(2015) 02 MP CK 0011

In the Madhya Pradesh High Court

Case No : Civil Revision No. 185 of 2014

Anita APPELLANT

Vs

Omvati and Others RESPONDENT

Date of Decision : 18-02-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 33, Order 33 Rule 33, Order 7 Rule 11, 115

Court Fees Act, 1870 — Section 35

Citation : (2015) 02 MP CK 0011

Hon'ble Judges : J.K. Jain, J.

Bench : Single Bench

Advocate : Rajendra Samdani, Learned Counsel, for the Appellant; R.K. Bakliya, Learned Counsel, Advocates for the Respondent

Judgement

Jarat Kumar Jain, J.—This revision has been filed under Section 115 of the Code of Civil Procedure [for short "the Code"] against the order passed by 2nd Civil Judge, Class I, Ujjain in Civil Suit No. 41A/ 2013 on 11.08.2014, whereby application under Order VII Rule 11 read with Order XXXIII of the Code has been dismissed.

2. Non-applicant No. 1 filed a suit against the applicant and Non-applicants No. 2 to 4 for declaration and injunction valued Rs. 9,30,000-00 and as per the valuation, she was required to pay Court-fees of Rs. 1,12,500-00 but the Non-applicant No. 1 claimed exemption from payment of Court-fees under Section 35 of the Court-fees Act as she being a woman and her annual income from all the sources does not exceed Rs. 25,00000. In support she has filed income certificate issued by the Naib Tehsildar. Learned Civil Judge on the basis of income certificate of Non-applicant No. 1 granted exemption from payment of Court-fees. The applicant filed an application under Order VII Rule 11 read with Order XXXIII of the Code raised an objection that before registering a case, the Court should have make an enquiry as provided under Order XXXIII of the Code and when the Court comes to a conclusion that the Non-applicant No. 1 is

entitled for the exemption under the Notification, then the Court should have registered the case. Thus, the statutory provisions of law has not been followed. Therefore, the suit may be dismissed under Order VII Rule 11 of the Code.

3. Non-applicant No. 1 resisted the application on the ground that the procedure provided under Order XXXIII of the Code is not applicable to the present case and the Court has adopted the correct procedure for granting exemption from payment of Court-fees under Section 35 of the Court-fees Act.

4. Learned Trial Court by the impugned order, dismissed the application. Against this order, present revision has been filed.

5. Learned counsel for the applicant submits that before granting exemption from payment of the Court-fees, the Trial Court should have followed the procedure as provided under Order XXXIII of the Code and a notice to the State (collector) is mandatory. For this purpose, learned counsel for the applicant rely upon the judgment of this Court reported in the case of Radhakishan v/s Amru [1994 (II) MPWN 169].

6. On the other hand, learned counsel for the Non-applicant No. 1 supports the impugned order. He submits that before granting exemption a notice was sent to the State but the income certificate issued by the Naib Tehsildar was not opposed by the State and no reply has been filed by the State, therefore, the learned Trial Court rightly placed reliance on the income certificate and granted exemption from payment of the Court-fees. For this purpose, he rely upon the judgment of this Court reported in the case of Shanti Bai v/s Lala [1996 (II) MPWN 63].

7. After hearing learned counsel for the parties, I have perused the record.

8. The objection of the applicant is of two folds. First is that the Trial Court has not adopted the procedure enumerated under Order XXXIII of the Code; and second is that before granting exemption, State has not been noticed. There is a complete answer of this objection in the judgment of this Court in the case of Satya Narayan Jaiswal Vs. Premlata Sewak Ram Jaiswal and another, . In this case earlier judgments in the case of Ramji Sharma Vs. High Court of M.P., Jabalpur and Others, ; R.N. Rai Vs. Shesh Narayan Rai and Others, ; and K.M. Nizam and Another Vs. Union Bank of India and Others, have been considered and this Court held as under :

"12. Thus, it is obvious that the Division Bench decision in Ramji Sharma (supra), does not lay down that the prayer for exemption under the Notification under Section 35 of the Court Fees Act, would require an enquiry as envisaged under Order 33, Civil Procedure Code. Clearly scope of proceeding under Order 33, Civil Procedure Code is different, and it has no bearing while considering the question of total exemption of Court-fees under the Notification under Section 35 of the Court Fees Act.

13. Therefore, the contention of the learned counsel for the petitioner that the trial Court was obliged to follow the procedure under Order 33, Civil Procedure

Code before passing an order on his prayer for exemption from payment of Court-fees under the Notification under section 35 of the Court Fees Act, cannot be accepted."

In Satya Narayan Jaiswal''s case (supra), it is also considered that whether the notice to State is mandatory, the Court held that :

"14. The learned counsel for the petitioner has also submitted that the Collector ought to have been noticed before his prayer for exemption from payment of Court-fees, was decided. In this connection reliance has been placed upon the observations in the case of K.M. Nizam and another (supra). In that case the question of income of the defendant who sought exemption from payment of Court-fees regarding the counter claim preferred by him was not duly considered, therefore, it was observed therein that the question of annual income of the appellant of that case was not decided. In that case, it was also observed that since the matter pertains to revenue, notice to the Collector was must as has been held in case of Ramji Sharma''s (supra). However, in the above reference it may be noticed that in Ramji Sharma''s case (supra) in para 13 of the judgment, it was observed that since exemption in payment of Court-fees, if allowed, may adversely affect State Revenue, it would be well within jurisdiction of the trial Court to notice the Collector and hear him if he opposes the claim for exemption. It was further observed that this requirement follows from the principles of natural justice as also from section 35 of the Court-fees Act because it would be competent for the State to oppose claim, made by a litigant on the ground that he is not entitled to exemption granted under the Notification.

15. However, from the above observations, it does not appear that it was mandatory for the trial Court to issue notice to the Collector before considering the prayer for exemption of the plaintiff/ petitioner. The observations as above appear to direct that it would be proper for the trial Court to notice the Collector while considering such an application as the matter relates to Revenue of State."

9. With the aforesaid, I am of the considered view that before granting exemption under the Notification under Section 35 of the Court-fees Act it is not required to follow the procedure under Order XXXIII of the Code and it would be proper but not mandatory for the Trial Court to issue notice to the State. In the present case, Trial Court issued the notice to the State, but the State has not filed any reply to the notice. In such circumstances there is no merit in the revision. Accordingly the revision is dismissed.