

**IN THE COURT OF THE SUB JUDGE, NEDUMANGAD**

**Present : Smt.Rajasree C.R, Civil Judge (Senior Division)**

**On Wednesday 10<sup>th</sup> September 2025/19<sup>th</sup> Bhadra 1947**

**I.A No.747/2016 in A.S 29/2025**

**Appellant/ Petitioner**

Sharafudeen, S/o. Aliyarukunju, Mohammed Khan  
Manzil, Perila, Karuppooru Village, Nedumangad  
Taluk.

**(By Adv. Sri.N. Satheesh Kumar)**

**Counter Petitioner/  
Respondent**

1. Abdul Jabbar, S/o. Ibrahim Kunju, Thaha Manzil,  
Nedumpara, Anad Village, Nedumangad Taluk.
2. State of Kerala represented by the Government  
Pleader, Nedumangad

**(By Adv.Sri.V.A. Baburaj)**

This petition having been finally heard on 20/08/2025 and the court on  
10/09/2025 passed the following:-

## ORDER

This application is filed under Order XLIV R.1 of the Code of Civil Procedure, 1908.

2. Petition averments, in brief, are stated as follows: The petitioner is the appellant in the appeal. The appeal is preferred against the decree and judgment in OS.921/2013 of the Court of Munsiff, Nedumangad. The petitioner had to pay an amount of Rs.53,400/- as court fee for the appeal and the petitioner is not in a position to raise the amount to pay the court fee. The petitioner has no job or source of income to pay the court fee. The petitioner has got 20 cents of property in survey no.99/2-1, 99/2-2 of Karippoor village. Out of which, 15 cents of property is the decree schedule property. The entire 20 cents of property is subjected to a prior mortgage in Trivandrum District Co-operative Bank and is also facing proceedings under the SARFAESI Act. The petitioner is depending on his children for his livelihood. So, this application is filed seeking a permission to permit his to prefer the appeal as an indigent person .

3. The first petitioner filed objection stating that the above petition is not maintainable either in law or on facts. The intention of the petitioner is to delay the execution of the decree in OS.921/2013. The petitioner has sufficient means to pay the court fee. On 21.05.2017, the petitioner conducted the marriage of his daughter

and gave 50 sovereign of gold ornaments to her. The gold ornaments are kept in the bank locker and the petitioner has got a monthly income of Rs.10,000/-. So, the first respondent prayed for the dismissal of the application.

4. Earlier, after considering the application filed and after hearing both parties, my learned predecessor had dismissed the application on the ground that the application filed is not in conformity with Order XXXIII Rule 2 and 3 of the Code of Civil Procedure, 1908. That order was reviewed as per the order dated 09.01.2024.

5. In this case the petitioner was examined as PW1 and Exts.A1 to A3 were marked.

6. Based on the petition averments and the objection raised, the following points are formulated for consideration.

1. Whether the petitioner entitled to get an order permitting him to prefer the appeal as indigent person?

2. What is the order as to costs?

7. Heard both parties.

8. Point no.1: The specific case of the petitioner is that he has no sufficient means to pay the court fee for preferring the appeal. On the contrary, the respondent contended that the respondent is getting a monthly income of Rs.

10,000/- and has means to pay the court fee. I have gone through the decree passed in OS.921/2013 . As per the decree, the petitioner is directed to execute the sale deed pertaining to property in favour of the plaintiff on receipt of the balance sale consideration of Rs.1,00,000/- within a period of 3 months from 13.07.2016. The petitioner was examined as PW1. His evidence would go to show that he has no means to pay the court fee. He was subjected to cross examination and nothing has been brought out to discredit his testimony. He has produced Ext.A3 which is his bank account passbook . Ext.A1 and A2 are the notices issued from the bank and mahazar. PW1 deposed that he is unable to pay the court fee of Rs,53,400/- for the institution of an appeal.

9. At this juncture, let me consider Order XLIV of the Code of Civil procedure, 1908. Order XLV provides for institution of an appeal by indigent persons. As per Rule 1, any person entitled to prefer an appeal , who is unable to pay the fee required for the memorandum of appeal, and may be allowed to appeal as an indigent person, subject in all matters, including the presentation of such application, to the provisions relating the suits by indigent person in so far as the provisions are applicable. When an application is made under Order XLIV Rule 1, the only question to be considered is whether the applicant is an indigent person or not and any question relating to the merit of the case cannot be adjudicated. PW1 categorically testified that he is unable to remit the court fee for the institution of

this appeal and that is the reason why he has filed an application under Rule 1 of Order XLV. Even though he was cross examined at length, nothing has been brought out to discredit his veracity. At the time of cross examination, it has come in evidence that he has got two children and they are not government employees. His daughter is working in daily wages in the University and his son is a tapping employee. He denied the suggestion that he has got monthly income of Rs.10,000/-. The evidence let in by PW1 regarding his inability to pay the court fee is substantiated by Ext.A3 which is the passbook produced by the petitioner. Having satisfied that the petitioner has no means to remit court fee, I am of the view that he can be permitted to institute this appeal as an indigent person. Position is by now settled that there is absolutely no need to comply with the specific provisions under Order XXXIII when an application is preferred under Order XLV Rule 1. No prescribed form is mentioned in Order XLIV for the presentation of an application accompanied by memorandum of appeal for allowing to appeal as an indigent person by the applicant. Having considered that the petitioner herein is able to establish the fact that he is having no means to pay the court fee, I am inclined to allow this petition. In the light of these discussions, this point is found in favour of the petitioner.

10. Point no.2:There is no order as to costs.

**In the result**, this application is allowed. The petitioner/appellant is permitted to prefer the appeal as an indigent person. This appeal is taken on the files of this Court and office is directed to number the appeal .

(Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in open court on this the 10<sup>th</sup> day of September, 2025).

Sd/-

RAJASREE.C.R,

Civil Judge(Senior Division)

### **APPENDIX**

#### **Exhibits Marked on the side of Petitioner/Appellant-**

A1	12/05/2014	Copy of notice issued from District Co-Operative Bank, Thiruvananthapuram
A2	26/11/2014	Copy of Mahazar prepared by Authorised Officer.
A3	27/01/2005	Duplicate pass book of A. Sharafudeen (Not opposed)

#### **Exhibits Marked on the side of Respondent/ Plaintiff:-**

NIL

Exhibits marked on the side of Court :-

NIL

Witness examined on the side of Petitioner/Appellant :

PW1      16/10/2023      Sharafudeen. A

Witness examined on the side of Respondent/ Plaintiff:-

NIL

Witness examined on the side of Court : NIL

Id/-

Civil Judge, Senior Division

(True Copy)

Typed by :BR

Compd by :

Civil Judge, Senior Division

Copy of Order in

**IA 747/2016 IN OS.29/2025**

Dated: 10/09/2025