(1999) 08 MP CK 0017

In the Madhya Pradesh High Court

Case No : C.R. No. 961 of 1999

Satya Narayan Jaiswal — APPELLANT

Vs

Premlata Sewak Ram Jaiswal and another — RESPONDENT

Date of Decision : 31-08-1999

Acts Referred:

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

Citation : (2000) 2 MPLJ 46

Hon'ble Judges : V.K. Agrawal, J

Bench : Single Bench

Advocate : Umesh Trivedi, for the Appellant;

Final Decision : Dismissed

Judgement

V.K. Agrawal, J.

By the impugned order dated 4-2-1999, the application of the petitioner/plaintiff for grant of exemption u/s 35 of the Court Fees Act, has been disallowed.

Admittedly, the plaintiff/petitioner filed a suit claiming damages amounting to Rs. 1,39,400/- . He sought exemption from payment of Court Fees under Notification No. F.9.83-B-XXI, dated 1-4-1983 of the State Government (hereinafter referred to as Notification for short), u/s 35 of the Court Fees Act.

The learned trial Court after holding an enquiry on the said application found that the petitioner/plaintiff is not entitled to the benefit under the said Notification, and therefore, directed him to pay the Court Fees.

Learned Counsel for the petitioner has submitted that the petitioner''s contention in regard to the said exemption were not duly considered by the trial Court while passing the impugned order. It has further been submitted that it was incumbent for the trial Court to hold enquiry as provided under Order 33 of Civil Procedure Code, and the Collector should have been issued a notice, before proceeding to decide his prayer as above. It has, therefore been prayed that the trial Court may be directed to decide his application after holding enquiry afresh, on the application filed by the petitioner. Learned Counsel for the petitioner in support of his contentions as above, relied upon R.N. Rai vs. Shesh Narayan Rai, 1990 MPU 528, K.M. Nizam and others vs. Union of India and others 1991 MPU 669 and Ramji Sharma Vs. High Court of M.P., Jabalpur and Others,

Section 35 of the Court Fees Act provides that the appropriate Government, from time to time, by Notification in the official Gazette, reduce or remit, in the whole or in any part of territories under its Administration all or any of fees mentioned in the first and second Schedule of the Court Fees Act. In exercise of powers conferred as above, the State Government by Notification dated 1-4-1983 remitted the Court-Fee in cases of certain specified persons, whose income does not exceed Rs. 6,000/- p.a. Relevant portion of the said Notification reads:--

"In exercise of the powers conferred by section 35 of the Court-Fees Act, 1870 (No. 7 of the whole of the State of Madhya Pradesh, the Court-fees mentioned in Articles 1-A and 2 of the 1st Schedule and Articles 5, 17 and 21 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) artisan;

(vi) unskilled labourer;

(vii) landless labourer;

(viii) person belonging to the weaker section of the society.''''

Clearly, therefore a person claiming exemption under the said Notification must belong to the one or other categories of persons as specified above, and his income from all sources does not exceed Rs. 6,000/- p.a..

It appears from the impugned order that the petitioner/plaintiff did not adduce any oral evidence before the learned trial Court in the enquiry held by it. He has filed a certificate from the ''Sarpanch'' of the Gram Panchayat concerned to the effect that his annual income is Rs. 5,000/- . However, the learned trial Court took into consideration the averments made in the plaint, which indicated that he has spent about Rs. 60,000/- in the previous litigation. It was therefore held that the income of the petitioner/plaintiff was not less than Rs. 6,000/- . Consequently, the trial Court held that he was not entitled to exemption from payment of Court fees.

It is thus obvious that after holding an enquiry and considering the facts and circumstances of the case, the learned trial Court has recorded a finding of fact that the income of the petitioner is not less than Rs. 6,000/- , and therefore, his prayer for exemption from payment of Court-fees was disallowed. The finding of fact as above cannot be faulted with as there is no reason to interfere in the said finding.

The contention of the Learned Counsel for the petitioner that no enquiry was made, also does not appear to be justified, because it appears from the impugned order that after holding summary enquiry the finding as above, has been recorded.

Learned Counsel for the petitioner further submits that before deciding his application u/s 35 of the Court Fees Act, an enquiry as envisaged under Order 33, Rule 1, CPC should have been held. In the case of R.N. Rai (supra) relied upon by the Learned Counsel for the petitioner, the trial Court had directed that the matter with regard to remission of Court Fee or treating the plaintiff, as an indigent person, shall be decided as a issue in the suit, and therefore, therein the trial Court had postponed consideration of the said question. Disapproving the view as above of the trial Court, it was observed therein that the trial Court should have first decided as to whether the plaintiff is an indigent person as envisaged under the provisions of Order 33, Rule 1, Civil Procedure Code, or is covered by the State Government Notification u/s 35 of Court Fees Act, which entitles him to seek exemption or remission from payment of Court Fees. However, in the said case it has nowhere been directed that for deciding the prayer in the Notification u/s 35 of the Court-fees Act enquiry as envisaged under Order 33, Rule 1, Civil Procedure Code, should have been conducted, as is the contention of the Learned Counsel for the petitioner.

It may be noticed that in Ramji Sharma''s case (supra) relied upon by the Learned Counsel for the petitioner, it has been laid down that the trial Court while considering the prayer for exemption from payment of Court fee under the Notification u/s 35 of the Court-fees Act, may follow such procedure in dealing and disposing off the claim as may be conducive to expeditious conclusion of the trial. It has further been observed that no separate proceeding is contemplated for disposal of the claim for exemption, and that it is only necessary for the plaintiff to prove the requirement of the Notification to the satisfaction of the trial Court. For that purpose he has to prove that his income from all sources does not exceed Rs. 6,000/- p.a., and that he is a person who belongs to any of the categories mentioned in the said Notification.

Thus, it is obvious that the Division Bench decision in Ramji Sharma (supra), does not lay down that the prayer for exemption under the Notification u/s 35 of the Court Fees Act, would require an enquiry as envisaged under Order 33, Civil Procedure Code. Clearly scope of proceeding under Order 33, CPC is different, and it has no bearing while considering the question of total exemption of Court-fees under the Notification u/s 35 of the Court Fees Act.

Therefore, the contention of the Learned Counsel for the petitioner that the trial Court was obliged to follow the procedure under Order 33, CPC before passing an order on his prayer for exemption from payment of Court-fees under the Notification u/s 35 of the Court Fees Act, cannot be accepted.

The Learned Counsel for the petitioner has also submitted that the Collector ought to have been noticed before his prayer for exemption from payment of Court-fees, was decided. In this connection reliance has been placed upon the observations in the case of K.M. Nizam and another (supra). In that case the question of income of the defendant who sought exemption from payment of Court-fees regarding the counter claim preferred by him was not duly considered, therefore, it was observed therein that the question of annual income of the appellant of that case was not decided. In that case, it was also observed that since the matter pertains to revenue, notice to the Collector was must as has been held in case of Ramji Sharma''s (supra). However, in the above reference it may be noticed that in Ramji Sharma''s case (supra) in para 13 of the judgment, it was observed that since exemption in payment of Court-fees, if allowed, may adversely affect State Revenue, it would be well within jurisdiction of the trial Court to notice the Collector and hear him if he opposes the claim for exemption. It was further observed that this requirement follows from the principles of natural justice as also from section 35 of the Court-fees Act because it would be competent for the State to oppose claim, made by a litigant on the ground that he is not entitled to exemption granted under the Notification.

However, from the above observations, it does not appear that it was mandatory for the trial Court to issue notice to the Collector before considering the prayer for exemption of the plaintiff/petitioner. The observations as above appear to direct that it would be proper for the trial Court to notice the Collector while considering such an application as the matter relates to Revenue of State.

However, in the instant case interference in the impugned order is not called for, as the prayer of the petitioner/plaintiff for exemption has been rejected by the impugned order. Therefore, the fact that Collector was not noticed, would not be material. No prejudice has been caused to the case of the petitioner, even if notice was not issued by the trial Court to the Collector, before passing the impugned order.

Therefore, this revision has no merit and does not deserve to be admitted. Accordingly, this revision is dismissed.