

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

&

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

FRIDAY, THE 07TH DAY OF MAY 2021 / 17TH VAISAKHA, 1943

FAO.No.114 OF 2020

AGAINST THE ORDER IN IOP 5/2017 DATED 06-11-2020 OF SUB
COURT, MUVATTUPUZHA.

APPELLANT/PETITIONER IN I.O.P/PLAINTIFF IN PROPOSED SUIT:

JAGADAMMA, AGED 85 YEARS,
W/O.RAMAKRISHNAN NAIR, AND D/O.KALYANI AMMA,
KRISHNAVIHAR @ KOCHUKOYICKAL HOUSE,
KUTHUKUZHY KARA, KUTHUKUZHY P.O.,
KOTHAMANGALAM VILLAGE, ERNAKULAM DISTRICT,
PIN 686 691.

BY ADVS.
SRI.P.B.KRISHNAN
SRI.P.B.SUBRAMANYAN
SRI.SABU GEORGE
SMT.B.ANUSREE
SRI.MANU VYASAN PETER

RESPONDENTS/RESPONDENTS IN I.O.P/DEFENDANTS IN PROPOSED
SUIT :

- 1 SHEELA, AGED 64 YEARS,
W/O.SASEENDRANATH,
GEETHANJALI HOUSE,
VALAYANCHIRANGARA KARA,
VALAYANCHIRANGARA P.O.,
RAYAMANGALAM VILLAGE,
KUNNATHUNADU TALUK,
PIN-683 356.

2 ASHA, AGED 47 YEARS,
 W/O.SATHEESHKUMAR V.K.,
 AJITH BUILDING, OPPOSITE OF BALAJI COMPLEX,
 RAILWAY COLONY ROAD, AKATHETHARA VILLAGE,
 KALLEKULANGARA P.O., PALAKKADU TALUK,
 PALAKKAD DISTRICT. NOW RESIDING AT 9B,
 ABAD BUILDING, NEAR GOVT. ARTS COLLEGE,
 MARKET ROAD, THRIPPUNITHURA P.O.,
 PIN 682 301.

R1 BY ADV. SRI.G.SREEKUMAR (CHELUR)
R2 BY ADV. SRI.THOMAS M.JACOB
R2 BY ADV. V.V.CHACKO

 THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR
ADMISSION ON 31-03-2021, THE COURT ON 07-05-2021
DELIVERED THE FOLLOWING:

"C.R"

A.HARIPRASAD & ZIYAD RAHMAN A.A., JJ.

F.A.O No. OF 114 of 2020

Dated this the 7th day of May, 2021

J U D G M E N T

Hariprasad, J.

No civilized society could view indigency with disdain. From time immemorial, our ancestors too were compassionate to indigent persons. This view was statutorily recognized for the first time in the Code of Civil Procedure, 1882, despite the operation of the Court Fees Act, 1870 with full vigour. When the Code of 1882 was completely replaced by the Code of Civil Procedure 1908 (in short 'the Code') the legislative empathy towards such persons (then described as paupers) was actually enlarged. Under the Code, in order to qualify a person indigent, he need not be in abject poverty. Legal requirement under Order XXXIII Rule 1 of the Code to consider a person indigent is that he should not be possessed of sufficient means (other than property exempt from attachment in execution of a decree and the subject matter of the suit) to pay the fee prescribed by law for the plaint in a suit that he proposes to file.

2. Familial disharmony is the root cause of this litigation. Appellant is the mother of the respondents. Appellant alleges that two documents were caused to be executed in the names of her daughters (respondents) by perpetrating fraud and misrepresentation regarding the contents of the documents. According to the appellant, her daughters in cahoots with their husbands committed the fraud and misrepresentation. And, therefore she approached the trial court with a suit by invoking the provisions under Order XXXIII of the Code for setting aside the two settlement deeds alleged to have been executed by her in the names of the respondents. As a consequential relief, a permanent prohibitory injunction decree is also sought for.

3. Facts briefly stated are thus: Appellant is the absolute owner in possession of the plaint A and B schedule properties having an extent of 4 acres 56 cents and 70 cents respectively. She derived title to these properties as per a partition deed bearing No.2007 of 1969 of Kothamangalam SRO and purchase certificates bearing Nos.2422 of 1976 of the Land Tribunal, Kothamangalam and 6578 of 1976 issued by the Special Tahsildar, Land Tribunal, Ernakulam.

4. Appellant's husband expired on 06.04.2016. She has a son, who is pursuing legal profession. Respondents are married away and they are well settled in life.

5. Appellant stated to have executed a registered Will in the

year 2006, bequeathing certain properties belonging to her in the names of the respondents and her son. During 2016, the respondents approached the appellant many a time requesting to settle the properties as per the terms of the bequest so that they could enjoy the properties in *praesenti*. As per the aforementioned Will, 1 acre 52 cents each, out of a total area of 4 acres 56 cents of land, was bequeathed to each respondent and her son. Appellant had no objection in executing a deed of settlement in accordance with the terms of the Will. Appellant was aged 82 years at the time of institution of suit. She, being aged and ailing, bonafide believed that the respondents would not betray her and therefore agreed to execute the settlement deed in tune with the Will. Without reading over the documents and without explaining the contents thereof, she was made to execute them by the respondents and their husbands. Later, she came to understand that more extent of properties had been included in the documents under challenge than agreed to and such items were included by practising deception, fraud and misrepresentation on her.

6. Respondents filed separate written statements denying all the allegations levelled in the plaint. According to them, the appellant is a literate lady and after fully understanding the contents of the documents she executed them at her own free will. 2nd defendant in this suit (2nd respondent) had filed O.S.No.641 of 2015 before the Court of

Subordinate Judge, Muvattupuzha, a suit for partition of her share in the property. Appellant's contention that the property exclusively belonged to her is not correct. In fact, the properties were set apart in Ext.A1 partition deed as thavazhi properties for the benefit of the appellant and her children. After filing O.S.No.641 of 2015, there were mediations at the instance of some well wishers and as per the suggestions of the mediators, a settlement was arrived at. As part of the settlement, all the properties were measured out by Taluk Surveyor. Out of the total extent of 6 acres and 56 cents of dry land and 70 cents of wet land, which remained in the name of appellant, an extent of 2 acres was identified as non patta dry land. After deliberations, the parties came to an understanding regarding division of the properties by metes and bounds. Accordingly, each respondent agreed to take an extent of 1 acre and 50 cents of out of 4 acres and 56 cents patta dry land and 1 acre out of 2 acres non patta land, on its western portion, and also 35 cents out of 70 cents wet land. It is also contended that the appellant is in possession of 1 acre 56 cents of landed property comprised in survey No.1126/1 of Kothamangalam Village. She is in possession of Rs.5,00,000/- worth gold ornaments. Appellant consciously suppressed the material fact of having such property and approached the court claiming to be an indigent person. Therefore, indigency claim is not bonafide and it is liable to be rejected. Respondents contended that the

suit is the machination of their brother.

7. Trial court after considering the oral and documentary evidence accepted the contentions of the respondents and directed the plaintiff to pay the requisite court fee in the suit. That order is under challenge in this appeal.

8. Heard Shri P.B.Krishnan, learned counsel for appellant and Shri G.Sreekumar (Chelur), learned counsel appearing for the 1st respondent and Shri T.Sethumadhavan, learned senior counsel appearing for the 2nd respondent.

9. Learned Sub Judge did not allow the appellant to prosecute the suit *in forma pauperis* mainly for the reason that she suppressed the factum of owning 1.56 acres of dry land and gold ornaments worth Rs.5,00,000/-. Further, she suppressed her monthly income of Rs.25,000/-, earned out of the usufructs taken from the disputed properties. According to the learned Sub Judge, the averments that the appellant has no property or assets of her own, other than what is described in the plaint C schedule, and that she is not in a position to raise funds to pay the requisite court fee and legal benefit fund are false.

10. Relying on the report submitted by the Village Officer, the court below held that 3.62 acres of land alone had been mutated in the names of the respondents and the remaining property still stands in the appellant's thandaper. Court below further held that, as per available

evidence and also from the recitals in Exts.A2 and A3 settlement deeds, despite the transfer property in favour of the respondents, the appellant has retained a right to take usufructs from the entire property. Further, the appellant claims to be in possession and enjoyment of the entire property as per the recitals in the plaint. Therefore, the court below deduced that the appellant cannot be presumed to be without any income, considering the extent of the cultivated property. In fact, neither the appellant nor any one on her behalf did mount the box to testify. And therefore her plea of indigency was rejected.

11. Sri.P.B.Krishnan contended that the approach made by the court below is erroneous on facts and law. It is vehemently argued on behalf of the appellant that the learned trial Judge misunderstood the material facts involved in the case. It is pointed out that A schedule is having an extent of 4.56 acres of dry land in Survey No.1126/1 of Kothamangalam Village and B schedule is 70 cents of wet land in Survey No.1127/5 of the same village.

12. Ext.A1 is the partition deed dated 29-08-1969. Admittedly, item No.3 having an extent of 4.56 acres and item No.1 having 70 cents in extent were set apart to the appellant. Learned counsel for the respondents pointed out that the recitals in Ext.A1 would establish that the properties were not set apart to the appellant exclusively, but it was thavazhi properties. It is therefore contended that the appellant had no

absolute right over the properties. We find some force in this argument. However, that aspect may not be relevant at this state of the proceedings.

13. Ext.A4 patta dated 07-12-1976 is in respect of 4.56 acres. Ext.A5 patta of the same date is in respect of 70 cents.

14. If we go through Ext.A2 settlement deed dated 16-07-2016, said to have been executed in favour of defendant No.2, it will be clear that item No.1 falling in Survey No.1126/1 and having an extent of 1.50 acres has been set apart to her. Item No.2 therein is 1 acre of land in the same survey number. Item No.3 is the wet land measuring 35 cents in Survey No.1127/5.

15. If we look into Ext.A3 settlement, alleged to have been executed in the name of the first defendant, it will be clear that item No.1 therein is having 1.50 acres in extent and the land is included in Survey No.1126/1. Item No.2 is 1 acre of land in the same survey number. Item No.3 is 35 cents of wet land in Survey No.1127/5. Sri.P.B.Krishnan contended that if we add the extents of item Nos.1 and 2 each in Exts.A2 and A3, it can be seen that it comes to 5 acres, whereas, under Ext.A1 partition deed and Ext.A4 patta, the extent claimable by the appellant is only 4.56 acres. It is therefore argued that the nature of fraud will be evident from this fact itself. We do not wish to express any opinion with respect to the sustainability of the claim regarding fraud,

misrepresentation etc.

16. It is the contention of the appellant that item Nos.2 in Exts.A2 and A3 are lands not mutated. That is admitted by the respondents as well. Ext.X1 would show that only 3.62 acres is the extent of land mutated in the name of appellant and balance extent has not been mutated. It is also contended on behalf of the appellant that the entire property is now covered by the disputed documents, indicating that the appellant is out of possession of the same. Whereas, the learned counsel appearing for the respondents would contend that this argument is against her own pleadings in the plaint. True, the appellant cannot be permitted to deviate from her pleadings in the plaint.

17. Before venturing to consider the correctness of the impugned decision, we shall examine the relevant legal provisions. Order XXXIII of the Code deals with suits by indigent persons. Rule 1 prescribes that subject to the other provisions in the Order, any suit may be instituted by an indigent person. Explanation I defines an indigent person for the purpose of the Code. A person is indigent, if he is not possessed of sufficient means, other than the property exempt from attachment in execution of a decree under Section 60 and also the subject matter of the suit, to enable him to pay the fee prescribed by law for the plaint. Where no such fee is prescribed for the plaint, if a person is not entitled to property worth one thousand rupees other than the

property exempt from attachment in execution of a decree and the subject matter of the suit is also an indigent person.

18. Explanation II to the above Rule clearly specifies that any property which is acquired by a person after the presentation of his application for permission to sue as an indigent person, and before the decision on the application, shall be taken into account in considering the question of indigency. Explanation III thereto is not relevant for our purpose.

19. Rule 1A of Order XXXIII of the Code mandates that every inquiry into the question, whether or not a person is an indigent person, shall be made, in the first instance, by the chief ministerial officer of the Court, unless the Court otherwise directs. The court has the discretion to adopt the report of such officer as its own finding or, may, itself make an inquiry into the question of indigency.

20. Rules 2 and 3 of Order XXXIII of the Code speak about the contents and presentation of the application. In short, these provisions say that every such application shall contain the particulars required in regard to the plaints in suits and the application shall be presented to the court by the applicant in person, unless he is exempted from appearing in court by any law. Examination of the applicant is dealt with in Rule 4.

21. In this context, it is relevant to mention that the inquiry into

the question whether a person is indigent or not cannot be reduced to the level of a matter exclusively between him and the State Government. In other words, the opposite party, who will be called upon to answer the plaint also has a right to show that the applicant is not *in forma pauperis*. It is a valuable right available to a person against whom the suit is instituted and he can appear and contest the claim of indigency in order to avoid a possible frivolous or vexatious litigation. In genuine cases, pauperism shall not be an obstacle or hindrance in the way of a litigant pursuing a legal remedy. On the other hand, the rights of parties, who are likely to be adversely affected by false or frivolous suits experimentally laid without paying the requisite court fee, should be respected. These principles have been lucidly enunciated in ***Shri.M.L.Sethi v. Shri.R.P.Kapur (AIR 1972 SC 2379)***.

22. The expression “sufficient means” occurring in Order XXXIII Rule 1 of the Code is very much significant. The Code consciously does not use the expression “without any means”. Ability or wherewithal of the applicant to raise money sufficient to pay the requisite court fee is the point to be enquired into. As observed in some decisions, having “sufficient means” refers to possession of enough properties from which money sufficient to pay the requisite court fee could be realized. One need not be in abject poverty to be qualified as an indigent person envisioned under Order XXXIII Rule 1 of the Code.

23. Complaint raised in this case is that the court below misread the grounds for rejection of the application provided in Rule 5 of Order XXXIII of the Code. The provision reads thus :

“ 5. Rejection of application. - The Court shall reject an application for permission to sue as an indigent person. -

- (a) where it is not framed and presented in the manner prescribed by rules 2 and 3, or*
- (b) where the applicant is not an indigent person, or*
- (c) where he has, within two months next before the presentation of the application disposed of any property fraudulently or in order to be able to apply for permission to sue as an indigent person:*
Provided that no application shall be rejected if, even after the value of the property disposed of by the applicant is taken into account, the applicant would be entitled to sue as an indigent person, or
- (d) where his allegations do not show a cause of action, or*
- (e) where he has entered into any agreement with reference to the subject matter of the proposed suit under which any other person has obtained an interest in such subject matter, or*
- (f) where the allegations made by the applicant in the application show that the suit would be barred by any law for the time being in force, or*
- (g) where any other person has entered into an agreement with him to finance the litigation.”*

24. Rule 6 mandates that a notice shall be given to the opposite

party and the Government Pleader for receiving evidence of the applicant's indigency when the court finds no reason to reject the application on any of the grounds stated in Rule 5. Rule 7 lays down the procedure at hearing and goes on to say that the court shall examine the witnesses (if any) produced by either party, and may also examine the applicant or his agent to make a full record of their evidence. It is amply clear from Rule 7(1A) that the examination of the witnesses shall be confined to the matters in clauses (b), (c) and (e) of Rule 5. But, at the same time, the examination of the applicant or his agent may relate to any of the matters specified in Rule 5. After hearing the arguments, the court may decide on the question of indigency, either by allowing or refusing to allow the applicant to sue as an indigent person.

25. Learned counsel strongly argued that the appellant has not suppressed any vital information from the court touching on the question of indigency. Well settled is the legal proposition that suppression of a material fact by a litigant disqualifies such a person from obtaining any relief. It has been held in ***S.J.S Business Enterprises (P) Ltd. v. State of Bihar and Others (2004(7) SCC 166)*** that the suppressed fact must be a material one, in the sense that had it not been suppressed, it would have had an effect on the merits of the case. Further, it must be a matter, which was material for the consideration of the court, whatever view the court may have taken on it. Almost the same view was adopted

by another Division Bench of the Supreme Court in **Mayar (H.K) Ltd. And Others v. Owners and Parties (AIR 2006 SC 1828)**.

26. According to the learned counsel, the appellant has not suppressed any material fact. In this case, in the C schedule to the plaint, certain wearing apparels, said to be belonging to the appellant, are shown. It is the contention of the appellant that except those articles worth Rs.3,400/-, no other property or cash is available with her to pay the requisite court fee. This case is stoutly denied by the respondents contending that the appellant is in possession of other immovable properties and also derives income from the properties settled in the names of the respondents. Besides, she has gold ornaments worth Rs.5 Lakhs. Going by the averments in paragraph 15 of the plaint, it can be seen that the appellant claims to be in possession and enjoyment of A and B schedule properties. On this ground, it is argued that the appellant's indigency is a false claim. We find some force in this argument especially when we consider the ratio in **Mathew v. State of Kerala (1996 (2) KLT 363)** pronounced by a Division Bench of this Court.

27. In **Mathew's** case (supra), the trial court refused permission to the appellant to sue as an indigent person on the ground that he had not set out in full the assets held by him, either in individual capacity or as a partner of a firm. In view of the failure to disclose the properties, he

was found disentitled to the permission sought for. After taking into account various pronouncements, the Division Bench found that the court below was justified in refusing permission to the appellant.

28. We may quote paragraphs 6 and 7 from the judgment in **Mathew 's** case (supra) :

“ 6. O. 33 R. 5 deals with rejection of an application for permission to sue as an indigent person. Clause (a) thereof says that the application shall be rejected where it is not framed and presented in the manner prescribed by Rr. 2 and 3. Sub-r. (b) calls for rejection where the applicant is not an indigent person. O. 33 R. 2 clearly provides that every application for permission to sue as an indigent person shall contain the particulars required in regard to plaints in suits: a schedule of any movable or immovable property belonging to the applicant with the estimated value thereof shall be annexed thereto and it shall be signed and verified in the manner prescribed for the signing and verification of pleadings. In other words, what R. 2 contemplates is a scheduling of any movable or immovable property (emphasis supplied) belonging to the applicant with the estimated value thereof. When an applicant does not disclose an asset held by him in his application, whatever be the reason, on the wording of R. 2 of O. 33 of the Code it is clear that the application is liable to be rejected in terms of O.33 R. 5(a) of the Code. In *Vazhunnavar's case*, His Lordship Justice Raghavan (as then was) made an

exception only in cases where a bonafide omission to include an asset was made by an applicant. May be occasionally cases may arise where either due to inadvertence or for reasons beyond his control, an applicant might omit to include an item of property in his application for permission to sue as an indigent person. If before the final disposal of the application, the applicant takes steps to include the said item also in the schedule to the application and satisfies the Court that the original omission was bonafide, it may be possible to take the view that at the time the application is taken up for disposal the same had been framed in the manner prescribed by R. 2 of O. 33 of the Code. With respect, we are inclined to think that the proposition as stated in *Kunji Raman's* case (1976 KLT 620) cannot be accepted in the broad form in which it is stated. The postulate that the rejection could only be under O. 33 R. 5(b) of the Code in a case where there is a non-disclosure in the application made by an applicant with respect, cannot be accepted. When R. 2 of O.33 calls for setting out the entire assets of an applicant for permission to sue as an indigent person, there is no jurisdiction for watering down the said requirement except probably in the exceptional circumstance of a bonafide omission as referred to by His Lordship Justice Raghavan (as he then was) in *Vazhunnavar's* case. The Supreme Court has clarified in the decision in *M.L. Sethy v. R.P. Kapoor* (AIR 1972 SC 2379) that an immunity from a litigation unless the requisite court fee is paid by the

plaintiff is a valuable right for the defendant. When the plaintiff seeks the taking away of that immunity on the scheme provided by O.33 of the Code, is there any jurisdiction for whittling down the requirement set out in O.33 R. 2 of the Code of Civil Procedure? We think not. Under the scheme of O. 33 of the Code, a plaintiff is exempted from paying the Court fee that is payable by any other litigant who comes to court for relief at the time of institution of the suit on the ground that he is not in a position to pay the court fee. If a plaintiff seeks such a special privilege to pursue his litigation, is there any reason not to insist on his strictly complying with the requirement of O.33 of the Code and coming to court with clean hands? According to us, there is no jurisdiction for removing the immunity available to the defendant in a suit and to grant a right to the plaintiff to prosecute the suit without payment of the Court fee unless the plaintiff comes to court with clean hands, making a disclosure of all his assets. The word 'any movable or immovable property' used in O. 33 R. 2 according to us ought to be given its natural meaning and on the scheme of the Code, it is clear that failure to comply with any of the requirements of O. 33 R. 2 or R. 3, should entail the rejection of the permission sought for by a plaintiff. In fact, Mr. T.K. Joseph, J, *in Abdul Khader Rowther v. Appu* (1963 KLT 13) adopted the view that any deliberate omission to include all the assets in the schedule should entail the dismissal of the application. We are therefore satisfied that in so far as *Kunju Ramam's* case (1976 KLT 620) postulated

that even in the case of an omission to include an asset by an applicant and its discovery later, the rejection of the application could only be under O. 33 R. 5(b) of the Code, cannot be taken as correct. With respect, we are of the view that the rejection could be under O.33 R, 5(a) of the Code in such a situation and a rejection under O.33 R. 5(a) of the Code can be ward off by an applicant for permission to sue as an indigent person, only by establishing that it was a bonafide omission on his part to include the asset and only after getting the application for permission amended to accord with the requirement of O. 33 R. 2 of the Code.

7. We would like to advert to another aspect, at this stage. In *K. Vazhunnavar's* case(1963 KLT 457) Raghavan, J. (as he then was) has suggested that it should appear to the court that the omission was deliberate and malafide before an application for permission can be rejected for non-disclosure of all his assets by the applicant who seeks to sue as an indigent person, as if the burden to show malafides is on the defendant opposing the application. We think with respect, that the boot is on the other leg and it is for the applicant to prove to the satisfaction of the Court that the omission on his part was not deliberate and it was a bonafide one. An application for permission to sue as an indigent person must be made with utmost bonafides and on the omission being discovered at the instance of the State or the defendant in the suit, it is for the applicant to establish

that his omission to include is bonafide. It is really a case where he is caught out on an omission. If it is deliberate, he must take its consequences. It is in that context that it becomes necessary for him to explain his omission and to show that it was not deliberate or that there was no lack of bonafides on his part in making such an omission. The adoption of a different approach would encourage dishonesty and in the applicant taking a chance on the non-discovery of the omitted asset and on being discovered, taking shelter under a plea that the omission to include is not shown to be malafide by the other side. We are therefore of the view that the statement of the law as contained in *Vazhunnavar's* case on the approach to be adopted also requires to be modified."

29. Learned Senior counsel contended that the situations dealt with in ***Mathew's*** case (supra) squarely apply to this case too and, therefore, the ratio has to be applied herein. Per contra, learned counsel for the appellant contended that the view expressed in ***P.V.Chandrasekharan v. Thirumala Chit Funds (AIR 1989 Mad 30)*** and ***Navudu Nuka Raju v. Rajani China Appanna (AIR 1977 AP 15)***, that failure to make a full and complete disclosure of one's movable and immovable property assets would disentitle a person to get permission to sue as an indigent person whatever be the motive for such non-disclosure or even if the non-disclosed property was not sufficient to pay court fee, is an extreme proposition. According to him, the facts in

Mathew's case (supra), did not warrant approval of the said proposition. On the contrary, learned counsel appearing for the respondents supported the above view in the light of the mandatory prescriptions in Order XXXIII Rule 2 and Rule 5(a) of the Code. We find an observation in **Mathew's** case, at paragraph 6, which is favourable to the line of arguments of the respondents. We are bound by an earlier pronouncement by a co-equal Bench.

30. More over, we also support the view that the plea of indigency should be made with utmost honesty and bona fides since approval of the same will have an impact on the exchequer as well as on the opposite party. True, bona fide omission to show the particulars of any movable or immovable property belonging to the applicant shall not be a reason to penalise him. But, it is for the applicant to explain the reason for the omission and it is also for him to show that it was a bona fide omission. Therefore, we find no reason to defer from the view taken by the earlier Division Bench in **Mathew's** case.

31. Another decision cited by the learned counsel for the appellant is **Pathumma v. KSEB (1997(2) KLT 227)**. In paragraph 3, the following observations are made :

"3. If the requirement of law is that, a person has to sell whatever little he possess in this world or beg, borrow or steal to raise money for payment of court fee, that will be too harsh an approach to the problem

resulting in manifest injustice cutting at the very root of the basic values and ideals of administration of justice in a welfare-State. While stating so we are only reminding ourselves of the constitutional obligations of the State to administer justice within its realm and the Directive Principles of State Policy in Art. 39A which enjoins the State to ensure that opportunities of securing justice are not denied to any citizen by reason of economic or other disabilities. The laws' delays and expenses of litigation are the notorious twin spokes on the wheels of legal system and administration of justice. If the social and economic change is to be achieved through peaceful means, then their realisation and effectuation which are directly linked to the availability and efficacy of expeditious and cheap legal remedies must receive top priority on the constitutional agenda."

With respect, we find that the facts in this case do not justify the application of the legal principles enunciated in the above decision.

32. Yet another decision relied on by the appellant is ***Mathai M Paikeday v. C.K.Antony (AIR 2011 SC 3221)***, where the expression 'sufficient means' occurring in Order XXXIII Rule 1 of the Code is interpreted to mean the ability or capacity of a person, in the ordinary course, to raise money by available lawful means to pay court fee. In the facts of the case on hand, there are materials pointed out by the respondents to show that the appellant has sources of income sufficient to pay court fee. But then, the appellant had not attempted any rebuttal.

Had the appellant made a true and complete disclosure of the entire assets, both movable and immovable, before the court of first instance, it would have answered the question whether she has sufficient means to pay the requisite court fee or not. In fact, withholding material information has affected the adjudicatory process. In the facts of the case, it cannot be said to be a bona fide omission.

33. Arguments raised by the learned counsel that the appellant, being an old lady, could not have collected usufructs as claimed by the respondents cannot be accepted. Such a case too was not attempted to be established. In this context, the respondents' case that their own brother is the mastermind of the litigation assumes relevance. Absence of any evidence on the appellant's side is a blemish in her case.

34. Even though reliance is placed on ***Rajamma Joseph v. Binu Prasad and Others (2010 KHC 99)***, we find no new proposition laid down therein.

35. Learned counsel for the respondents placed reliance on two Division Bench decisions in ***Mini James v. T.I.Goerge and Others (2018 (5) KHC 744)*** and ***Palakkil Puthiyamaliyekkal Abdul Razak v. P.K.Saleem (2018 (5) KHC 336)***, where the provisions in Order XXXIII of the Code were interpreted to hold that suppression of real facts would entail in disallowing the prayer of the applicant to sue as an indigent person.

In the light of the above mentioned legal propositions, we find no legal infirmity in the finding of the court below, especially when there are reasons to find from her own pleadings that the appellant has not disclosed the true facts to establish her indigency. Moreover, the appellant failed to personally testify or adduce any evidence before the court to establish that omission to include all her properties in the application was a bona fide mistake.

In the result, we find no reason to interfere in the impugned order. Hence, the appeal is dismissed. No costs.

All pending interlocutory applications will stand dismissed.

**A.HARIPRASAD,
JUDGE**

**ZIYAD RAHMAN A.A,
JUDGE**

amk