
(2011) 10 MP CK 0022
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3656 of 2011

Saatibai and another

APPELLANT

Vs

State of M.P. and another

RESPONDENT

Date of Decision : 21-10-2011

Acts Referred:

Court fees Act, 1870 — Section 35

Citation : (2012) 2 MPHT 21 : (2012) 2 MPLJ 535

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Advocate : Kamlesh Mandloi, for the Appellant; Pramod Mitha, Govt. Advocate Respondent No. 1, State, for the Respondent

Judgement

Mr. N.K. Mody, J.—Being aggrieved by order dated 4-2-2011 passed by I ADJ, Barwani in Case No. 15/2009 whereby application filed by the petitioners for exemption from payment of Court fee was dismissed, present petition has been filed. Short facts of the case are that petitioners filed a suit for damages wherein it was alleged that decree be passed against respondents for recovery of Rs. 1,15,000/- on account of death of husband of petitioner No. 1 and father of petitioner No. 2. In the suit it was alleged that Court-fee of Rs. 17,800/- is payable but since the petitioners are having no means to pay the Court-fee and income of the petitioners is below Rs. 6,000/- per year, therefore, petitioner be exempted from payment of Court-fee. It was prayed that petitioners be permitted to prosecute the suit without payment of Court-fee. After hearing the parties learned Court below disallowed the application of petitioners on the ground that income of the petitioners is more than Rs. 18,000/- per year, therefore, petitioners are not entitled to prosecute the suit without payment of Court-fee against which the present petition has been filed.

2. Learned Counsel for the petitioners submit that income of Rs. 18,000/- per year shown is the income of whole family of the petitioners and not of the petitioners. Learned Counsel submits that there are 7 members in the family of

the petitioners, therefore, it cannot be said that income of the petitioners is of Rs. 18,000/- per year. It is submitted that petition filed by the petitioners be allowed and the impugned order passed by learned Court below be set aside.

3. Learned Counsel for the respondent No. 1 submits that no illegality has been committed by the learned Court below in dismissing the application filed by the petitioners. It is submitted that petition filed by the petitioners be dismissed.

4. In exercise of powers conferred by Section 35 of the Court-fees Act, 1870 (No. 7 of 1870), the State Government has issued a notification dated 1-4-1983 whereby exemption from payment of Court-fee was given to the class of persons shown in the said notification whose income was below Rs. 6,000/- in the preceding year. This notification was amended vide notification dated 14-2-2011 whereby the words Rs. 6,000/- has been substituted by Rs. 25,000/-. Thus, a person whose income is less than Rs. 25,000/- is entitled to claim exemption from payment of Court-fee after 14-2-2011 if he belongs to any of the category shown in the notification dated 1-4-1983. However, the petitioners cannot claim any benefit of this notification because suit was filed prior to 14-2-2011. Since income assessed by Tehsildar as Rs. 18,000/- per year behind the back of the petitioners and this income is the income of the family in which there are 7 members, therefore, learned Court below committed error in holding that income of the petitioners is Rs. 18,000/- per year. In view of this, petition filed by the petitioners is allowed and the impugned order is set-aside holding that petitioners are entitled to prosecute the suit without payment of Court-fee, Learned Court below is directed to register the suit as civil suit and proceed with the case in accordance with law. With the aforesaid observations, petition stands disposed of. No order as to costs.