.Sc.,LL.B.,District Judge.
 Friday the 1st day of February, 2019/12th Magha 1940 S.E.

OP(Indigent) 9/2017

Between:

1. Abdul Salam, aged 42 years,
 S/o Abdul Rasheed,
 Lakkulathu Thazhchayil House,
 Perunna Kizhakku Muri, Changanasserry -
 Village, Kottayam District.
 2. Haseena, aged 38 years,
 W/o Abdul Salam,
 Lakkulathu Thazhchayil House,
 Perunna Kizhakku Muri, Changanasserry -
 Village, Kottayam District.
- } Petitioners

(Vakkalath not filed)

And:

Muhammed Uvaise, aged 37 years,
 S/o Abubakkar, Karinjalikkulam,
 Punnakunnam Muri, Kuttappuzha Village,
 Thiruvalla Taluk, Pathanamthitta District.

} Respondent

(By Adv.Subash.R)

Petition filed Under Section 96 Order XLI Rule I and Order XXXIII,
 Rule I of the Civil Procedure Code 1908 in O.S.15/15 of the Sub Court,
 Thiruvalla.

This petition having been finally heard on 24.01.2019 and the
 court on 01.02.2019 passed the following:

ORDER

The present appeal suit is filed by the appellants/defendants seeking permission to institute the appeal suit in forma pauperis. Suit was one for realization of money ie., for getting back the advance consideration paid by the plaintiff to the defendants in respect of the immovable property owned by the defendants. As per the judgment of the learned Subordinate Judge, Thiruvalla dated 31.10.2016 the suit was decreed with cost and the decree is passed in favour of the plaintiff permitting the plaintiff to realize ₹16,40,000/- (Rupees Sixteen Lakhs Forty Thousand only) from the defendants. Against the said judgment and decree passed by the learned Subordinate Judge the present appeal was filed in forma pauperis.

2. In the appeal memorandum it is prayed that the appellants may be permitted to institute the appeal as an indigent appeal as they are not possessed sufficient means to pay the prescribed court fee. The prescribed court fee to be paid is ₹1,49,000/- (Rupees One Lakh Forty Nine Thousand only). In the appeal memorandum the properties owned by the appellants are scheduled as schedule Nos.1 to 4 properties. Item No.1 is immovable property which is having an extent of 2.90 ares situated in Kuttappuzha village. Schedule item No.2 is the bank account in the name of the first appellant/first defendant maintained in Kottayam District Co-operative Bank. Schedule item No.3 property is the personal belongings and household utensils of the appellant. Schedule No.4 property is the Maruti Swift car bearing Reg.No.KL-27/D-8719 and Scooter bearing Reg.No.KL27/D-221 owned by the appellants/defendants.

According to them even though they are owned plaintiff item Nos.1 to 4 properties they are not getting any income from the said properties hence they are not having sufficient means to pay the prescribed court fee amounting to ₹1,49,000/-. Along with the appeal memorandum they filed IA No.89/2017 also for permitting them to file appeal memorandum as forma pauperis as indent person.

3. Respondent/defendant filed objection contending as follows:- The appellants are capable of mobilizing the court fee. The first appellant is a whole sale dealer of fish in Paippad fish market and he is capable of mobilizing the court fee. The first appellant is rich enough to maintain a Posh life. He himself admitting that he owns a luxury car, scooter, a building etc,. Appellants are deriving income from many sources including their business and the second petitioner, wife till recently was working as part time employee in Mahatma Gandhi University, Kottayam. It is also to be noted that the car owned by the petitioners is used as rent car and they are receiving income from that count also. The appellants filed this petition without any bona fides. Hence the petition has to be dismissed.

4. First petitioner/first appellant/first defendant is examined as PW1. No other evidence adduced by either sides.

5. I have heard the learned counsels appearing for both sides.

6. The point that arises for determination is:-

Whether the petitioners/appellants/defendants are not possessed sufficient means to pay the prescribed court fee in the appeal suit ?

7. **The point**:- First appellant/first petitioner sworn in conformity

with the averments in the appeal memorandum. During cross examination he deposed that formerly he was having wholesale fish business and due to financial difficulties he stopped the business during 2015 and now he is working as loading employee and he is member of the Welfare Fund of the loading and unloading employees. According to him from 2010 onwards he is working as loading and unloading employee at Paipadu fish market. During cross examination he also deposed at original page 4 that he started wholesale fish business during 2012 – 2013. According to him during 2012 he owned other properties and the said properties were sold. During cross examination PW1 would depose that his wife was working as temporary employee in Mahatma Gandhi University during 2015 – 2016 and now she is having no job. According to him he purchased a Maruti Swift car during 2013 by availing financial loan and the loan is now in existence. According to him his son is studying at S.H.School, Changanassery. According to him he is getting ₹20,000/- per month from loading and unloading works.

8. From a perusal of the appeal memorandum it is clear that appellants owned 2.90 ares of property in Kuttappuzha village. It is also an admitted case that they are residing in the building situated in the said property. It is also an admitted case that he owned a Maruti Swift car which was purchased during 2013 and a scooter. It is also an admitted case that he is working as a loading and unloading employee and he is getting ₹20,000/- per month from his occupation. Now the definite case of the respondent/plaintiff is that first appellant is engaged in wholesale fish business at Paipad and he is an affluent man. PW1 himself admitted during cross-examination that he was conducting wholesale fish business

at Paippad. But according to him during 2014 he sustained heavy loss in the business and he stopped the business. However, admittedly, even now he is having a Maruti Swift car and scooter. It is also to be noted that in the appeal memorandum itself it is specifically scheduled that ₹11,712/- is now present in his bank account as balance.

9. It is true that an indigent person need not necessarily be bereft of all articles. As per Order 33 Rule 1CPC the point to be determined is whether the petitioner not possessed sufficient means to pay the prescribed court fee. In the decision reported in **1997(2) KLT 227 ie., Pathumma v. KSEB**, the Hon'ble High court of Kerala held that the expression used in Order 33 Rule 1 CPC "Sufficient means', means sufficient to pay court fee after meeting the basic needs of life. In the case at hand the prescribed court fee is ₹1,49,000/-. Indisputably the petitioner is having an income of ₹20,000/- per month. It is also come out in evidence that he was conducting wholesale fish business. The original suit was filed during 2015. In the written statement filed by the appellants in the original suit and in the affidavit filed before the trial court they categorically admitted that the first defendant/first appellant is a fish merchant. But at the same time now during cross-examination PW1 would state that he stopped his business during 2014. According to him he is not having any business from 2015 onwards. But at the same time in the written statement and in the affidavit filed before the lower court he categorically admitted that he is a fish merchant. That means first petitioner/PW1/first appellant is now trying to suppress material facts before court. It is also to be noted that he is able to maintain a car and a scooter. In such a situation, I find that the case put forward by the

defendants that they are having no sufficient means to pay the prescribed court fee is not true and correct. Considering the facts and circumstances of the case and the evidence available on record, I find that the contention put forward by the petitioners/appellants that they are not possessed sufficient means to pay the prescribed court fee in the appeal suit is not true and correct. Point is found against the petitioners/appellants.

In view of my above findings, the prayer of the petitioners/appellants to file this appeal as an indigent person is refused.

In the result, the O.P is dismissed. The prayer of the petitioners to sue as an indigent person is refused and the O.P is dismissed. However, the petitioners/appellants are hereby granted time to pay the requisite court fee within three weeks.

Dictated to the Confidential Assistant, taken down and transcribed by her, corrected by me and pronounced in open court on this the 1st day of February, 2019.

Sd/-

**JOHN K ILLIKKADAN,
DISTRICT JUDGE.**

Appendix:

Witness examined for Appellant

PW1: Abdul Salam

Id/-

DISTRICT JUDGE

Typed by: Akl

Compared