

**Thresia Vs. Xavier**

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**SooperKanoon Citation :** [sooperkanoon.com/718618](http://sooperkanoon.com/718618)

**Court :** Kerala

**Decided On :** Feb-24-1976

**Reported in :** AIR1977Ker118

**Judge :** P. Govindan Nair, C.J.,; P. Narayana Pillai and; P. Subramanian Poti, JJ.

**Acts :** [Constitution of India](#) - Article 226; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 141 - Order 33, Rule 7

**Appeal No. :** C.M.P. No. 5274 of 1975

**Appellant :** Thresia

**Respondent :** Xavier

**Advocate for Def. :** Govt. Pleader

**Advocate for Pet/Ap. :** M.S. Kurian, Adv.

**Disposition :** Application dismissed

**Judgement :**

**Narayana Pillai, J.**

1. This is an application for permission to file as pauper an original petition under Article 226 of the Constitution. Court-fee payable on the Original Petition is only Rs. 25/-. A. V. Balan v. District Collector, Trichur 1972 Ker LT 588 : (AIR 1973 Ker

88) is a Division Bench decision where this court refused to apply to a proceeding under Article 226 the provisions of Order XXXIII of the C. P. C. enabling institution of suits by paupers. Abdul Kareem v. District Medical Officer 1974 Ker LT 21 : (AIR 1974 Ker 167) and Devassy Manjooran v. Registrar 1975 Ker LT 348 are two Division Bench decisions of this Court where a review provided for in Order XLVII and withdrawal of suit provided for in Order XXIII of the C. P. C. were extended to proceedings under Article 226 on the basis of Section 141 of the C. P. C, Apart from the provisions of Order XLVII of the C. P. C. as held by the Supreme Court in Shivdeo Singh v. State of Punjab AIR 1963 SC 1909 power of review inheres in every court of plenary jurisdiction to prevent miscarriage of justice and to correct grave and palpable errors committed by it and there is nothing in Article 226 of the Constitution to preclude Courts from exercising that power.

In Babuhhai Muljibhai Patel v. Nandlal Khodidas Barot, AIR 1974 SC 2105 another decision of the Supreme Court, it was held that the object of Article 226 being to provide quick and inexpensive remedy to aggrieved parties it would be incorrect to assimilate and incorporate all the procedures of a suit into a proceeding under Article 226. There the Supreme Court emphasised the words 'as far as it can be made applicable' occurring in Section 141 of the C. P. C. to show that it was not all procedures for suits which were intended to be made applicable to proceedings other than suits in civil courts. Provisions in the C. P. C. contain both substantive and procedural rights and what is made applicable to proceedings other than suits by Section 141 of the C. P. C. is only those provisions which deal with matters of procedure and even in respect of those matters only those which could be made applicable. The right of a person to institute a proceeding as a pauper is a substantive right. Consequently the provisions of Order XXXIII cannot be applied to a proceeding under Article 226 of the Constitution. This application is in the result dismissed but in the circumstances without costs.