

(2008) 02 CHH CK 0023
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 4943 of 2007

Lokmanya Sahakari Griha Nirman Sanstha	APPELLANT
Vs	
Smt. Kavita Devani and Another	RESPONDENT

Date of Decision : 14-02-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Court Fees Act, 1870 — Section 35

Citation : (2008) 2 MPJR 99

Hon'ble Judges : Sunil Kumar Sinha, J

Bench : Division Bench

Advocate : P.R. Patankar, for the Appellant; G.D. Wasvani, for the Respondent

Judgement

Sunil Kumar Sinha, J.

Heard.

The Petitioner, who is Defendant No. 1 in the trial Court, has challenged the validity of orders dated 03.11.2006 and 23.6.2007 passed by the said court in Civil Suit No. 38A/2006. By the first order, the trial Court has granted permission to the Plaintiff to prosecute her suit without payment of requisite court fees on the basis of remission given under notification dated 01.04.1983 issued u/s 35 of the Court Fees Act. Since it was an ex-parte order, the Petitioner/Defendant No. 1 after causing his appearance filed an application u/s 151 of the CPC indicating that the Plaintiff is possessing many properties and suppressing the details of all those properties she has claimed remission on the involous grounds, therefore, the order of remission be withdrawn and she may be directed to deposit the requisite court fees. It is on this application, the second order dated 23.6.2007 has been passed.

Referring to the decisions rendered by the M.P. High Court in matter of K.M. Nizam v. Union Bank of India and others, 1991 J.L.J. 381 J.L.J. and Ramji Sharma Vs. High Court of M.P., Jabalpur and Others, learned Counsel for the Petitioner

argued that if an objection was raised by the Defendant that the Plaintiff was not entitled to get the remission u/s 35 of the Court Fees Act, it should have been decided by the trial Court and the trial Court should not have outrightly rejected the contention of the Defendant.

On the other hand, learned Counsel for Respondent No. 1/Plaintiff argues that the matter of payment of court fees is a matter between the Plaintiff and the State and the Defendant has no say on it, therefore, the order passed by the trial Court should not be set aside.

I have heard learned Counsel for the parties at length and have also perused the records of the writ petition.

Admittedly, the first order was an ex-parte order in which the Defendant was not heard and when the Defendant caused his appearance he had raised the objection by filing an application u/s 151 of CPC. When the Defendant has contended that the Plaintiff was not entitled to get remission under the Court Fees Act, it was incumbent on the Court to decide this point but the said point has not been decided and the trial Court rejected the application saying that objections may be taken in the written statement in this regard.

It is an admitted position that written statement was not filed at the time of passing of both the orders but subsequently it has been filed. Counsel appearing for the Petitioner is not in a position to state as to whether this point has been raised by the Defendant in written statement or not.

Admittedly, if such controversy is raised by the Defendant after causing his appearance, in the opinion of this Court, proper course would be to raise these points in his written statement and then the Court has to decide that point after giving proper opportunity of hearing to both the parties.

In the result, the petition is disposed of with a direction to the trial Court to examine the written statement and if the ground is taken therein to frame an issue on the point. If the Defendant has not raised this ground in the written statement, an opportunity shall be given to the Defendant to raise the same and if such a ground is raised then after framing an issue on the question of payment of court fee, the same shall be decided by the trial Court in accordance with law.

With the above observations, this writ petition stands finally disposed of.