

(1991) 04 MP CK 0050
In the Madhya Pradesh High Court
Case No : F. A. No. 25 of 1988 (G)

Ramswarup Vashisht

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 03-04-1991

Acts Referred:

Court Fees Act, 1870 — Section 35, 7

Citation : (1991) MPJR 283

Hon'ble Judges : S. K. Dubey, J

Bench : Single Bench

Advocate : K. N. Gupta, for the Appellant; V. G. Khot, Dy. Govt., for the Respondent

Final Decision : Dismissed

Judgement

In this appeal the defendant/appellant claims exemption from the payment of Court fees on memorandum of appeal under Notification No. F-9-1-83-XXI dated 1st April, 1983, issued by the State Government in exercise of powers conferred by Section 35 of the Court Fees Act, 1870 {No. 7 of 1870} (for short, the "Act"), published in M. P. Rajpatra (Asadharan) dated 1st April, 1983 at p. 1062 (reproduced in 1983 M. P. Law Time, Part II, at p. 91). The Notification reads as under :-

"In exercise of the power conferred by Section 35 of the Court Fees Act, 1870 (No. 7 of 1870) the State Government hereby remits in the whole of the State of Madhya Pradesh, the Court Fees mentioned in Articles 1A and 2 of the First Schedule and Articles 5, 17 and 2i of the Second Schedule to the said Act, payable on plaint by the following categories of persons whose annual income immediately preceding the date of presentation of plaint from all sources does not exceed rupees six thousand, namely :

(i) member of Scheduled Tribes;

(ii) member of Scheduled Castes;

- (iii) minors;
- (iv) women;
- (v) artisans;
- (vi) unskilled labourer;
- (vii) landless labourer;
- (viii) person belonging to the weaker section of society.

(i) "Member of Scheduled Castes" means a member of any caste, race or tribe or part of or group within caste, race or tribe specified as such with respect to the State of Madhya Pradesh under Article 341 of the Constitution of India.

(ii) "Member of Scheduled Tribes" means a member of any tribal community or part of or group within a tribe or tribal community specified as such with respect to the State of Madhya Pradesh under Article 342 of the Constitution of India."

Shri K. N. Gupta, learned counsel for the appellant/defendant contended that the appellant falling within the category of persons belonging to weaker section of society whose annual income immediately preceding the date of presentation of the appeal from all sources did not exceed Rs. 6000/-and is only Rs. 4500/-, is liable to be exempted from payment of Court-fees,

The moot question before this Court is whether the said Notification applies to memorandum of appeal also or is restricted to plaint only.

A reading of the Notification shows that Court-fees mentioned in Articles 1-A and 2 of the First Schedule and Articles 5, 17 and 21 of the Second Schedule to the Act, payable on plaint, by persons falling in any of the categories, has been remitted by the State Government in exercise of the powers conferred u/s 35 of the Act. Section 7 of the Act deals with computation of fees payable in certain suits. Article 1-A of the Act speaks of payment of Court-fees on plaint, written statement pleading a set-off or counter claim or memorandum of appeal (not otherwise provided for in this Act) presented to any Civil or Revenue Court, except those mentioned in Section 3. Article 2 speaks of payment of Court-fees on a plaint in a suit for possession u/s 9 of the Specific Relief Act, 1977. Article 5 of the Second Schedule speaks of Court-fees payable on plaint or memorandum of appeal in a suit to establish or disprove a right of occupancy. Article 17 relates to Court-fees payable on plaint or memorandum of appeal in certain cases described from CI. (i) to CI. (vi). Art. 21 speaks of payment of Court-fees on plaint or memorandum of appeal under the Parsi Marriage and Divorce Act, 1865 (XV of 1936). It is evident that the expressions "plaint", "Written statement", "pleading", "counter claim" and "memorandum of appeal" have been used in various Articles distinctly. A look to these expressions shows that "plaint" does not include "memorandum of appeal".

Plaint and memorandum of appeal are not the same thing and carry different

meanings, The word "plaint" has no statutory definition and is of the English equivalent of the Latin *querela*. Its dictionary meaning is very wide, but in legal phraseology it has acquired a more limited meaning and that is a statement in writing of the cause of action in a suit. "Plaint", in law, means "a private memorial tendered to a Court in which a person sets forth his cause of action, the exhibition of an action in writing." Every proceeding in a Court is not commenced by a plaint. Section 26 of the CPC states that every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed. Order 4, R. 1 lays down that every suit shall be instituted by presentation of a plaint to the Court or such officer as it appoints in this behalf. Thus, in other words, it is a document which sets forth a cause of action, drawn up substantially in accordance with the rules contained in Order 6 and Order 7 of the Code, and is called a plaint, though it may contain some imperfections.

When in a suit a decree is passed, an appeal is taken to superior Court arising out of such suit. The expression "appeal" is not defined either in the CPC or in the Act, it has to be construed in its ordinary meaning, i. e., removal of a cause from an inferior Court to a superior Court for purpose of testing the soundness of the decision of the inferior Court. It is trite that an appeal is not a fresh suit but is only a continuation of the original proceeding or suit and a stage in the suit itself. The Supreme Court in case of *Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat*, has observed that the right of appeal is one of entering a superior Court and invoking its aid and interposition to redress the error of the Court below. True, an appeal is a continuation of the original proceeding, but "plaint" and "memorandum of appeal" carry different meanings. By memorandum of appeal, a party to the suit against whom a decree is passed, invokes the appellate jurisdiction to test the soundness of the decision of the inferior Court, while, by presentation of a plaint, a suit is commenced for passing a decree on the cause set up in the plaint. Thus, for the purposes of payment of Court-fees, the valuation of a suit may be different from the valuation of the suit for the purposes of fixing the appellate forum. The valuation for fixing the forum is dealt with by the M. P. Civil Courts Act, 1958 and by the Suits Valuation Act (No. 7 of 1887). The Legislature in its wisdom has used the words in various Articles of the Act distinctly : "plaint", "written statement", "counter claim", "memorandum of appeal" etc. This clearly shows, the Legislature intended the use and meaning of these words distinctly. "Plaint" cannot be meant as "written statement", "counter claim" or "memorandum of appeal". Similarly, memorandum of appeal cannot mean vice-versa.

The State Government knowing fully well the use of the various words in S. 7 and Articles of the First and Second Schedules, limited the remission of the Court-fees on the persons falling in the categories specified in the Notification and exempted them from payment of Court-fees on plaint of the nature mentioned in Articles 1-A and 2 of the First Schedule and Articles 5, 17 and 21 of the Second Schedule of the Act. Even the Court-fees on plaint of other nature have not been remitted. The Notification does not say that a person aggrieved of the judgment

and decree falls within the category specified in the Notification and fulfilling the conditions of the Notification, may prefer the memorandum of appeal without payment of Court-fees. Hence, in my opinion, the contention of Shri M. G. Khedkar, learned Additional Government Advocate, that, by process of interpretation, in the Notification the words which do not find place, cannot be introduced or added, is right.

As a result of the above discussion, the appellant is not entitled to claim exemption or remission of the Court-fees in view of the Notification mentioned above. The memorandum of appeal so presented being not stamped with requisite Court-fees is liable to be rejected. But, in the circumstances, the appellant is granted two months" time to pay the requisite Court-fees on the memorandum of appeal, and, if that is not done, the appeal shall stand dismissed for want of payment of Court-fees.