

APHC010256662023



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3332]

**PRESENT:THE HONOURABLE SRI JUSTICE RAVI CHEEMALAPATI
CIVIL REVISION PETITION NO: 1608/2023**

Between:

1.ALUGOLA GANESH, S/O. DURGA RAO, HINDU AGED ABOUT 38 YEARS, BUSINESS, RESIDING AT DOOR NO.12-234/1, TARAKARAMA NAGAR, MYAVARAM VILLAGE AND MANDAL, KRISHNA DISTRICT.

...PETITIONER

AND

1.CHAGANTI SRINIVASA RAO, S/o. late Koteswara Rao, Hindu aged about 50 years, Residing at door No.2-152, DNR Colony, Kanuru village, Penamaluru Mandal, Vijayawada, Krishna District, C/o. Chagantipati Siva Rama Krishna.

...RESPONDENT

Petition under Article 227 of the Constitution of India,praying that in the circumstances stated in the grounds filed herein,the High Court may be pleased to allow the Civil Revision Petition and to set aside the order dated 13- 04-2023 in Pauper O.P No.03 of 2021 on the file of the Principal Senior Civil Judge at Vijayawada and pass

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend order dated 13-04-2023 passed in P.O.P No.03 of 2021 on the file of the Principal Senior Civil Judge at Vijayawadaand pass

Counsel for the Petitioner:

1.SATYANARAYANA NIMMALA

Counsel for the Respondent:

1.P PRABHAKAR RAO

Reserved on	18.03.2026
Pronounced on	29.04.2026
Uploaded on	29.04.2026

ORDER

This Civil Revision Petition is filed questioning the legality and correctness of the order dated 13.04.2023 passed in P.O.P.No.3 of 2021 by the learned Principal Senior Civil Judge, Vijayawada.

2. The Revision petitioner is the respondent while the respondent is the petitioner in P.O.P.No.3 of 2021.

3. For sake of convenience, the parties hereinafter will be referred with their status in this Civil Revision Petition.

3. The facts that led to filing of the Civil Revision Petition, in brief, are that the respondent sustained heavy losses in the business and in the course of his attempts to raise funds to discharge the debts, he, through his friends, came into contact with the petitioner, who obtained signatures on documents, making the respondent to believe that they are mortgage bonds, however, when the respondent put the property to sale, he learnt that the petitioner obtained sale deed in respect of the property by misrepresenting that it is only a mortgage deed and therefore, the respondent filed the suit for cancellation of sale deed. It is further stated in the petition that the respondent has no means to pay court fee and hence prayed to court to permit him to file the suit as an indigent person. The petitioner filed counter and resisted the relief

sought by the respondent to file the suit in forma pauperis, contending that the respondent is doing real estate business and he has means to pay court fee. The learned trial Judge upon considering the material available on record and upon considering the submissions made by learned counsel for parties, allowed the petition under Order-33, Ruls-1 and 2 CPC permitting the respondent to sue as indigent person. The said order has been assailed in this Civil Revision Petition.

4. Heard Sri Satyanarayana Nimmala, learned counsel for petitioner and Ms. Sai Reshma, learned counsel, representing Sri P.Prabhakar Rao, learned counsel for respondent.

5. Sri Satyanarayana Nimmala, learned counsel for the petitioner, while reiterating the contents of the counter filed before the trial Court and grounds of Civil Revision Petition contended that in his cross-examination the respondent categorically admitted that his wife owns an extent of Ac.0-50 cents of land and that his daughter is doing job and getting monthly salary of Rs.13,000/- and this itself indicates that the respondent has means to pay court fee, however, the learned trial Judge without considering the admissions made by respondent in cross-examination and the documentary proof filed by the petitioner erroneously allowed the petition permitting the respondent to sue as indigent person. He would further contend that the learned trial Judge upon misreading the provisions of Order-XXXIII allowed the petition and the

same has to be set aside. Accordingly, prayed to allow the Civil Revision Petition.

6. On the other hand, Ms. Sai Reshma, learned counsel, while reiterating the contents of the affidavit filed in support of the petition, would contend that the petitioner in his cross-examination pleaded ignorance as to whether the properties stand in the name of wife of respondent were sold for discharge of the debts and the children of the respondent are pursuing their studies. He would further contend that the learned trial Judge upon considering the evidence let in by the parties had rightly allowed the petition and the said order does not require interference of this Court. Accordingly, prayed to dismiss the Civil Revision Petition.

7. Perused the material available on record and considered the submissions made by learned counsel for the parties.

8. At the outset it is relevant here to note that permitting a petitioner to sue *in forma pauperis* (as an indigent person) is not absolute. Under Order 33 of the Code of Civil Procedure (CPC), 1908, the court retains the authority to direct the petitioner to pay court fee at various stages of the proceedings, treating the exemption as a deferred liability rather than a complete waiver.

9. In his cross-examination, the respondent admitted that he along with his wife and two children are residing in Kankipadu and that his daughter is doing job and earning Rs.13,000/- per month. Though denied in cross-

examination, it is the specific contention of the petitioner in his chief examination and contents of the petition that he is doing cooly work and earning Rs.300/- per day. However, it is to be considered that daily wage worker would not get work and earn throughout the year.

10. Where two people are living together and functioning as a single economic unit, whether married, related, or otherwise, consideration of their combined financial assets may be warranted for the purposes of determining a party's indigency status in a civil proceeding.

11. Under Order XXXIII Rule 1 of the CPC, an indigent person is defined as someone who lacks "sufficient means" to pay the prescribed court fee, excluding property exempt from attachment or the subject matter of the suit. Having some assets does not automatically disqualify a person if those assets cannot be readily converted into cash to pay fee. The focus is on whether paying the fee would deprive the person of basic necessities.

12. Therefore, even if it is presumed to be correct the income of daughter of the respondent and his daily earnings as cooly, with that amount the respondent and his family members (in all 4) have to meet out their basic necessities. Therefore, the above said income cannot be considered as a means to pay court fee.

13. Though the petitioner filed Revenue Records to substantiate that wife of the respondent owns lands, in view of his cross-examination evidence that he does not know whether the said lands were sold for discharging the debts of the respondent, the said documents would not prove the capacity of the respondent to pay court fee.

14. In view of the above, the trial Court had rightly allowed the petitioner to sue in forma pauperis and the said order does not require interference of this Court while exercising supervisory jurisdiction under Article 227 of the Constitution. The Civil Revision Petition being meritless deserves dismissal.

25. Accordingly, The Civil Revision Petition is dismissed. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

29th April, 2026.

JUSTICE RAVI CHEEMALAPATI
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