
(1997) 03 BOM CK 0032

In the Bombay High Court

Case No : Civil Revision Application No. 833 of 1996

Sanjay Mahavirprasad Jain

APPELLANT

Vs

Mrs. Vrishali Jain

RESPONDENT

Date of Decision : 19-03-1997

Acts Referred:

Bombay Court Fees Act, 1959 — Section 46
Civil Procedure Code, 1908 (CPC) — Section 115
Hindu Marriage Act, 1955 — Section 9

Citation : (1997) 4 BomCR 299 : (1997) 2 DMC 543 : (1997) 2 MhLj 264

Hon'ble Judges : V.S. Sirpurkar, J

Bench : Single Bench

Advocate : P.Y. Deshpande and Sanjeev P. Deshpande, for the Appellant; B.R. Gawai, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Sirpurkar, J.—In this civil revision, the applicant has challenged the order passed by the trial Court below Exhibit 10, whereby the objection raised to the counterclaim on the ground of non-payment of Court-fees is turned down by the trial Court.

2. Originally, the present applicant filed a petition u/s 9 of the Hindu Marriage Act for restitution of conjugal rights against the present non-applicant. His case was that that he was married to the non-applicant on 21-5-1995 in Arya Samaj Temple, Amravati, and thereafter in one another temple. He claimed that the marriage was registered before the Registrar of Marriages, on 22-8-1995 and after the marriage, the non-applicant respondent stayed with him and had also conceived. They decided to terminate the pregnancy and accordingly it was terminated. He further pleaded that the non-applicant was taken away by her father as he had never approved of this alliance between the applicant and the non-applicant, and further reiterated that the non-applicant was living in her father's house without any justification and had deserted the applicant and it

was on that count that he prayed for a decree for restitution of conjugal rights.

3. The non-applicant/respondent filed her say and flatly denied the factum of marriage between herself and the applicant/petitioner. She contended that the applicant/petitioner had never married her and all the contentions regarding the marriage and the pregnancy etc. were false and concocted allegations. She claimed that her signatures on the blank forms were received by the petitioner and the petitioner was out to destroy her reputation by publishing false advertisement in the newspapers. She flatly denied that she was ever married, muchless in Arya Samaj Mandir. She contended that she was exposed to mental torture, her reputation was ruined and as damages, she claimed Rs. 5,00,000/- by way of counter claim. She also prayed that she should be exempted from payment of Court-fees on the counter claim, u/s 46 of the Bombay Court fees Act, and relied upon a Notification dated 1-10-1994 which exempted the woman from paying the Court fees in respect of the petitions filed by them. The trial Court has permitted the said counter claim to be raised without payment of Court fees and has held by the impugned order that the applicant/respondent stands exempted from payment of Court fees because of the Notification. In short, according to the trial Court, the Notification covered the disputes like the one at hand.

4. Shri P.V. Deshpande, learned Counsel appearing on behalf of the applicant, has strenuously contended that the counter-claim as raised, without payment of the Court-fees was wholly untenable in law and the reliance by the non-applicant on the Notification was also uncalled for as the said Notification was not applicable to the dispute at hand. He pointed out that the Notification applied only to the cases relating to the maintenance, property disputes, violence and divorce. His contention is that the present counter-claim raised does not pertain to any of these subjects and, therefore, the non-applicant would not be able to pursue her counter claim without paying the Court fees on Rs. 5,00,000/- which is a valuation of her counter-claim.

5. Shri B.R. Gavai, learned Counsel appearing on behalf of the non-applicant, however, supported the order and also contended that the Notification was fully applicable. According to Shri Gavai, the case of the non-applicant was fully covered by the entry of violence and divorce. According to him, the counter claim pertains to the damages which were claimed because of the violence caused by the applicant/husband and, therefore, the counter-claim was perfectly justified. Shri Gavai also contended that the entries in the Notification will have to be given a broader meaning and interpretation so that the women are benefited from such interpretation.

6. On this back-drop, it will be worthwhile to see as to whether the instant dispute is covered by the said Notification. The Notification is in the following terms :-

"Now, therefore, in exercise of the powers conferred by section 46 of the Bombay

Court Fees Act, 1959 (Bom. XXXVI of 1959) the Government of Maharashtra hereby remits the fees payable by women litigants on any of the plaints, applications, petitions, memorandum of appeals on any other documents specified in the First and Second Schedules to the Bombay Court Fees Act to be filed in any Civil Family or Criminal Courts in respect of cases relating to-(A) Maintenance; (b) Property disputes; (c) Violence and (d) Divorce."

A plain reading of the Notification would bring out a position that the women litigants are exempted from paying the Court-fees on the plaints, applications, petitions or any other documents which are filed in any Civil, Family or Criminal Court. This exemption is applicable even for the Court-fees payable on the memorandum of appeals. It is further enumerated that the said exemption shall be applicable to the cases relating to the maintenance, property disputes, violence and divorce. The language of the notification is in broad terms. It speaks of the cases "relating to" the four subjects mentioned therein. The words "relating to" are significant. It will be seen that the notification does not use the words "cases of"; the user of the words "relating to" would give a broad basis to the four subjects mentioned. The exemption would not, thus, be limited strictly to the cases of maintenance or cases of property disputes, or cases of violence, or cases of divorce, but such exemption would certainly be available even if the cases are "relating to" these four aspects.

6A. As regards the maintenance, the cases may not be limited to the grant of the maintenance alone, but would cover all the aspects of the maintenance. Similarly, though the word "divorce" is mentioned, it is unthinkable that the Legislature intended to exempt the petitions for divorce from the payment of Court-fees but did not intend to give the same exemption to the petitions for judicial separation or petitions for restitution of conjugal rights. The word "divorce" will have to be read in the broad sense of the marital disputes. It could not stand to the reason that a lady, who wishes to file the restitution of conjugal rights proceedings, will be required to pay the Court-fees while a lady wanting to file the divorce petition is exempted from paying the Court-fees. The subjects in the notification have to be given the broader meaning.

Similar is the case of entry (c)- "violence". The cases relating to violence could be of many kinds as the violence also could be of many kinds. The violence could be classified broadly as physical violence, mental violence, sexual violence, social violence, etc. A woman could sue on account of any physical violence having been done to her. She could also sue for the damages for any mental violence having been inflicted on her. She could also sue for redressal of her grievance complaining about the violence by any private individual or, for that matter, any other agency. She could sue her employer, her husband, Government for every kind of violence inflicted against her. The words "relating to violence" would naturally widen the scope. The intention of the Legislature in exempting the women from payment of Court-fees in relation to such cases is clear enough and it is to remove the impediment in their way to seek justice, social, economic and

political, as enshrined in the preamble of our Constitution. The cases where the women could claim such an exemption would be very many and it is difficult to give an exhaustive list of such cases. It cannot be forgotten that it is a benevolent legislation and will have to be read broadly and in such manner so as to provide a remedy rather than to shun it. In that view of the matter, if a woman complains of the physical and/or mental violence as would be clear from the pleadings in this case, she has to be given the advantage of the notification by providing her exemption from payment of Court-fees. In the present case, it is in the clearest possible term that the non-applicant has complained of not only the physical violence but also the mental violence.

7. Shri Deshpande, learned Counsel appearing on behalf of the applicant, wanted to limit the cases under the entry "violence" to the physical violence only. His contention is that where a lady sues for the damages of the physical violence, there alone such exemption would be available. It is difficult to accept this contention. The word "violence" as per Black's Law Dictionary means-

"unjust or unwarranted exercise of force, usually with the accompaniment of vehemence, outrage or fury.

Physical force unlawfully exercised;

abuse of force, that force which is employed against common right, against the laws, and against public liberty.

The exertion of any physical force so as to injure, damage or abuse."

The note further says:

"Violence in labour disputes is not limited to physical contact or injury, but may include picketing conducted with misleading signs, false statements, publicity and veiled threats by words and acts. *Esco Operating Corporation v. Kamplan*, 144 Misc. 646, 258, N.Y.S. 303."

There is, therefore, nothing in the meaning to suggest that violence would be limited only to the physical force, though every kind of unlawful physical force would amount to violence.

8. In her counter-claim, the present non-applicant has clearly mentioned that due to the acts of the plaintiff (i.e. the present applicant), her moral and intellectual character has been assassinated and she had suffered and was suffering severe mental pain and agony and her prestige is lowered down in the estimation of her friends. She had bitterly complained against the publication made by the present applicant in the local newspaper and, therefore complained in the counter-claim that she suffered mental torture, pain and agony because of the defamation and because of the concocted allegations made against her. In her written-statement and counter-claim, she has categorically denied that she had ever conceived from the so-called husband- the present applicant, as she very clearly had denied the factum of marriage with the applicant. She has also

alleged that these allegations of marriage and subsequent pregnancy had damaged her physically as well as mentally. She had also claimed that she had given a notice to the applicant that he should not blackmail her on telephone or otherwise by making any correspondence with her on this subject. She had also made assertions that the applicant had been making publication of the defamatory matters in the newspapers and was also threatening her and her father on telephone and otherwise. She complained of her physical health having been adversely affected. All these allegations would clearly go to show that the present non-applicant not only complained of the mental violence but in a way a physical violence also. However, even if there was no physical element attached to it, the allegations of mental violence are sufficient to bring her case within the language of the notification for the reasons given above.

8A. Now, it is an established law that a divorce could be claimed on account of mental cruelty inflicted by the spouse. Unfounded allegations of adultery made in the written-statement will amount to cruelty and on that ground the wife was held entitled to a decree of divorce in a reported decision of this Court in *Jayshree v. Mohan*, 1987 MLJ 160. The word "violence" will have to be given a broader meaning, and the mental violence will have also to be included and it will have to be held that the mental violence has been covered by the Notification.

9. For these reasons, it will have to be held that the trial Court was absolutely right in granting the exemption in payment of Court-fees for the counter claim made by the non-applicant for damages on account of mental violence inflicted to her by the applicant. The Civil Revision Application has no merits and must be dismissed with costs.