
(1997) 08 MP CK 0060

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 416 of 1990

Fulabai and Another

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 04-08-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 1
Constitution of India, 1950 — Article 39A

Citation : (1998) 1 MPLJ 486

Hon'ble Judges : Jayant Govind Chitre, J

Bench : Single Bench

Advocate : U. Maheswari, for the Appellant; S.M. Jain, Dy. Govt. Advocate, A.H. Khan and B.K. Gupta, for the Respondent

Final Decision : Allowed

Judgement

J.G. Chitre, J.

Shri U. Maheswari for the appellants.

Shri S. M. Jain, Dy. Govt. Advocate for respondent No. 1.

Shri A. H. Khan for respondent No. 2.

Shri B. K. Gupta for other respondents. All of them have been heard.

Shri Meheswari has placed reliance on section 35 of CPC and the notification of M. P. Government issued in that context dated 1-4-1983 bearing No. F-9-1-83-B-X and submitted that in view of this notification, the trial Court should have permitted the appellants to sue as indigent persons. Further he submitted that the conclusion drawn by the trial Court in refusing the permission to sue appellants as indigent person is based on incorrect assumptions. He submitted that the appellants own a hut which could be hardly of Rs. 10,000/- worth and the value of bed, utensils would not be worth enabling him to pay the Court fees in respect of the suit brought by them. He further argued that the trial Court has

held that the appellant No. 2 Chaganlal can take loan from his General Provident Fund for the purpose of paying the Court fees.

Shri Meheswari further argued that learned trial Court has also committed error in concluding that the appellants should sell out the said hut and utensils for the purpose of paying Court fee. In this context he argued that if they sell the hut which is their residential place and if they sell their utensils, they would be totally on the road deprived of any source of livelihood.

Shri S. M. Jain, appearing for respondent No. 1 argued that the impugned order is correct, proper and legal because the appellants are having sufficient property to enable them to pay the Court fees.

Shri A. H, Khan for respondent No. 2 argued that the appellant cannot take the advantage of the notification mentioned above because one of them is woman. He argued that other appellant No. 2 can pay the Court fee by selling the property i.e. hut.

Order XXXIII, Rule 1-A of CPC provides for an enquiry to be done by the Court for the purpose of finding out whether the persons seeking such permission is indigent or not. The said enquiry should be always be reasonable. The provisions of Order XXXIII have been enacted for the purpose of allowing a person to sue as indigent, if he happens to be unable to pay the Court fee. The provisions of Order XXXIII have been enacted with a benevolent view. It never means that the indigent person should sell out all his property and put himself without any source of livelihood. That does not mean that he should sell the house and all belongings and should come on road for the purpose of paying the Court fee. The State has also issued notification keeping in view the same benevolent spirit behind the enactment of provisions of Order XXXIII of Civil Procedure Code. State which is welfare State would never desire that the citizens should be on road by selling their houses and belongings.

It is the matter of common knowledge that loans are not advanced from G.P.F. for the purpose of paying the Court fee. Therefore, the learned trial Judge was obviously in error in discarding prayer of present appellants on that count.

Shri Khan during the course of arguments, argued that appellant No. 2 has now retired and, therefore, he can pay the Court fee from his pension, P.F. and gratuity amount. I do not find any force in the submission of Shri Khan because the pension, P.F. and gratuity are means of survival of a retired person/employee. The State never desires to deprive such a retired employee from such source of livelihood after retirement. This argument is inconsistent with the benevolent provisions of Order XXXIII and with this case wherein the appellant No. 1 happens to be a retired mill employee.

The Court fee can be recovered from defeated plaintiff in accordance with legal process. In border line cases attitude of the Courts should be broad minded. In democracy right to approach the Court for legal relief should not be denied on

the ground of poverty. That is why our Constitution has taken care of that by making provisions of legal aid. Court's decision in this context should be consistent with that spirit, of Article 39A of Constitution.

Thus, the appeal stands allowed. The appellants are permitted to prosecute/sue as indigent persons.