



CMP.No.19328 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 17.09.2025

PRONOUNCED ON : 25.09.2025

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

CMP.No.19328 of 2025

in

OSA.SR.No.17760 of 2025

S.Venkatesan
S/o Late Sarangapani,
Shrishi Apartments
No.240, I Cross Street,
III Main Road, Natesan Nagar,
Virugumbakkam, Chennai 600 092

Appellant(s)

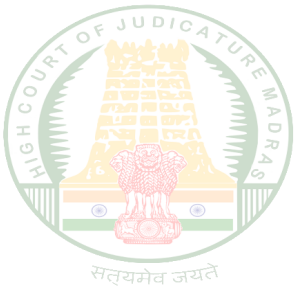
Vs

Sundaram Fasteners Limited
Rep By Its Executive Director And
Secretary.,
Mr. V.G. Jaganathan,
No.98-A, Dr. Radhakrishnan Salai,
Mylapore, Chennai 600 004

Respondent(s)

PRAYER

Civil Miscellaneous Petition is instituted under Order XIV Rule VIII of the Original Side Rules, to permit the applicant to file the appeal as indigent person capacity.



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For Appellant(s): Mr.D.Prabhu Mukunth Arun Kumar

For Respondent(s): Mr.P.R.Raman
Senior Counsel for Mr.C.Seethapathy

ORDER

S.M.SUBRAMANIAM, J.

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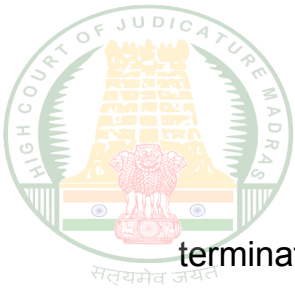
The present civil miscellaneous petition has been instituted by the petitioner seeking permission to file the Original Side Appeal (OSA) in the capacity of an indigent person.

I. Background of the Case:

2. The facts, in nutshell, show that the suit in CS.No.507 of 2012, instituted by the respondent herein seeking a direction to pay the plaintiff a sum of Rs.2,01,62,284/- along with interest, has been decreed. Challenging the said judgment and decree, an OSA has been preferred. Along with the OSA, the present petition seeking permission to sue as an indigent person has been instituted.

3. The learned counsel for the petitioner would mainly contend that the petitioner has no sufficient means to pay the Court fee, which is approximately about Rs.22,80,000/-. Since the petitioner has no source of income, permission is to be granted to prefer the OSA as an indigent person.

4. The petitioner states that he is not in employment after being



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terminated from the respondent company. He is aged about 66 years and has no other source of income. He is living out of the help extended by his relatives and friends.

5. The learned Senior Counsel for the respondents would oppose by stating that the petitioner possesses properties. The very statement that he has no source of income is false and incorrect. The bank statements filed by the petitioner in the typed set of papers along with the OSA would indicate that the petitioner is having sufficient source of income and during the years 2024 and 2025, the petitioner has deposited a sum of Rs.58,06,479.20/- in his accounts. The transaction details would also show that the petitioner is not an indigent person. Since the bank statements itself would be sufficient to form an opinion that the petitioner has not made out a prima-facie case, no further inquiry is required.

6. The learned counsel for the petitioner would reiterate that an inquiry is contemplated under Order XXXIII and Order XLIV.

7. In reply, the learned Senior Counsel for the respondent would contend that Order XLIV of CPC read with Order XXXIII is not applicable to the petitioner, as he does not satisfy the requirements contemplated. The



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petitioner is in possession of the valuable properties, both movable and immovable. In this context, the learned Senior Counsel relied on the findings made by the learned Single Judge in paragraph Nos.34 of the impugned judgment.

8. Under Exhibits P23 and P24, the petitioner had created a mortgage by deposit of title deeds on the properties covered by two sale deeds dated 27.10.2003 and 05.09.2008. The property still stands in the name of the petitioner, and he has filed an affidavit stating that he has not made any attempt to dispose of the said properties. Even during the suit proceedings, the petitioner herein has not pleaded anything about his indigent circumstances. Therefore, the present petition has been filed in order to circumvent payment of Court fee and thus, liable to be rejected.

9. Rival submissions made between the parties are considered.

II. Who is an Indigent Person ? :

10. "An 'indigent person' is defined in Explanation I to Order XXXIII Rule 1 of the Code of Civil Procedure. The provision contemplates that such a person **is one who does not possess sufficient means** to pay the requisite court fee for filing a suit, or who does not own property worth one



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thousand rupees, excluding necessary wearing apparel and the subject-matter of the suit, together with such articles as may be deemed essential to life. Thus, indigence is determined both by the inability to pay court fees and by the absence of substantial property which could be realized for that purpose.

11. The Hon'ble Supreme Court in ***Union Bank of India v. Khader International Construction***¹ has clarified that the expression 'indigent' refers to one who is impoverished, destitute, and without money, and that a litigant lacking the necessary funds to pay the plaint charge or entitled to property of insignificant value alone may qualify as indigent. Accordingly, the test of indigency is pragmatic, directed at discerning whether the litigant has the financial capacity to prosecute the claim by paying the prescribed court fees."

III. "Sufficient Means" – Meaning

12. The Hon'ble Supreme Court of India in the case of ***Mathai M.Paikeday Vs. C.K.Anthony***² discussed about the eligibility of a person to sue in Forma Pauperis. Paragraph No.17 of the judgment reads as under,

"17) The eligibility of person to sue in forma

¹ (2001) 5 SCC 22

² AIR 2011 SC 3221



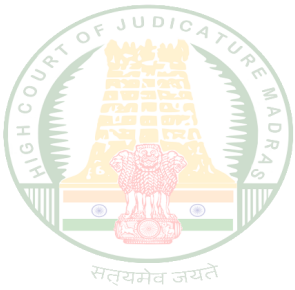
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pauperis has been considered in American Jurisprudence (20 Am. Jur. 2d Costs 100) as thus:

" 100. Eligibility to sue in forma pauperis; generally: The burden of establishing indigency is on the defendant claiming indigent status, who must demonstrate not that he or she is entirely destitute and without funds, but that payments for counsel would place an undue hardship on his or her ability to provide the basic necessities of life for himself or herself and his or her family. Factors particularly relevant to the determination of whether a party to a civil proceeding is indigent are: (1) the party's employment status and income, including income from government sources such as social security and unemployment benefits; (2) the ownership of any unencumbered assets, including real or personal property and monies on deposit; and finally (3) the party's total indebtedness and any financial assistance received from family or close friends. 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."



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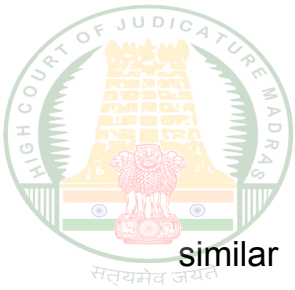


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“18. To sum up, the indigent person, in terms of explanation I to Rule 1 of Order 33 of the Code of Civil Procedure, is one who is either not possessed of sufficient means to pay court fee when such fee is prescribed by law, or is not entitled to property worth one thousand rupees when such court fee is not prescribed. In both the cases, the property exempted from the attachment in execution of a decree and the subject-matter of the suit shall not be taken into account to calculate financial worth or ability of such indigent person.

19. Moreover, the factors such as person's employment status and total income including retirement benefits in the form of pension, ownership of realizable unencumbered assets, and person's total indebtedness and financial assistance received from the family member or close friends can be taken into account in order to determine whether a person is possessed of sufficient means or indigent to pay requisite court fee. Therefore, 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.”

13. The Court further explained that the determination of indigency is a question of fact, to be examined with reference to the overall financial position of the applicant. While interpreting Order XLIV, which incorporates



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similar criteria in the appellate stage, the Court observed that “*sufficient means*” refers to the capacity to pay court fees without compromising basic living standards. It clarified that all sources of income, including pension and financial assistance from family members (even if unverified but plausible), must be considered. Failure to disclose assets or income, such as bank passbooks, could lead to an adverse inference.

14. This principle was subsequently applied by the Madras High Court in the case of ***Ruckmani Vs. Venkataraj (2012)***³, reiterating that not only personal liquid assets but also alternative sources of money should be taken into account.

15. Additionally, the ambit of “person” under Order XXXIII was clarified by the Hon'ble Supreme Court in the case of ***Union Bank of India Vs. Khader International Construction and Others***⁴, wherein it was held that “person” in Order XXXIII, Rule 1 includes juristic persons like companies, thus allowing them to sue as indigent persons if they meet the financial criteria.

3 2012 SCC Online Mad 1991

4 (2001) 5 SCC 22



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IV. Procedure for Filing Suits by Indigent Persons:

16. Order XXXIII of the Code of Civil Procedure prescribes the manner in which a person claiming indigency may institute a suit. The procedure can be summarized as follows:

- (1) **Application (Rule 2):** The applicant must file an application in the form of a plaint, accompanied by a schedule of movable and immovable property and particulars of indigency.
- (2) **Inquiry (Rule 1-A):** The court, usually through its chief ministerial officer, conducts an inquiry into the applicant's means, assets, and bona fides.
- (3) **Notice (Rule 6):** Prior to admission, notice is issued to the opposite party, affording an opportunity to contest the claim of indigency.
- (4) **Adjudication (Rule 7):** Upon considering the inquiry and objections, the court may allow the application, in which case it is registered as a plaint and the suit proceeds without initial court fees.
- (5) **Rejection (Rule 5):** An application may be rejected if it is not in the prescribed form, if the applicant is found not to be indigent, has disposed of property to qualify, the plaint discloses no cause of action, the suit is barred by law, or the subject-matter is transferred through agreement. In such cases, the applicant remains free to



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file the suit in the ordinary course with payment of court fees.

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Whereas, Order XLIV provides for appeals by the indigent persons. It provides that a person unable to pay Court fee on memorandum of appeal may apply to allow him to appeal as an indigent person.

V. Inquiry into Indigency (Order XXXIII Rule 1-A CPC):

17. The inquiry contemplated under Rule 1-A is a safeguard to ensure that the privilege of suing as an indigent person is not misused. The Court, ordinarily through its chief ministerial officer, conducts an investigation into the financial capacity of the applicant, including the extent of property owned, income sources, and the genuineness of the plea of poverty. The opposite party, upon notice under Rule 6, is entitled to contest the claim and adduce material to show that the applicant is possessed of sufficient means. Order XLIV Rule 3 deals with Inquiry as to whether applicant is an indigent person. In a inquiry into pauperism under Order XLIV Rule 3 the report of the officer of the court is final. However, on a question of law, the Court can consider the objections raised with regard to indigent status.

Order XLIV Rule 3 reads as follows:

“3. Inquiry as to whether applicant is an indigent person.

(1) Where an applicant, referred to in rule 1,



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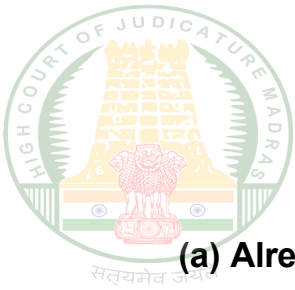
was allowed to sue or appeal as an indigent person in the Court from whose decree the appeal is preferred, no further inquiry in respect of the question whether or not he is an indigent person shall be necessary if the applicant has made an affidavit stating that he has not ceased to be an indigent person since the date of the decree appealed from; but if the Government pleader or the respondent disputes the truth of the statement made in such affidavit, an inquiry into the question aforesaid shall be held by the Appellate Court, or, under the orders of the Appellate Court, by an officer of the Court.

(2) Where the applicant, referred to in rule 11, is alleged to have become an indigent person since the date of the decree appealed from, the inquiry into the question whether or not he is an indigent person shall be made by the Appellate Court or, under the orders of the Appellate Court, by an officer of that Court unless the Appellate Court considers it necessary in the circumstances of the case that the inquiry should be held by the Court from whose decision the appeal is preferred.”

18. Order XLIV Rule 3 has been inserted by 1976 Amendment in the interests of expedition.

(A) Two Situations:

Rule 3 covers two different situations:



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(a) Already indigent at trial:

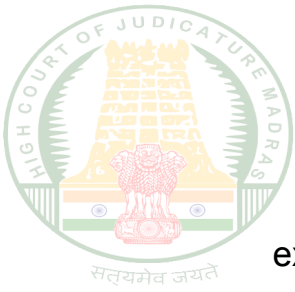
- If the applicant was already declared indigent in the Trial Court, now for appeal, he just files an affidavit saying he is *still indigent*.
- No fresh inquiry is needed unless the learned Government Pleader or the respondent challenges the truth of that affidavit.

(b) Became indigent after decree:

- If the applicant was *not indigent at trial* but claims he became indigent after the decree appealed from, then an inquiry must be held.
- That inquiry is conducted either:
 - by the Appellate Court itself, or
- by an officer of that Court,
- unless the Appellate Court directs the original Trial Court to hold the inquiry.

(B) Who conducts the inquiry?

- Sub-rule (2) says the Appellate Court can entrust the inquiry to an officer of its Court.
- Compare this with Order XXXIII Rule 1A (also added in 1976): there, for indigent suits at the trial stage, the inquiry is to be made first by the chief ministerial officer, whose report the court may adopt or re-



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examine.

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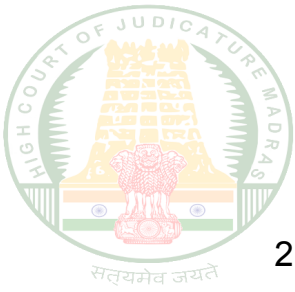
- In Order XLIV, there is no express mention like this , but that doesn't mean the appellate court must blindly accept the officer's report. The appellate court still has discretion: it can adopt the report, reject it, or conduct its own independent inquiry.

VI. Scope of Filing Appeals as an Indigent Person Despite Earlier Rejection of Suit:

19. The Hon'ble Supreme Court of India has clarified that dismissal of an application to file a suit as an indigent person under **Order XXXIII CPC** does **not bar** the same person from seeking permission to appeal as an indigent under **Order XLIV CPC**.

20. In ***Sushil Thomas Abraham Vs. M/s Skyline Build. Thr. Its Partner and Others***⁵, decided on 07.01.2019, the issue before the Court was whether the High Court was justified in rejecting the appellant's prayer to file an appeal under **Order XLIV Rule 1** on the ground that the appellant's earlier application to file a suit as an indigent person under **Order XXXIII Rule 1** had been dismissed by the Trial Court.

⁵ (2019) 3 SCC 415



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21. The Hon'ble Supreme Court held that such reasoning was **incorrect**. The question of whether the appellant possessed sufficient means to pay the requisite court fees must be determined through an inquiry under **Rules 4 to 7 of Order XXXIII CPC**, regardless of any previous rejection at the trial stage.

22. The Court explained that under Order XLIV, if a person had previously been allowed to sue as an indigent person at trial, no fresh inquiry is necessary provided the applicant files an affidavit affirming continued indigency. However, in cases where the applicant was **not allowed to sue as an indigent person previously**, the Appellate Court must independently examine the claim. The Court meticulously analyzed the interplay between Orders XXXIII and XLIV CPC, and clarified the procedure for determining indigency at the appellate stage as follows:

*“23. Order 44 of the Code applies to appeals.
By virtue of Order 44 Rule 1 of the Code, the provisions of Order 33 are made applicable to such appeals.*

24. Order 44 Rule 3(1) of the Code prescribes the procedure in relation to the inquiry which is required to be held to decide the question as to whether the applicant, who has filed the application/appeal under Order 44, can be declared as an indigent person or not. The Rule says that where



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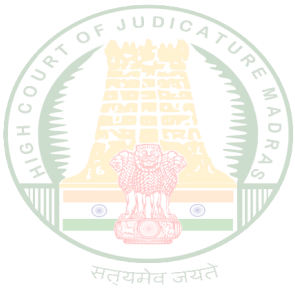
the applicant is already allowed by the trial court to sue as an indigent person then in such circumstances, no further inquiry in respect of the question as to whether he is an indigent person or not is necessary provided such person files an affidavit stating therein that he has not ceased to be an indigent person since the date of decree appealed from.

25. However, if the government lawyer disputes the statement of the applicant made in the affidavit, then the inquiry into the question as to whether he is an indigent person or not shall be held by the appellate court or officer of the court.

26. Order 44 Rule 3(2) of the Code provides that where the applicant referred to in Order 33 Rule 11 is alleged to have become indigent person since the date of the decree appealed from then the appellate court shall hold an inquiry into the question as to whether the applicant has become an indigent person or not since the date of decree appealed from. The appellate court in its discretion can also direct the trial court which passed the decree appealed from to hold an inquiry on such question.

27. Having examined the scheme of Orders 33 and 44 of the Code and the facts of this case, we find that the case of the appellant (plaintiff) falls in Order 33 Rule 11 read with Order 44 Rule 3(2) of the Code.

28. Though the appellant (plaintiff) was not allowed by the trial court/High Court in the earlier round of litigation to institute a suit as an indigent person under Order 33 Rule 1 of the Code, yet in our



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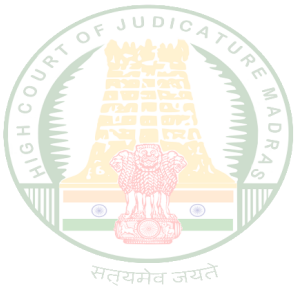
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considered opinion, he was entitled to file an application/appeal under Order 44 Rule 1 of the Code and seek permission from the appellate court to allow him to file an appeal as an indigent person.

29. In our view, the dismissal of application made under Order 33 Rule 1 of the Code by the trial court in the earlier round of litigation is not a bar against the plaintiff to file an application/appeal under Order 44 Rule 1 of the Code before the appellate court. The grant and rejection of such prayer by the trial court is confined only up to the disposal of the suit. This is clear from the reading of Rules 3(1) and 3(2) of Order 44, which contemplate holding of an inquiry again into the question at the appellate stage as to whether the applicant is an indigent person or not since the date from the decree appealed from.

30. Once the plaintiff files an appeal under Order 44 of the Code, his case is governed by the provisions of Order 44. The applicant to whom the permission was granted or declined by the trial court is entitled to apply before the appellate court to allow him to continue with the status or grant the status so as to enable him to prosecute the appeal as an indigent person.

31. This is subject to the applicant filing an affidavit as required under Order 44 Rule 3(1) where the status is granted to him by the trial court. If the averments in his affidavit are controverted by the State, an inquiry into the status of the applicant as to whether he is an indigent person since the date of



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decree appealed from is mandatory at the appellate stage as contemplated under Order 44 Rule 3(1).

32. So far as Clause (2) of Order 44 Rule 3 of the Code is concerned, it deals with the cases where the applicant was declined the status of an indigent person by the trial court in the suit. In such case, the applicant is entitled to say that he is or has become an indigent person since the date of decree appealed from and, therefore, entitled to prosecute the appeal as an indigent person. In such case also, an inquiry is required to be held to decide his status.”

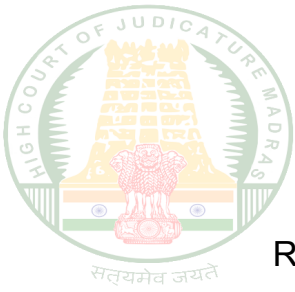
VII. Safeguards Against Abuse: Order XXXIII, Rule 5 CPC:

23. While Order XXXIII facilitates access to justice for indigent persons, it simultaneously incorporates safeguards to prevent misuse of this concession. Order XXXIII, Rule 5 CPC serves as a gatekeeping provision, specifying the circumstances under which an application for permission to sue as an indigent person must be rejected.

(A) Legislative Framework of Rule 5:

24. Order XXXIII, Rule 5 mandates rejection of an application in the following cases:

(a) The application is not framed or presented in accordance with



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Rules 2 and 3.

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(b) The applicant is not an indigent person.

(c) The applicant has, within the two months preceding the application, disposed of any property fraudulently or to qualify for indigent status; however, if the property disposed of is insufficient to pay the court fee, the Court may, for reasons to be recorded, permit the applicant to sue as an indigent person.

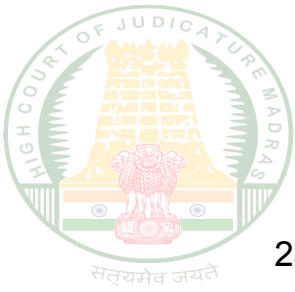
(d) The allegations do not disclose a cause of action.

(e) The applicant has entered into any agreement regarding the subject-matter of the suit under which another person acquires an interest.

(f) The allegations show that the suit would be barred under any law in force.

(g) Any other person has entered into an agreement with the applicant to finance the litigation.

The mandatory language of Rule 5 “*The Court shall reject an application...*” indicates that if any of these conditions are satisfied, rejection is required. Nevertheless, the scope and applicability of each ground remain subject to careful judicial interpretation.



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25. Rule 5 serves a dual function, it filters out applications that are improperly framed, filed by non-indigent persons, tainted by fraud or champerty, disclose no cause of action, or are barred by law, while simultaneously protecting court resources.

26. The careful and principled application of Order XXXIII, Rule 5 is therefore essential to uphold both the spirit and efficacy of the legal aid mechanism embedded within the Code of Civil Procedure.

VIII. Finality of the Officer's Report and Court's Supervisory Role in Appeals by Indigent Persons:

27. While the report of the court officer or master regarding pauperism is final on questions of fact, the court retains the authority to examine legal objections. The provision, inserted by the 1976 Amendment, ensures that appeals by indigent persons are not unduly delayed, allowing reliance on affidavits and officers' reports, but preserving the court's supervisory jurisdiction on points of law, was clarified in ***P.V. Chandrasekharan Vs. Thirumalai Chit Funds***⁶, as follows:

“5..... It is also contended by the learned counsel for the respondents, Mr. B.T. Seshadri, that

6 AIR 1989 Mad 30



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*the report of the Master is final and it has to be accepted. In support of his argument, he cited the decision in Ambalavanan v. Bank of Madurai Ltd., wherein it was held that from the statutory procedure prescribed for the institution and admission of the appeals in forma pauperis, under O. 44, R. 2, read with 6.33, C.P.C., when once an enquiry into the pauperism was directed to be done by the lower Court, the report is final as it is the result of delegation of authority. In view of the ratio laid down in the said decision, the report submitted by the Master in this case is final. **It is to be noted that even though on the question of fact, it is final, yet, on the question of law, this Court can consider the objections raised by the appellants-petitioners herein with regard to the pauperism.***

28. Orders XXXIII and XLIV of the Code of Civil Procedure embody the principle that financial incapacity must not bar access to justice. The scheme provides a structured mechanism for enabling indigent persons to sue and appeal without immediate payment of court fees, while simultaneously incorporating safeguards through inquiries, affidavits, and judicial scrutiny to prevent abuse.

29. From the above provision, it is clear that any person filing an



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application seeking permission to sue as an indigent person must adduce in proof of his indigency. The opposite party is entitled to disprove the claim of the petitioner or approach the Court with unclean hands. Thus, Order XXXIII Rule 6 provides an opportunity for both the parties in the suit to establish and rebut their respective cases. Under these circumstances, the Court dealing with the petition has to find out whether *prima facie* case has been made out for conducting an inquiry under Order XXXIII or Order XLIV of Code of Civil Procedure. Only if a *prima facie* case regarding indigency is established by the petitioner, then alone an inquiry is to be conducted, but not otherwise. Based on the documents available, if the Court by itself is able to form an opinion that the petitioner seeking permission to sue as a indigent person has not established the *prima facie* case, then such petitions are liable to be rejected by the Court, and no further inquiry needs to be undertaken. The said position has been amply made clear under Order XXXIII Rule 5 of the Code of Civil Procedure.

30. The next question arises as to whether a certificate obtained by the revenue authorities of the Government department would be sufficient to grant permission to sue as an indigent person. In this context, Order XLIV Rule 3(2) indicates that the Appellate Court by itself decide the indigency of a person or appoint an officer of that Court to conduct an inquiry, which is to



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be read in continuation of Order XXXIII of the Code of Civil Procedure.

Therefore, mere production of a certificate from the revenue authorities of the Government department may be considered as a document for the purpose of considering the case of the indigent person. But it need not be accepted as a conclusive proof to declare a person as indigent. Therefore, any such certificate obtained from an authority of the Government department may be relied on for the purpose of establishing the indigent circumstances, but such a certificate cannot be a conclusive proof for arriving a decision that the person is indigent. To conclude the issue, the Court has to conduct an independent inquiry by itself or by appointing an officer of that Court. The Court or the officer of that Court appointed has to conduct an inquiry by following the established procedures and form an opinion for the purpose of declaring the person as indigent. On receipt of report, the Court independently takes a decision both on facts and law.

IX. Conclusion:

31. In the present case, the respondents relied on the bank statement produced by the petitioner. It is the statement issued by the Bank of Baroda, Virugambakkam, Tamil Nadu. The account stands in the name of the petitioner. The statements of accounts from 03.01.2024 till 26.01.2025 have been produced before this Court. Perusal of the statement would show



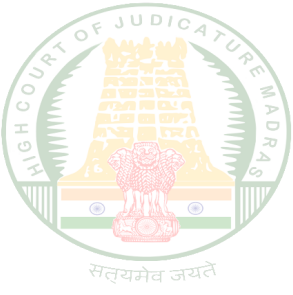
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that the petitioner has deposited a sum of Rs.58,06,479.20/-. That apart, the petitioner himself admitted that he has two properties in his name and he has made no attempt to alienate the said properties.

32. Therefore, the petitioner herein has not established that he has no “sufficient means” to raise funds to pay the Court fee. Thus, the present petition fails and consequently, stands dismissed. However, the petitioner is at liberty to pay the Court fee within a period of two weeks from the date of receipt of a copy of this order and represent the appeal before the Registry. Consequently, the Original Side Appeal is rejected at the SR stage itself. No costs.

(S.M.SUBRAMANIAM J.)(MOHAMMED SHAFFIQ J.)
25.09.2025

gd
Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No



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S.M.SUBRAMANIAM, J.

and
MOHAMMED SHAFFIQ J.

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Pre-Delivery Order in
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in
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25.09.2025