
(1990) 04 MP CK 0024
In the Madhya Pradesh High Court
Case No : Civil Revision No. 91 of 1990

R.N. Rai

APPELLANT

Vs

Shesh Narayan Rai and Others

RESPONDENT

Date of Decision : 05-04-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 1, 115
Court Fees Act, 1870 — Section 35

Citation : (1990) JLJ 377 : (1990) MPJR 273 : (1990) 35 MPLJ 528 : (1990) MPLJ 528

Hon'ble Judges : S.K Jha, C.J

Bench : Single Bench

Advocate : A. Sapre, for the Appellant; V.S. Thakur, for the Respondent

Judgement

S.K. Jha, C.J.

The defendant of Civil Suit No-17-A/88 of the Court of 4th Additional Judge to the Court of District Judge, Jabalpur, is the petitioner here against the orders dated 16-1-1990 and 17-10-1989. By the impugned orders, the Court below has held that the matter with regard to remission of court fees or treating the plaintiff non-applicant as an indigent person, is a matter to be tried as an issue in the suit itself and, has, therefore, shelved the question for determination at a later date.

The Court below has misdirected itself on a question of law and thereby refused to exercise jurisdiction vested in it by law. If it is a matter to be gone under the provisions of order XXXIII of the CPC for a decision on the question as to whether the non-applicant is an indigent person or not an enquiry is a must before the suit can proceed further, it can, therefore, by no stretch of imagination, be held to be an integral part of an issue in the suit itself, Learned counsel for the non-applicants, however, relies upon a Notification No. F. No. 9-1-83-B-XXI, dated the 1st April, 1983, whereby in exercise of powers conferred by section 35 of the Court Fees Act, 1870 (No.7 of 1870), the State

Government has decided to remit in the whole of the State of Madhya Pradesh, the Court fees, mentioned in Articles 1-A and 2 of the first schedule and Articles 5, 17 and 21 of the second schedule payable on plaint by a certain categories of persons whose annual income immediately preceding the date of presentation of plaint, does not exceed Rs. 6,000/-. Even in this notification, it will be seen that two conditions must be fulfilled: (i) that the person claiming remission, must belong to one or either of the categories of persons mentioned in the notification; and (ii) his annual income immediately preceding the date of presentation of the plaint from all sources, does not exceed Rs. 6,000/-. In the absence of a finding to this effect, the suit cannot proceed and court fee will have to be paid. Therefore, in either view of the matter, the Court below is not correct in law in holding that the matter with regard to remission of court fees in such circumstances is an integral part of the issues involved in the suit and shall, therefore, be tried later. The Court below must first decide as to whether the plaintiff non-applicant is either an indigent person under the provisions of Order XXXIII, Rule 1 of the Code of Civil Procedure, or is covered by the State Government notification as mentioned above. Only when a conclusion is arrived at one way or the other, can the suit proceed or not proceed. If it is held that the non-applicant is not entitled to any remission of court fees, he will have to pay the court fees before the suit can proceed.

For these reasons, the impugned order is set aside and the case is remanded to the Court below for deciding the question of remission of court fees in the first instance before the suit can proceed any further after passing appropriate orders with regard to the matter of court fees. There shall, however, be no order as to costs.