

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. _____ OF 2026
(@ SLP (C) NO. _____ OF 2026)
(@ DIARY No. 45455 of 2025)

ARVIND PUNDALIK TENDULKAR

... APPELLANT

VERSUS

RAJU K. MATHEWS

... RESPONDENT

ORDER

- 1.** Delay condoned.
- 2.** Leave granted.
- 3.** These appeals are filed against the impugned judgments dated 20.05.2025 and 18.10.2024 passed by the learned Single Judge of the High Court of Kerala.
- 4.** Facts giving rise to the filing of present appeals, are that respondent who is an advocate, filed a suit for recovery of a sum of Rs.12,50,51,989/- (Twelve Crores Fifty Lakh Fifty-One Thousand Nine Hundred Eighty-Nine Only) against the appellant namely, his erstwhile client. Along with the suit, the respondent

filed an application under Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908 (Code), seeking attachment before judgment.

5. The Trial Court passed an *ad interim* order on 10.03.2023, directing the appellant either to furnish security for an amount of Rs.12,50,51,989/- (Twelve Crores Fifty Lakh Fifty-One Thousand Nine Hundred Eighty-Nine Only) or to show cause why he should not furnish the security. In the meanwhile, a conditional order of attachment in respect of schedule item nos. 1 and 2 properties was passed. The Trial Court after hearing the parties, by an order dated 07.10.2023, took note of the statement of the counsel for the appellant that he has no objection to passing an order of attachment for schedule item no. 1 property, vacated the order of attachment in respect of item nos. 2 and 3 of schedule properties.
6. Being aggrieved, the respondent filed an appeal. The High Court by an order dated 18.10.2024, set aside the order of the Trial Court in so far as it directed the release of item nos. 2 property and directed the Trial Court to attach such portion of sale consideration of Rs.18 crores to which respondent is entitled as per compromise decree that would be necessary, over and above, item no. 1 property which is already under the attachment. The Trial Court was further directed to release the balance amount in

deposit to plaintiff and defendant nos. 1 to 3 in O.S. No. 208 of 2018 in accordance with their entitlement under the compromise decree in the suit. The appeal was accordingly allowed. The appellant thereupon filed an application seeking review of the judgment dated 18.10.2024. The said application was dismissed by the High Court vide judgment dated 20.05.2025. Hence, these appeals.

- 7.** Learned senior counsel for the appellant submitted that the claim of respondent, based on alleged oral agreement of legal fees, lacks in *bona fides* and is contrary to public policy. It is urged that demand for professional fee as a proportion of the litigation proceeds is in direct contravention of Rule 20 of the Bar Council of India Rules and is a misconduct. It is contended that the alleged agreement is in nature of champerty and maintenance, amounting to an abdication of professional duties and an illegal speculation in litigation outcomes. The impugned judgments are, therefore, liable to be set aside.
- 8.** On the other hand, learned senior counsel for the respondent, has submitted that the claim of the respondent, in the suit is based on Rules regarding fee payable to advocates framed by the High Court of Kerala under Articles 225 and 227 of the Constitution of India.

It is contended that impugned judgments do not call for any interference in these appeals.

- 9.** We have considered the rival submissions.
- 10.** The power under Order XXXVIII Rule 5 of the Code is a drastic and extraordinary power. Such power should not be exercised mechanically or merely for the asking. It should be used sparingly and strictly in accordance with the Rule. The purpose of Order XXXVIII Rule 5 is not to convert an unsecured debt into a secured debt. Any attempt by a plaintiff to utilise the provisions of Order XXXVIII Rule 5 as a leverage for coercing the defendant to settle the suit claim should be discouraged. The court before exercising the power under Order XXXVIII Rule 5 has to be satisfied that there is a reasonable chance of decree being passed against the defendant and that the defendant is attempting to remove or dispose of his assets with an intention to defeating the decree that may be passed¹.
- 11.** The High Court has not recorded its satisfaction with regard to condition precedent for invoking power under Order XXXVIII Rule 5 of the Code. We would have examined the matter in detail,

¹ Raman Tech. & Process Engg. Co. & Anr. v. Solanki Traders; (2008) 2 SCC 302

however, it is not necessary to do so in the facts and circumstances of the case as the appellant has no objection to continuance of order of attachment in respect of schedule 1 properties namely, two flats. The claim of the respondent in the suit also needs to be secured.

12. We set aside the impugned judgments dated 18.10.2024 and 20.05.2025 passed by the High Court and restore the order dated 07.10.2023 passed by the Trial Court. Accordingly, the appeals are disposed of. There shall be no order as to costs.

.....J.
[PAMIDIGHANTAM SRI NARASIMHA]

.....J.
[ALOK ARADHE]

**NEW DELHI;
JULY 27, 2026.**

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

SPECIAL LEAVE PETITION (C) NO. 23177 OF 2026

ARVIND PUNDALIK TENDULKAR

... PETITIONER

VERSUS

RAJU K. MATHEWS & ANR.

... RESPONDENTS

O R D E R

- 1.** This Special Leave Petition is directed against the order dated 17.06.2026 passed by the learned Single Judge of the High Court of Kerala by which appeal filed by respondent no. 1 has been allowed.
- 2.** Facts giving rise to the filing of present petition are that respondent no. 1 who is an advocate, filed a suit for recovery of a sum of Rs12,50,51,989/- (Rupees Twelve Crore Fifty Lakh Fifty-One Thousand Nine Hundred and Eighty-Nine only) against the petitioner namely, his erstwhile client. The respondent no. 1 after the issues were framed in the suit, filed an application under Order

XXXIII Rule 1 of the Code of Civil Procedure, 1908 (Code), seeking leave to prosecute the suit as an indigent person.

3. The Trial Court after conducting an inquiry, by an order dated 10.04.2026, *inter alia* found that respondent no.1 has sufficient means to pay the court fee. Accordingly, the application under Order XXXIII Rule 1 of the Code was rejected. The petitioner challenged the aforesaid order in a Miscellaneous Appeal before the High Court. The learned Single Judge of the High Court by impugned judgment dated 17.06.2026, set aside the order passed by the Trial Court and remitted the matter for reconsideration to the Trial Court in the light of law laid down by the High Court of Kerala.
4. We have heard learned senior counsel for the parties at length. The impugned judgment is a judgment of remand, therefore, in the facts and circumstances of the case, we are not inclined to interfere with the impugned judgment. However, it is clarified that the Trial Court while deciding the plea of indigency of respondent no. 1 shall take into account the law laid down by this Court in **Mathai M. Paikeday v. C.K. Antony; (2011) 13 SCC 174** and **Solomon Selvaraj & Ors. v. Indirani Bhagawan Singh & Ors. (2023) 1 SCC 349**. It is further clarified that this Court has not expressed

any opinion on the merits of the matter, and the Trial Court shall decide the plea of indigency without being influenced by any of the observations/findings contained in the judgment of the High Court.

5. Accordingly, the Special Leave Petition is disposed of.

.....J.
[PAMIDIGHANTAM SRI NARASIMHA]

.....J.
[ALOK ARADHE]

**NEW DELHI;
JULY 27, 2026.**

ITEM NO.35

COURT NO.4

SECTION XI-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 45455/2025

[Arising out of impugned final judgment and order dated 20-05-2025 in RP No. 1289/2024 18-10-2024 in FAO No. 124/2023 18-10-2024 in CO No. 9/2024 passed by the High Court of Kerala at Ernakulam]

ARVIND PUNDALIK TENDULKAR

Petitioner(s)

VERSUS

RAJU K MATHEWS & ANR.

Respondent(s)

IA No. 221247/2025 - CONDONATION OF DELAY IN FILING

WITH

SLP(C) No. 23177/2026 (XI-B)

FOR ADMISSION

IA No. 193462/2026 - EXEMPTION FROM FILING O.T.

Date : 27-07-2026 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA
HON'BLE MR. JUSTICE ALOK ARADHE

For Petitioner(s) :Mr. Gagan Gupta, Sr. Adv.
Mr. Anil Dsouza, Adv.
Mr. Udit Gupta, Adv.
Ms. Sneha Singh, Adv.
Mr. Vyom Chaturvedi, Adv.
Ms. Prachi Gupta, Adv.
M/S. Udit Kishan And Associates, AOR

For Respondent(s) :Mr. P. N. Ravindran, Sr. Adv.
Mr. S. P. Chaly, Sr. Adv.
Ms. Anne Mathew, AOR

UPON hearing the counsel the Court made the following
O R D E R

SLP (C) NOs. @ Diary No(s). 45455/2025

1. Delay condoned.
2. Leave granted.
3. The Civil Appeals are disposed of in terms of the Signed Order.

4. Pending application(s), if any, shall stand disposed of.

SLP(C) No. 23177/2026

5. The Special Leave Petition is disposed of in terms of the Signed Order.

6. Pending application(s), if any, shall stand disposed of.

(KAPIL TANDON)

COURT MASTER (SH)

(NIDHI WASON)

ASSTT. REGISTRAR(NSH)

(Two separate Signed Orders are placed on the file)