

IN THE COURT OF THE DISTRICT JUDGE, THIRUVANANTHAPURAM

PRESENT : SMT. NAZEERA.S, DISTRICT JUDGE

On Wednesday, 11th March, 2026/20th Phalguna, 1947

IA No.1 /2023

in AS (Indigent) No. 30/2023

(Against decree and Judgment in OS No. 82/2016 dated 17-10-2022 of
Addl. Sub Court-I, Thiruvananthapuram)

Petitioner/Appellant/Defendant:-

K M Asharaf, aged 52 years, S/o M M Kasim,
residing at Phoenix, TC 38/204, Power House Road,
Chenthitta, Chalai PO, Thiruvananthapuram.

By Adv. K S Satheesh Kumar

Respondents:-

1. District Collector, Thiruvananthapuram District,
Collectorate Office, Kudappanakunnu, Thiruvananthapuram.
2. M Shajideen, aged 66 years, S/o Mytheenpicha,
residing at Flat No. A and B, 1st Floor, Marvel Mansion,
Gowreeshapattam, Pattom PO, Thiruvananthapuram.

By Govt. Pleader. Dr T Geenakumary(for R1)

By Adv. G Bhuvanachandran Nair and Aneesh Kumar G (for R2)

This petition having been finally heard on 09-03-2026 and the Court on
11-03-2026 passed the following :-

ORDER

This is a petition filed under Order 33 Rules 1 and 2 and Section 151 of the
Code of Civil Procedure seeking permission to sue and continue to proceed the
Appeal Suit as an indigent person.

2. Being aggrieved by the common judgment and decree passed by the Court of 1st Additional Sub Judge, Thiruvananthapuram in O.S. No.82/2016 dated 17.10.2022, the petitioner herein had preferred appeal as A.S.(Indigent) No.30/2023. As per the impugned judgment, the suit for realisation of money filed against the petitioner herein who is the defendant in the suit was decreed and the appeal is preferred against the said judgment and decree.

3. The petitioner submits as follows:-

The suit is filed against the petitioner/defendant for realisation of an amount of Rs.13,41,000/- with interest. In the written statement filed by the petitioner/defendant, it is contended that he is a business man and he borrowed Rs.10,00,000/- from the plaintiff for his business purpose and on the request of the plaintiff issued two blank cheques as well as promissory notes and a signed blank paper with revenue stamp affixed on it as a security for the amount. The plaintiff demanded repayment of the amount and presented the cheque issued to him. Altogether seven cases were filed by the plaintiff against the petitioner/defendant and his wife for an amount of Rs.41,00,000/-. After Covid 19 pandemic, the business of the petitioner was in heavy loss and he was forced to put an end to his business. The petitioner has no income to raise the amount required as court fee for preferring the appeal. The petitioner does not possess sufficient means to pay the prescribed court fee. So he seeks permission to proceed with the appeal as an indigent person.

4. Notice in this application is issued to the respondents. The 1st respondent is represented through the Government Pleader. The 2nd respondent appeared and filed vakalat and objection. Report is called from District Collector.

5. During enquiry, the petitioner is examined as PW1 and Exts. X1, B1 and B2 are marked.

6. Heard. Perused the records.

7. The only point to be answered is : -

Whether permission can be granted to the petitioner to sue the appeal suit as an indigent person?

8. **The point:-**

The petitioner is challenging the judgment passed by the trial court by decreeing the suit for realisation of money as against the petitioner, who is the defendant in the suit. As per the impugned judgment, the plaintiff in the suit is entitled to realise an amount of Rs.13,41,000/- with interest at the rate of 6% from the defendant/petitioner herein and his assets from the date of the suit till realization with interest. The appeal is valued at Rs.19,04,220/-. The court fees ought to have been paid is Rs.1,70,738/- and L.B.F to be paid is Rs.19,043/-. According to the petitioner, he has no sufficient means to pay the prescribed court fee. It is submitted by the petitioner that, his business was at loss and he has to shut down his business and so he has no source of income.

9. In order to substantiate the case of the petitioner, he mounted the box

and got himself examined as PW1. He deposed in tune with the facts stated in the petition. He deposed that he need to pay Rs.1,67,372/- as court fee and Rs.18,622/- as L.B.F. and for the same, he has no financial capacity. PW1 states that, he has no source of income to pay court fee and he is now residing in his sister's house. During cross examination, it has come out in evidence that he has no Bank account and his accounts which were maintained with IDFC First Bank and IndusInd Bank were closed. PW1 admits that, he is doing interior furnishing work now and he used to get the transactions by way of cash. He further admits that, he has two children and they are studying for Medicine in Ukraine. During cross examination by the counsel for the 2nd respondent, he states that his wife was the proprietor of a hardware shop and before Covid it was closed. He also admits that, twice he had gone abroad to meet his son.

10. The report called for from the District Collector states that the petitioner was running a Glass Wood shop in the Powerhouse Road and during the Covid period it was closed and at present he is doing Interior furnishing work and from that, he is earning Rs.17,000/- per month and his annual income can be calculated at Rs.2,04,000/-

11. Ext.X1 is the statement of accounts of the Bank account of the petitioner maintained with the IDFC First Bank, Thiruvananthapuram Branch. The learned counsel for the 2nd respondent invited this court's attention to the entry dated 28.12.2023 in Ext.X1, as per which, Rs.18,00,000/- is credited to the account

of the petitioner. However, it is seen that, on 2.1.2024, Rs.18,00,000/- was debited to the account of one Muhammed Rafi. The counsel for the 2nd respondent submitted that, this credited amount is not stated by PW1 while he was examined before court on 24.1.2024. Per contra, the learned counsel for the petitioner strenuously argued that, the amount of Rs.18,00,000/- was not in fact kept intact in the account of the petitioner, instead it was transferred to another person in connection with a property deal. Though it is seen that Rs.18,00,000/- was credited to the account of the petitioner, it is kept in that account only for a few days.

12. The learned Government Pleader argued that, in spite of holding an account in IDFC First Bank, PW1 states that he is not holding an account and that it was closed. It is also submitted by the Government Pleader that, the petitioner has not produced document to show that his Bank account are closed though he admitted in the box and so adverse inference is to be drawn. Further, it is brought to the notice of this court that, the children of the petitioner are studying for MBBS in Ukraine as admitted by him. Exts. B1 and B2 are absent applications filed by the counsel for the petitioner before the Judicial First Class Magistrate Court-XII, Thiruvananthapuram on 3.6.2023 and 15.7.2023 respectively, which states that the accused had gone abroad in connection with the admission of his son.

13. The argument advanced by the counsel for the petitioner in this regard mainly rests on the point that the court need to look only into the fact whether the

petitioner has sufficient means to pay court fee at the time of filing of the appeal. The appeal is seen filed on 4.4.2023. It is held by the Hon'ble High Court of Kerala in **Palakkil Puthiyamaliyekkal Abdul Razak v. P.K Saleem (2018 ICO 2067)** that *the burden of establishing indigency is on the person who claims indigent status, who must demonstrate not that he is entirely destitute and without funds, but that payment for counsel would place an undue hardship on his liability to provide the basic necessitates of life for him or his family.* It is further held in this decision that *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.*

14. Now it is apposite to consider his income and assets as revealed from the evidence offered. As per the report of the District Collector, he is doing interior furnishing work earning Rs.17,000/- per month with an annual income of Rs.2,04,000/-. PW1 has not stated anything in his chief affidavit regarding his present job or income. PW1 is a male aged 52 years. Even accepting his contention that his business was at loss and it is closed, it is hard to believe that he is not doing any job further. During cross examination, PW1 denied having holding any Bank account. Later, the respondents filed I.A. No.1/2024 to call for the statement of account from IDFC First Bank and the bank account statements of PW1 is marked as Ext.X1. It is seen therefrom that there was transactions till 8.1.2024. PW1 was examined on 24.1.2024. At the time of examination of the

petitioner as PW1, his Bank account is closed. As per Ext.X1, 'account status is seen closed'. However, at the time of filing of the appeal, he was holding a savings account with IDFC First Bank Limited and so he could have stated that fact frankly and fairly. PW1 has admitted during cross examination that he is doing interior furnishing work and that the transactions relating to that is obtained by way of cash. So that will not be reflected in his Bank account. PW1 has not fairly stated his present job in his chief affidavit. He has not disputed the income reported by the District Collector. PW1 initially says that he has no wife and children and later clarified that his wife is with her brother at Kollam and that his two children are studying in Ukraine. PW1 is also admitting that he had gone abroad once. Necessarily huge money will be incurred for travel and stay expenses to go abroad. The counsel for the petitioner submitted that the educational expenses of the children of PW1 is met by the brother of petitioner's wife. However, visiting the children staying abroad cannot be considered as the basic need and that too twice. Exts. B1 and B2 shows that he had gone abroad twice.

15. The learned counsel for the petitioner/appellant, on the other hand, contended that incapacity of the plaintiff to pay court fee at the time of filing of the suit or the appeal as the case may be is the only point to be looked into to decide whether a party can sue as an indigent person. The learned counsel for the appellant placed reliance on **Sushil Thomas Abraham v. Skyline Build (2019**

KHC 6017) and submitted that *an inquiry into the status of applicant as to whether he is an indigent person since the date of decree appealed from is mandatory at appellate stage.*

16. In **Muraleedharan Nair v. P.Usha Kumari (2022 KHC 1053)** it is held by the Hon'ble High Court of Kerala that *in a suit by indigent person what is to be shown before court is that he is a person not able to raise enough funds for making payment of court fees in the present circumstances.*

17. In **Mini James v. T. I. Goerge and others (2018(5)KHC 744(DB))** the Hon'ble High Court of Kerala held that *a person is indigent, if the payment of fee 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.*

18. **Palakkil Puthiyamaliyekkal Abdul Razak v. P.K.Saleem** cited supra it is observed that *where it is evident to the Court that the disclosures are untrue or unreliable or incorrect, it can lead to an inference that they are half truths or totally false, then the application can be dismissed on that ground alone.*

19. On the basis of the inquiry and on appreciation of the evidence on record it is seen that the petitioner has not stated fairly in the petition that he is doing interior furnishing work. Neither did he state his earnings from the present job. As per the report of the District Collector it is seen that he is having an annual income of Rs.2,04,000/-. The court fee to be paid in this appeal and in the

connected appeal A.S. (Indigent) No. 31/2023 will come to a total amount of Rs. 3,38,110/-. The evidence offered by petitioner regarding his family background, the studies of his children appears to be not fully correct. It appears that PW1 has delivered only half truth. On many questions PW1 was giving contradictory answers. So the evidence offered by PW1 is found not trustworthy. Further, it is seen that, apart from the basic need the petitioner and his family is leading a life above the minimum standard and that he can afford to visit his children abroad twice. The evidence on record clearly indicates that the petitioner/appellant has sufficient means to meet his international travel and other standards of life. With these evidence, it cannot be said that the petitioner/appellant has no financial capacity to pay the court fee for filing the appeal. In such circumstances, permission cannot be granted to the petitioner to file the appeal and proceed with the appeal as an indigent person.

In the result, this petition is dismissed.

Dictated to the Confidential Assistant, transcribed and typed by her corrected by me and pronounced in Open Court, on this the 11th day of March, 2026.

Sd/-
NAZEERA S
DISTRICT JUDGE

APPENDIX

Exhibit for the Petitioner:- Nil

Exhibits for the Respondent No.2:-

- B1 - 03-06-2023 - Certified Copy of absent application filed before the Judicial First Class Magistrate Court-XII, Thiruvananthapuram.
- B2 - 15-07-2023 - Certified Copy of absent Application filed before the Judicial First Class Magistrate Court-XII, Thiruvananthapuram.

Witness for the petitioner:-

PW1 - 24-01-2024 - K M Asharaf

Court Exhibit:-

X1 - 20-01-2024 - Statement of Account from 22-12-2022 to 20-01-2024 of K M Asharaf in IDFC First Bank Limited.

(Copies : 4)
Typed by : Rifa
Compared by : Soumya FCS :

(True Copy)

Id/-
DISTRICT JUDGE
By Order

SHERISTADAR

Copy of Order in
IA No. 1/2025 in
AS (indigent) No. 30/2023
Dated: 11-03-2026
