

ORDER BELOW EXH.01 IN INSOLVENCY MISC. APPLN.
NO.1/2018

1] Perused the record and roznama. It discloses that, the applicant filed present application under Order 33 of Code of Civil Procedure to grant permission to institute the suit in *forma paupries* alleging that, he is an indigent person. Notice of the present application was issued to the opponent. The opponent No.1 appeared and contest present application by filing say vide Exh.12. The opponent No.3 also appeared. Thereafter, in pendency of present application the specific order is passed below Exh.1 on 04/09/2018 directing the applicant to provide schedule of his movable and immovable properties with its estimated value as per Rule 2 of Order 33 of Code of Civil Procedure. Instead of complying the said order, the applicant filed his puris vide Exh.17 that, he do not want to proceed further with the proceeding and prayed to dispose off proceeding. The supporting affidavit is also filed vide Exh.18. Therefore, it clearly reveals that, instead of complying the order passed below Exh.1, applicant choose not to proceed with the matter.

2] At this juncture on perusal of detailed order passed below Exh.1 on 04/09/2018, it discloses that, the applicant is not only owner of the house property which is described in application para No.4, but also he is the owner of agricultural property bearing gat No.694 admeasuring 70 R situated within the limits of village Belwandi, Tal. Shrigonda, Dist. Ahmednagar. In order to seek permission to institute suit as a indigent person, the applicant in para No.8 in the application alleged that he has no source of income. Previously, he was doing the labour work, but due to the old age he is not able to do said work. Hence, he is unable to pay the Court fees stamp. Hence, he prayed to allow the application.

3] At this juncture it will be fit to reproduce **Rule 1 of Order 33**, which defines who is an indigent person and which reads as under.

1. Suits may be instituted in forma pauperis

Explanation I- A person is an indigent person,

a) if he is not possessed of sufficient means (other than property exempt from attachment in execution of a decree and the subject-matter of the suit) to enable him to pay the fee prescribed by law for the plaint in such suit, or

b) where no such fee is prescribed, if he 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.

Explanation II- 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 of the application, shall be taken into account in considering the question whether or not the applicant is an indigent person.

Explanation II- Where the plaintiff sues in a representative capacity, the question whether he is an indigent person shall be determined with reference to the means possessed by him in such capacity.

4] The Rule 2 of Order 33 prescribed the contents of the application and Rule 4 prescribed the examination of applicant. Therefore, considering the scheme of the Court it seems that basically the applicant has not complied with provision of Rule 2 of Order 33. Moreover, when he was specifically directed to comply it, he choose not to proceed with the matter. As mentioned above on examination of applicant, it is found he is owner of not only house property but also agricultural property which are specifically mentioned in the order below Exh.1 passed on 04/09/2018. Therefore, considering whole conduct of the applicant, I am of the considered view that, the applicant is abusing the process of law. He not only wasted the valuable time of the Court but

abuse the process of law to harass opponent to appear in the present matter and contest the present matter. Therefore, considering conduct of the applicant, it will be fit to award cost to the contested opponent, as well as it will be fit to impose cost on the applicant for abusing of process of law. Accordingly, I proceed to pass following order.

O R D E R

The application stands disposed off for want of prosecution. The applicant to pay cost of Rs.2,000/- to the contesting opponent No.1 and also deposit cost of Rs.5,000/- within 14 days to legal aid for misusing and abusing the process of law.

(Dictated and pronounced in open Court.)

Shrigonda.
Date : 21/11/2018.

Sd/-
(K. M. Kayangude)
Civil Judge, Senior Division,
Shrigonda.