



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: 17.03.2025  
Judgment delivered on: 15.05.2025

+ CMI 6/2019 & CM APPL. 26975/2019

N.V. RAMAMI .....Petitioner

VERSUS

THE GOVERNMENT OF CANADA .....Respondent

**Memo of Appearance**

For the Appellant: Ms. Sunita Singh and Mr. Abhigya Kushwah, Advocates with  
petitioner in person

For the Respondents: Mr. Amir Singh Pasrich and Mr.Karan Bahmani, Advocates

**CORAM:**

**HON'BLE MR. JUSTICE MANOJ JAIN**

**JUDGMENT**

**MANOJ JAIN, J**

1. It needs to be evaluated whether appellant can be permitted to file the appeal in question as an indigent person or not.
2. Before coming to the aspect of indigency, let me, in brief, take note of the relevant background facts.
3. Appellant-Mr. N.V. Ramami was employed by *Canadian High Commission* as Librarian/Typist way back in the year 1975 and was stationed in New Delhi. He, eventually, got promoted as Accounts



Officer in the year 1982 and his job profile, *inter alia*, included handling of cash, bank drafts and cheques of various currencies etc.

4. During such employment, plaintiff-Commission learnt that funds were missing from their accounts and either there was no record in the bank account or there was mismatch. It, accordingly, decided to inquire into the matter, while also expecting a reasonable explanation from appellant.

5. Appellant, instead, sent resignation on 05.12.1994 and, since he did not give any reason for the same, the respondent suspected his complicity in said misappropriation of funds. When he was called for hearing and was asked to explain the above, he, even, offered to pay back a sum of Rs. 1 lac, of his own volition.

6. Fact, however, remains that he, eventually, retracted from his such commitment also.

7. Inquiry conducted by the plaintiff-Commission castigated him and, besides initiating separate criminal proceedings, suit in question was filed seeking recovery of alleged misappropriated amount under different heads i.e. *Immigration Cost Recovery Misappropriation, Duplicate/Fraudulent Cheque Misappropriation, Conversion/theft and/or misappropriation of cash.*



8. After comprehensive trial, vide judgment dated 08.01.2019, the suit was decreed for principal amount of Rs. 37,84,470/- with interest @ 6% per annum.

9. Appellant has challenged the aforesaid decree by filing a *Regular First Appeal* under Section 96 of CPC.

10. Along with appeal, he also filed an application under Order XLIV Rule 1 CPC seeking permission to file the present appeal as an indigent person. It has been averred in the application that he has no source of income and he is not possessed with sufficient means to enable him to pay court fee and he is rather dependent on meager pension of his wife, for his survival. He also claimed that he had no son to support him in his old age and, therefore, permission has been sought to file the appeal as an indigent person.

11. Along with application, he gave details of movable & immovable properties which he possessed. These are as under: -

S. No.	Details of property	Valuation Rs. (Approx)
1	Flat No. A-3/35-D, Paschim Vihar, New Delhi 110 063 (The property attached in the suit vide order 17.04.1996)	Rs. 80,00,000/-
2	Household goods and items of daily use like daily use furniture, Almirah, Fridge, TV, Cooler, desk top computer and kitchen utensils, gas stove etc.	Rs. 50,000/-
3	Cash in bank	Rs. 10,000/-



12. This Court, vide order dated 30.05.2019, directed Registrar (Appellate) to dispose of aforesaid application seeking permission to file appeal as an indigent person.

13. During enquiry, Registrar (Appellate) issued notice to concerned SDM to file report regarding financial status of appellant. The report of SDM was received which reads as under: -

*"1. That the Halqa Patwari/F. KGO of Sub Division (Punjabi Bagh) was directed to submit the status of the financial position in respect of applicant Sh. N.V. Ramani S/o Late Sh. P.S. Narayanswamy R/o A-3/35, Paschim Vihar, New Delhi. It is submitted that Sh. N.V. Ramani S/o Late Sh. P.S. Narayanswamy is residing in a flat having area 91 sq. mtr. The fiat is in the name of Sh. N.V. Ramani as per Copy of allotment letter issued by Asst. Director (H) G, Delhi Development Authority. He has no other property in Delhi or outside Delhi other than detailed above.*

*2. That Sh. N.V. Ramani is 75 years old senior citizen and have two daughters namely Smt. Sujata Suhar and Smt. Uma Shriram, both are married and are living in Mumbai. The wife of Sh. N.V. Ramani has been retired from Govt. School and her monthly pension is Rs.27534/- which comes in PNB Bank. This is only the source of income in the family. He has no Bank Account, LIC & FDR Deposit in his name.*

*3. That he is having Movable assets viz One LED TV, Two Double Bed, Two Almirah, Two AC, One Sofa Set, One Central Table, One wooden Almirah, One cooler. One Washing Machine, One Fridge, One Gas Connection and some utensils. His wife has 20gram Gold. He has no Vehicle in his and his wife name.*

*4. That the two witnesses namely Smt. Chander Kanta Sharma W/o Sh. Yashpal Sharma R/o A-3/36C, MIG Flats Green Apartments Paschim Vihar, Delhi-110063 and Smt. Mala Keswani W/o Taxman*



*Das Keswani R/6 A- 3/36D Flats Green Apartments Paschim Vihar, Delhi-110063 have also confirmed the above facts.*

14. Admittedly, the court fee payable with respect to appeal in question is Rs. 95,552/-.

15. Registrar (Appellate), after considering the report received from SDM and hearing arguments from both the sides, concluded that such application deserved to be allowed. In its order dated 24.03.2021, it was held that MIG flat owned by the appellant could not be construed as sufficient means. It was also held that such property could not fetch any income and, even as per report of SDM, appellant had no source of income of his own and was also without any job after being sacked by his erstwhile employer. It noted that pension of Rs. 27,534/- received by his wife, at best, could be termed as 'source of survival for him and his wife' and could not be termed as 'source of income', keeping in mind the cost of living and inflation rate and day-to-day requirement of household and medicine etc. It observed that appellant was almost at the fag end of his life and such aspect was considered by learned Trial Court even and, therefore, interest granted was @ 6% per annum only. It also noted that appellant had already, after a marathon litigation, exhausted all his resources.

16. It needs to be seen whether such decision is in synchronization with the facts pleaded and in accordance with law or not.



17. Respondent/Decree-Holder (DH) has also submitted objection to the aforesaid order. Such objection was filed on 25.07.2023 with the leave of the Court.

18. It may be noted that the learned Registrar passed the order in question on 24.03.2021 and, thereafter, when the matter was taken on 16.04.2021, there was a request for adjournment from the side of appellant as the arguing counsel was hospitalized and, therefore, matter was adjourned for 18.05.2021. However, on account of pandemic of COVID-19, there was no significant development in the matter and it was only on 16.01.2023 that the learned counsel for DH sought time to file objection to the aforesaid order dated 24.03.2021. On hearing such submissions, this Court, *vide* order dated 16.01.2023, permitted him to do so within four weeks.

19. Mr. Amir Z. Singh Pasrich, learned counsel for objector/DH contends that such order dated 24.03.2021 of learned Registrar is not sustainable as certain important aspects have been overlooked, while conducting the inquiry. It is submitted that the scope of consideration was merely to the effect whether any such person, who claims himself to be indigent person, is unable to pay court fee or not. It is argued that the schedule of the properties given by appellant and the report of SDM would clearly indicate that he possessed sufficient means to pay the prescribed fee for the purposes of appeal in question.



20. It is also asserted that the residential property situated in Paschim Vihar is not exempted from attachment as the appellant is neither a farmer /agriculturist nor a labourer or a domestic servant and, therefore, Section 60 (1)(ccc) CPC does not stand attracted. Reliance in this regard has been placed upon *Sujata Kapoor v. Union of India (2019) SCC OnLine Del 12184*. Moreover, since the wife of appellant is, admittedly, receiving sizeable amount as monthly pension, there is no embargo in making the payment of the court fee, even if it is by way of some instalments.

21. Mr. Amir Singh Pasrich also submits that details of the bank account were not, deliberately, disclosed by the appellant and, moreover, he was possessed with other properties, which he intentionally and conveniently concealed.

22. In this regard, strong reliance is placed upon order dated 17.04.1996 which was passed by this Court when the suit in question was pending in this Court, on Original Side. On first date, when the suit was entertained, plaintiff had made reference to properties which defendant (appellant herein) possessed and these properties were described in Para 6(a) to 6(d) of the application moved by the plaintiff, whereby it was seeking attachment before judgment. After appreciating the contentions made in this regard and noticing *prima facie* case in favour of the plaintiff, the defendant was restrained from selling,



alienating or parting with possession or creating any third-party interest with respect to such properties. It is submitted that neither was such order ever objected to by the defendant nor did he lead any evidence to show that such property was not in his possession. During the pendency of the suit and when defendant's application seeking permission to file the appeal as an indigent person was under consideration, he, avoided to make even a reference to all such properties. These properties are as under: -

- a. DDA MIG Flats, Paschim Vihar, New Delhi-110041 (already within the scope of inquiry).
- b. Land in village Tilangpur Kotla, Najafgarh-Nagloi Road consisting of three plots measuring 750 sq. yds., 650 sq. yds. and 550 sq. yds. having value of Rs. 10,00,000/-.
- c. Mahindra Jeep vehicle registration No. DL-2C-1423.
- d. Factory styled as Durga Plastic Factory situated at Nangloi-Najafgarh Road, Village Tilangpur, Kotla Vihar, Delhi (value of the factory including land, machinery, equipment etc. is around Rs 15,50,000/-.)

23. It is argued that such valuation was as on 15.04.1996 when the aforesaid application under Order XXXVIII Rule 5 CPC was filed and the valuation, save for the vehicle, would have increased, substantially.



24. All such contentions have been refuted by the appellant.

25. Ms. Sunita Singh, learned counsel for appellant submits that the objection in question is required to be submitted in a prescribed format of an appeal and since the requirement in this regard has not been followed and the petition is neither signed nor verified by the party concerned, and since even requisite court fee has not been affixed, such petition, cannot be construed as appeal and thus not maintainable in the eyes of law.

26. Besides the aforesaid technical aspect, Ms. Sunita Singh also submits that these objections were placed on record belatedly and, therefore, these are not liable to be entertained. On merits, it is submitted that the MIG flat in question is the only residential property available to the appellant and his aged wife, who both are octogenarian and, thus, such property is protected and exempted from attachment. Reliance in this regard has been placed upon *Mohinder Singh v. Bimal Saxena: 2024 SCC OnLine Del 6515*.

27. It is contended that *Mohinder Singh* (supra) also discusses *Sujata Kapoor* (supra) and learned Division Bench of this Court observed that the attention of the Bench, which rendered decision in *Sujata Kapoor* (supra), was not drawn to the earlier judgment passed by this Court in *V.P. Arora v. Punjab National Bank: 1991 SCC OnLine Del 581* wherein it was held that as long as the Judgement Debtor continued to be in



possession of the attached property as his main residential house, such property would cease to be attached. Attention was also not drawn to one Supreme Court judgment i.e. *Kiran Bala v. Surender Kumar (1996) 4 SCC 372* wherein the property was also not attached *albeit* for the reason that the sale of the house in order to make payment of appellant's debts was declared *null* and void.

28. On the strength of the aforesaid judgments, learned counsel for the appellant submits that the property in question, being the sole residential house of the appellant, can neither be attached nor sold in execution proceedings in terms of the specific provisions contained under Order XXXIII r/w Order XLIV CPC. Thus, such property cannot be considered at all, being exempted from attachment. It is argued that, even otherwise, it is settled law that possessing 'sufficient property' would not tantamount to having "sufficient means". She submits that except for the aforesaid house, appellant does not possess, directly or indirectly, any other immovable assets. She submits that, even if the present value of the MIG flat of Paschim Vihar is substantial and significant, it has no meaning as such assessment of sufficient means cannot be at the expense of right to live with dignity guaranteed under Constitution. In this regard, she relies upon *A. Prabhakaran Nair v. K.P. Neelkantan Pillai: (1987) SCC OnLine Kerala 46*.



29. Learned counsel for appellant further submits that report of SDM is very clear and there is no reason to disbelieve such report which was prepared, after making due inquiry at the spot. She submits that such report reflects a true picture about the financial status of the appellant and listed assets, which are primarily household items, merely constitute basic necessities of life, which are just sufficient for a bare living and cannot cause influence or prejudice, while deciding the aspect of indigency. As far as the aspect of *gold* in possession of the appellant is concerned, though the value of such gold of 20gms might exceed the court fee, learned counsel for appellant/defendant has referred to the same as *stridhan* of the appellant's wife.

30. It is submitted that pension amount is also meagre in today's context of high cost of living in the Capital City of Country and the old-aged couple is not in a position to make any saving from such pension amount either. It is also submitted that if DH was of the view that the application was misconceived or that appellant was actually in possession of some other asset, as per settled procedure, it should have, rather, made a request to the learned Registrar, seeking permission to examine witnesses in this regard. For the reasons best known to DH, since it did not take any recourse thereto, the objections cannot be sustained and consequently, permission cannot be denied.



31. I have gone through the material on record very carefully and given my thoughtful consideration to the rival contentions.

32. As far as technical aspect is concerned, the fact that the objection appeal was signed by the counsel only and not signed by the DH, cannot, by itself, persuade the Court to, outrightly, throw away such appeal. These are curable defects and moreover, there is nothing which may indicate that such filing is in detriment to the interest of the DH or actuated with any malice. In *Uday Shankar Triyar v. Ram Kalewar Prasad Singh*, (2006) 1 SCC 75 Hon'ble Supreme Court has observed that *it has always been recognised that if a plaint is not signed by the plaintiff or his duly authorised agent due to any bonafide error, the defect can be permitted to be rectified either by the trial court at any time before judgment, or even by the appellate court by permitting appropriate amendment, when such defect comes to its notice during hearing.*

33. Therefore, learned counsel for DH is directed to cure such defect.

34. Resultantly, since the order passed by the Registrar (Appellate) has been impugned by filing the aforesaid objection, such objection petition filed vide diary No.1280424 dated 25.07.2023, is directed to be numbered as "Chamber Appeal"

35. *Let the court fee payable on such Chamber Appeal be paid/deposited within one week.*



36. Coming to the aspect of possession of sufficient means, undoubtedly, “*possession of sufficient property*” cannot be equated or confused with “*possession of sufficient means*”. One may be in possession of sufficient property but still may not possess sufficient means and it would depend, on most of the occasions, on the nature of the property, which may differ from one case to another.

37. As already noticed above, the court fee on the main appeal would be Rs. 95,552/- and appellant can be called indigent person only if he is not possessed of sufficient means to pay aforesaid fee prescribed by law.

38. The benevolent intention behind incorporating the provision with respect to permission to sue as an indigent person is quite obvious. Doors of the Court cannot be said to be closed merely because the party approaching the Court is poor and is in no position to pay court fee. Thus, the objective behind the aforesaid provision is to enable, any such poor person who is desirous of seeking justice, file suit or appeal, irrespective of his such financial handicap.

39. It has been rightly observed in *Alifiya Husenbhai Keshariya Vs. Siddiq Ismail Sindhi and Others: 2024 SCC OnLine SC 1093* that the intent of Orders XXXIII and XLIV is unmistakable which exemplify the cherished principle that lack of monetary capability does not preclude a person from knocking on the doors of the Court to seek vindication of his rights.



40. Undoubtedly, as per *Mohinder Singh* (supra), the residential property would be exempted from the attachment, being the sole dwelling unit of the appellant and, therefore, even if, it carries substantial market value, it cannot be reckoned for the purpose of deciding whether the appellant possesses sufficient means or not. Therefore, in terms of Section 60 (1) (ccc) CPC, as applicable to Delhi, the aforesaid dwelling unit can neither be attached in execution nor taken into consideration while deciding the aspect of indigency.

41. However, there are certain other factors, which somehow, have not been considered by the learned Registrar, in desired manner.

42. *To a very large extent, DH is responsible in this regard as it failed to draw the attention of the learned Registrar to those aspects, which have been highlighted here.*

43. Before this Court, it has been contended that the appellant is in possession of one vehicle, land measuring 1950 sq. yds. at Najafgarh-Nangloi Road and a factory known as *Durga Plastic Factory*. DH, despite having knowledge of the aforesaid assets, which, though, have been disputed by the appellant, did not make any request to the learned Registrar to give him permission to prove the same. It seems that no contention, even namesake, was made in this regard. DH also did not make any reference towards gold and, therefore, there is no observation, either way, with respect to such gold.



44. However, at the same time, this Court cannot be oblivious of the fact that these assets, including immovable assets, were mentioned by the plaintiff (DH) when the suit was instituted way back in the year 1996. So much so, this Court even issued restraint order against the defendant.

45. As per Mr. Pasrich, learned counsel for decree holder, during the pendency of the aforesaid suit, no fact to the contrary was averred or pleaded by the defendant and, therefore, according to him, it has to be assumed that appellant continues to be in possession of sufficient means.

46. However, it would have been better had these relevant and important facts been pleaded before the learned Registrar when he was seized with the aforesaid application. DH should have also made a request before the learned Registrar to examine witnesses in order to prove the aforesaid significant aspects.

47. Since no evidence has been led in this regard by either of the parties, therefore, this Court, while considering the present petition as an appeal, would not be in a position to give any definite finding *qua* factum of indigency of the appellant. Rule 1 and Rule 3(2) of Order XLIV dealing with appeal filed as an indigent person, reads as under:

***“Rule 1. Who may appeal as an indigent person :-***



*Any person entitled to prefer an appeal, who is unable to pay the fee required for the memorandum of appeal, may present an application accompanied by a memorandum of appeal, and may be allowed to appeal as an indigent person, subject, in all matters, including the presentation of such application, to the provisions relating to suits by indigent persons, in so far as those provisions are applicable.”*

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

*(1).....*

*(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.”*

48. The key word is inquiry.

49. It is quite obvious that DH did not render due assistance to learned Registrar and, therefore, there is no inquiry on certain crucial aspects.



50. Though the matter has already gotten delayed considerably, in order to ensure that the aspect of indigency or sufficient means is adjudicated appropriately, the present appeal is disposed of with direction that the parties would appear before the learned Registrar afresh on **22.05.2025** and the learned Registrar would carry out inquiry and may also permit both the parties to lead evidence, if any, with respect to application in question i.e. CMI No 6/2019.

51. Learned Registrar is requested to give due priority to the present matter as the main appeal can be taken up for consideration, only once CMI in question is disposed of.

**(MANOJ JAIN)**  
**JUDGE**

**MAY 15, 2025/dr**