

(2008) 06 BOM CK 0148

In the Bombay High Court

Case No : Writ Petition No. 5370 of 2007

Kiran Talreja and Another

APPELLANT

Vs

Ramchandra Talreja and Another

RESPONDENT

Date of Decision : 25-06-2008

Acts Referred:

Citation : (2008) 6 ALLMR 344 : (2008) 5 MhLj 958

Hon'ble Judges : A.P. Lavande, J

Bench : Single Bench

Advocate : S.V. Purohit, for the Appellant; A.S. Kilor, for the Respondent

Judgement

A.P. Lavande, J.—Heard Mr. Purohit, learned Counsel for the petitioners and Mr. Kilor, learned Counsel for respondent No. 1.

2. Rule. Heard forthwith.

Mr. Kilor, learned Counsel waives notice on behalf of respondent No. 1.

3. By this petition, the petitioners, who are original plaintiffs in Special Civil Suit No. 204/2000 pending before the 5th Joint Civil Judge, Senior Division, Nagpur, takes exception to the order dated 19-9-2007 by which the plaintiffs have been directed to pay requisite Court fees within a period of 15 days with further direction that in case Court fees are not paid, within the stipulated time, the suit would be dismissed.

4. The facts leading to filing of the present petition, briefly, are as under:

The plaintiff No. 2 is the daughter of plaintiff No. 1. The plaintiffs filed the above suit for partition and separate possession of the property originally belonging to the father of Chunnilal, the husband of petitioner No. 1. The suit was filed on 25-2-2000. The suit was valued at Rs. 1,08,03,440/-. Relying upon Notification dated 1-10-1994 which exempted women litigants from paying Court Fees, the petitioners did not pay any Court fees. The respondents filed written statement. Thereafter they filed an application dated 30-3-2005 for dismissal of the suit on

the ground of non-payment of Court fees. After hearing both sides, the trial Court dismissed the application, however, directed the petitioners to pay requisite Court fees within 15 days and further directed that in the event the plaintiffs did not pay requisite Court Fees, the suit would be dismissed. Aggrieved the petitioners/plaintiffs have approached this Court.

5. Mr. Purohit, learned Counsel for the petitioners submitted that the trial Court has erred in law in holding that the Court Fees are payable by the petitioners and that they are not covered by Notification dated 1-10-1994. Placing reliance upon judgment delivered by the learned Single Judge of this Court in Mrs. Jyoti S. Doshi Vs. M/s Hindustan Hosiery Mills, , Mr. Purohit submitted that the issue involved in the present petition is squarely covered by the said judgment. Therefore, according to Mr. Purohit, the impugned order is liable to be quashed and set aside.

6. Per contra, Mr. Kilor, learned Counsel for respondent No. 1 has supported the impugned order.

7. On 1-10-1994 State of Maharashtra with a view to promote welfare of the women issued Notification granting exemption from payment of Court Fees in cases relating to maintenance, property right, violence and divorce filed by women. By Notification dated 23-3-2001 Explanation was added to the said Notification, which reads thus:

Explanation. - The expression "property disputes" shall mean property disputes arising out of and concerning matrimonial matters.

8. According to Mr. Purohit, the Notification dated 1-10-1994 was squarely applicable to the case of the petitioners-plaintiffs and the Explanation added to Notification dated 23-3-2000 i.e. after filing of the suit could not have been made applicable. In support of his submission Mr. Purohit has placed reliance upon the judgment delivered by learned Single Judge in Jyoti S. Doshi's case (supra).

9. At this stage, it would be appropriate to refer to relevant portions from the judgment in Jyoti S. Doshi's case (supra). The learned Single Judge framed the following two issues for consideration in the said matter:

(1) What is the scope and applicability of the exemption Notification dated October 1, 1994 bearing No. ST.P. 1994 CR/859/M-1?

(2) Whether the said Notification dated 23rd March, 2000 can in any way restrict and/or govern and/or control the exemption granted earlier by Notification dated 1st October, 1994 with regard to payment of Court Fees by women litigations?

10. After considering several judgments, learned Judge in paragraph 19 answered the two issues. For the purpose of this petition, it would be appropriate to refer to relevant Clauses (i), (ii) and (vii) of paragraph 19, which read thus:

(i) As far as the two issues which have been framed by me are concerned, my answer on Issue No. 2 will be that the Notification dated 23rd March, 2000 will

not restrict and/or govern and/or control the exemption granted by the earlier Notification of 1st October, 1994 with regard to payment of Court fees to women litigants provided those are suits filed by women litigants in their personal capacity. The suits filed by them as directors of companies or as partners of firms will not make them eligible to get the exemption in the pending matters.

(ii) As far as the applicability of the Notification of 1st October, 1994 is concerned, which is issue No. 1, it will continue to apply to the suits which are already filed and which are pending in this Court though subject to the above, namely that those suits which are filed by women directors of companies or women partners of partnership firms will not make them eligible for exemption under the Notification.

(vii) Needless to state that the matters filed on and after 23rd March, 2000 will be governed under the Notification of that date.

11. From perusal of paragraph 19 of the above judgment, it is evident that the learned Single Judge has held that Notification dated 23rd March, 2000 will not restrict or govern the exemption granted by Notification dated 1-10-1994 with regard to the payment of Court Fees by women litigants provided those suits were filed by women litigants in their personal capacity. The learned Single Judge has further held that the matters filed on or after 23rd March, 2000 will be governed by Notification issued dated 23rd March, 2000.

12. I am in respectful agreement with the view taken by learned Single Judge in Jyoti S. Doshi's case (supra). The ratio laid down in Jyoti S. Doshi's case (supra) is squarely applicable in the present case. Admittedly, the petitioners have filed the above referred suit claiming right in the ancestral property in their personal capacity. This being the position, the trial Court was not right in holding that the petitioners-plaintiffs were bound to pay Court Fees on the basis of valuation given in the suit. The ratio laid down in 2007(2) Mh.L.J. 175, Prabhakar Dayaram Narkhede v. Vijaya alias Shakuntala G. Chaudhari upon which reliance has been placed by the trial Court is not attracted in the present case inasmuch as while the facts are entirely different in the said case. Therefore, the trial Court has committed patent jurisdictional error and pass the impugned order.

13. For the reasons aforesaid, the impugned order is liable to be quashed and set aside and is accordingly quashed and set aside. It is held that having regard to the nature of the claim made by the plaintiffs in the suit, the petitioners are not liable to pay any Court Fees in terms of Notification dated 1-10-1994 which is applicable to the suit filed by the plaintiffs. Needless to mention that interim relief granted by this Court stands vacated. The parties shall appear before the trial Court on 30th July, 2008 at 11.00 a. m. for further directions.