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**IN THE COURT OF ADDITIONAL SENIOR CIVIL
JUDGE KACHCHH, AT BHUJ.**

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CMA SC No. : 64 of 2024

Exh : 12

APPLICANT :

Adam Daudbhai Sumara.

Age : 47 years, Occupation : Animal husbandry,

Residing at Village Kunariya, Taluka- Bhuj, Kachchh.

Vs.

OPPONENT :

Pachchim Gujarat Vij Company Ltd.,

Through Chief Engineer,

Bhuj-Kachchh.

Appearances:-

Shri.Z.A.Saiyed, Ld. Advocate for the applicant.

Shri. D.J.Thacker, Ld. Advocate for the opponent.

**Sub:- Application for the indigent person under Sec.
XXXIII, Rule 1 & 2 of the Code of Civil Procedure,1908.**

::-J U D G M E N T-::

(1) The applicant herein have moved this application under Order XXXIII, Rules 1 & 2 of the Code of Civil Procedure, 1908 ("***the Code***" for short) seeking leave to sue in *forma pauperis*.

Brief facts of applicants' case are enunciated as under :-

(1.1) The Plaintiff is a resident of Village Kunariya, Taluka Bhuj, District Kachchh, and earns his livelihood by engaging in animal husbandry and cattle rearing. On 10/01/2024, the Plaintiff had entrusted his buffalo, a superior Kutchi (Banni Region) breed, having a market value of more than Rs. 1,70,000/-, to the herd of buffaloes owned and managed by Mr. Jakab Alimamad Sumra, resident of Village Kunariya, Taluka Bhuj, for the purpose of grazing. Mr. Jakab Alimamad Sumra was taking due care and proper custody of the Plaintiff's buffalo as well as the other buffaloes in the herd and, in the ordinary course of his business, had taken them for grazing in the village grazing fields. At about 9:30 a.m., when the herd reached the agricultural field of Mammu Budha Koli, situated on the bank of the river in Village Kunariya, within the jurisdiction of Madhapar Police Station, an electric wire belonging to the Defendant, passing through an electric pole owned and maintained by the Defendant, had snapped and fallen on the ground. The said live electric wire was carrying electric current. The Plaintiff's buffalo, along with one buffalo belonging to Mr. Jakab Alimamad Sumra and another buffalo belonging to Ms. Rehana Adam Sumra, came

into contact with the live electric wire, resulting in all three buffaloes suffering fatal electric shock and dying on the spot.

(1.2) It was the statutory and legal duty of the Defendant to properly maintain, inspect, and safeguard the aforesaid electric line and to ensure that no injury or damage was caused to the life or property of any person due to its negligence. However, the Defendant failed to exercise reasonable care and failed to properly maintain the said electric line, as a result of which the electric wire snapped and remained lying on the ground. Despite the existence of the dangerous condition, the Defendant failed to disconnect the electric supply or take any preventive measures. Consequently, the Plaintiff's buffalo came into contact with the live wire, suffered electrocution, and died solely due to the negligence and carelessness of the Defendant.

(1.3) In relation to the said incident, the police prepared a panchnama of the place of occurrence, a true copy whereof is produced and marked as Mark 3/1. A true copy of the post-mortem report of the Plaintiff's buffalo is produced and marked as Mark 3/2. A copy of the letter issued by the Defendant in connection with the incident is produced and marked as Mark 3/3. The Plaintiff, through his learned Advocate, issued a legal notice dated 21/09/2024 to the Defendant claiming compensation for the death of the buffalo. A copy of the said notice is produced and marked as Mark 3/4. The original postal receipt evidencing dispatch of the

notice by Registered A.D. is produced and marked as Mark 3/5. The original postal acknowledgment evidencing service of the notice upon the Defendant is produced and marked as Mark 3/6. Although the Defendant duly received the legal notice, the Defendant has neither paid the compensation nor replied to the said notice. A true copy of the Plaintiff's Aadhaar Card is produced and marked as Mark 3/7, which may kindly be taken on record.

(1.4) The buffalo belonging to the Plaintiff was of an excellent pedigree and a highly productive milch buffalo of the renowned Banni (Kutchi) breed. The market value of the said buffalo was more than Rs. 1,70,000/-. The Banni region is well known for its rich natural grasslands, which produce highly nutritious fodder, resulting in buffaloes of exceptional health and milk-producing capacity. Consequently, buffaloes of this breed command a very high market value ranging from approximately Rs. 1,00,000/- to Rs. 3,00,000/-, depending upon their quality and productivity. Due to the gross negligence and carelessness of the Defendant, the Plaintiff has suffered the loss of his valuable buffalo worth Rs.1,70,000/-. The Plaintiff is, therefore, legally entitled to recover compensation of Rs.1,70,000/-, together with interest at the rate of 12% per annum from the date of the accident, i.e., 10/01/2024, until realization. The cause of action for the present suit arose on 10/01/2024, and the present suit has been instituted within the period of limitation prescribed under the Limitation Act, 1963.

(1.5) This Hon'ble Court has the territorial as well as pecuniary jurisdiction to entertain, try, and decide the present suit. The present suit is filed for recovery of compensation amounting to Rs. 1,70,000/- (Rupees One Lakh Seventy Thousand Only), on which a court fee of Rs. 8,050/- is payable. However, the Plaintiff is a person of indigent means and is financially incapable of paying the requisite court fee. Therefore, the Plaintiff has filed a separate application seeking permission to institute the present suit as an indigent person, which may kindly be allowed.

(1.6) The Plaintiff, therefore, most respectfully prays that this Hon'ble Court may be pleased to:

a. Issue summons/notice to the Defendant and call upon the Defendant to appear before this Hon'ble Court and answer the present suit.

b. Pass a judgment and decree directing the Defendant to pay to the Plaintiff a sum of Rs. 1,70,000/- (Rupees One Lakh Seventy Thousand Only) towards compensation for the death of the Plaintiff's buffalo, together with interest at the rate of 12% per annum from 10/01/2024 until the date of actual realization. Grant such other and further reliefs as this Hon'ble Court may deem fit, just, and proper in the facts and circumstances of the case.

(1.7) The Applicant has instituted a suit against the Defendant for recovery of compensation amounting to Rs. 1,70,000/- (Rupees One Lakh Seventy Thousand Only). The Court fee of Rs. 8,050/- is payable on the said claim. The

Applicant is an indigent person and is not possessed of sufficient means to pay the requisite court fee. The Applicant does not own any immovable property within the State of Gujarat. Further, the Applicant has no movable assets such as cash, gold ornaments, or any other valuable articles which could be sold or otherwise utilized for payment of the requisite court fee.

(1.8) The Applicant further states that within a period of two months immediately preceding the filing of the present application, or at any time prior thereto, the Applicant has not sold, transferred, assigned, or otherwise alienated any movable or immovable property. The Applicant has not entered into any agreement or arrangement with any person for financing or sharing the proceeds of the present litigation. The Applicant has also not previously filed any application to sue as an indigent person before any Court in India, nor has any such application been allowed in the Applicant's favour. The Applicant is a person of extremely poor financial condition and is wholly indigent. The Applicant owns no immovable property whatsoever. The only movable articles in the Applicant's possession are old wearing apparel, broken household utensils used for cooking, old bedding, blankets, and other articles of ordinary domestic use. Apart from these basic household necessities, the Applicant possesses no movable property or assets of any value.

Schedule of properties of the applicant.

Details.	Valuation (Rs.).
Household items.	Rs.1,000/- to Rs.1,500/-.

(1.9) The present suit has been instituted within the prescribed period of limitation under the Limitation Act. The office of the Defendant is situated at Bhuj, where it carries on business. Therefore, this Hon'ble Court has territorial jurisdiction to entertain and decide the present suit under Section 19 of the Code of Civil Procedure, 1908.

(2) Filing of reply by Opponent.

(2.1) The defendant has filed reply vide Exh.10. The defendant denied all averments and allegations made in the plaint. The application filed by the Applicant is false, untenable in law and on facts, and is liable to be dismissed. The contents of Paragraph No. 1 of the application are denied. The Applicant has made false and incorrect statements solely with a view to avoiding payment of the requisite court fee of Rs. 8,050/-. The present application has been filed with the sole intention of evading payment of the court fee. With regard to the contents of Paragraph No. 2 of the application, it is submitted that the averments made therein are false and incorrect. The Applicant possesses sufficient means and property to pay the requisite court fee. Nevertheless, the Applicant has deliberately filed the present false application only to avoid payment of the court fee of Rs. 8,050/-.

(2.2) The contents of Paragraph Nos. 3 and 4 of the application are also denied. The Applicant has made false statements with the intention of obtaining exemption from payment of court fees. In fact, the Applicant is the owner of immovable property and possesses sufficient financial means to pay the requisite court fee. Despite having such means, the

Applicant has intentionally failed to pay the court fee. Therefore, the present application deserves to be dismissed with costs. In view of the facts and circumstances stated hereinabove, the application filed by the Applicant is false, frivolous, and not maintainable either in law or on facts, and therefore deserves to be dismissed with exemplary costs.

(3) Arguments :-

(a) On behalf of the applicants Mr.Z.A.Saiyed submitted that, considering chief-in-affidavit at Exh.8 of the present application may be allowed.

(b) *Per contra*, learned advocate for the opponents, submitted that, necessary order considering record of the application may be passed.

(4) Having heard either sides, following issues arises for just decision of this application :-

(4.1) Does applicants proves that, they are entitled to have permission of the Court to file suit for compensation against defendant in forma pauperism?

Ans :- In Affirmative.

(4.2) What Order?

Ans :- As per final order.

:: REASONS ::

(5) Be it noted that, Hon'ble Supreme Court as well as Hon'ble High Court repeatedly in catena of judgments haveheld

that whatever situation may be, so far as possible every matter must be decided on its merits.

(6) Order-XXXIII of C.P.C. provides for the allows indigent persons to file suits without paying court fees. *An indigent person is one who does not possess sufficient means to pay court fees and unable to proceed with any suit. Every application for permission to sue as indigent person must contain the report of his movable and immovable property, with the estimated value annexed with the application.* When the application is in proper form and duly presented, the court, may think fit, examine the applicants or his agents and the application must be duly verified and signed by the applicants.

(7) In this matter, all the above mentioned, pre-conditions are fulfilled. Applicants have mentioned about movable and immovable properties in application.

(8) Further, said facts are reaffirmed by the applicant in examination-in-chief filed at exhibit-8. During cross-examination nothing adverse has been brought on record. Thus, this Court believes that, applicants have successfully proved that, they are indigent person. When applicants have proved this, particular fact, there is no reason to deny the relief as claimed by the applicants. Hence, this Court believes that, this application required to be allowed and the answer to the issue No.1 that arose for the consideration is in the affirmative.

(9) Hence, I pass following order for issue no.2.

-:: FINAL ORDER ::-

- The present application is hereby allowed and applicant is hereby permitted to file the suit in forma pauperism. Consequently, suit is hereby ordered to be registered and summons be issued on the defendant namely, the Chief Engineer, PGVCL, Bhuj- Kachchh.
- No order as to costs.

**Signed and pronounced in open Court today on
this 13th day of August, 2026.**

Date : 13.08.2026

Place : Bhuj-Kachchh

(Mohammed Zaid M.Qureshi)

Chief Judicial Magistrate,
Bhuj-Kachchh.
(GJ-GJ01472)

/VBJOSHI/