

(1998) 07 BOM CK 0090

In the Bombay High Court

Case No : Civil Rev. Application No. 189 of 1998

Smt. Ashabai Shiral and anothers

APPELLANT

Vs

The Executive Engineer, M.S.E.B. (O and M) Division

RESPONDENT

Date of Decision : 29-07-1998

Acts Referred:

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

Citation : (1999) 1 ALLMR 442 : (1999) 2 BomCR 194

Hon'ble Judges : A.B. Palkar, J

Bench : Single Bench

Advocate : R.R. Patare, for S.B. Talekar, for the Appellant; H.T. Joshi, for the Respondent

Judgement

A.B. Palkar, J.—In this revision application the plaintiffs have challenged the order dated 2-1-1998 passed by the learned 3rd Joint Civil Judge, Senior Division, Parbhani on Exh. 1.

2. The suit was filed by the plaintiff Ashabai and Kaushalyabai for recovery of Rs. 2 Lakhs for compensation caused due to the loss of life of deceased Shivaji who died due to electric shock. The claim is made against M.S.E.B. (defendant) by the legal heirs of deceased Shivaji.

2-A. The office raised an objection that no Court fee was paid and, therefore, the learned Advocate for plaintiffs was heard on that point. In the Trial Court notification dated 1-10-1994 in respect of section 46 of the Bombay Court Fees Act was relied upon. The notification dated 1-10-1994 reads as below :

"REVENUE AND FORESTS DEPARTMENT Mantralaya, Bombay 400 032, dated the 1st Oct. 1994 BOMBAY COURT FEES ACT, 1959.

No. STP/1094/CR-859/M-1. -Whereas the Government of Maharashtra has recently announced a policy with a view to promote the welfare of the women;

And whereas, the said welfare policy for women inter alia, provides for exemption of Court fees for women litigants in cases relating to maintenance, property right, violence and divorce.

And whereas, section 46 of the Bombay Court Fees Act, 1959 (Bom. XXXVI 1959), empowers the State Government by notification in the Official Gazette to reduce or to remit any of the fees mentioned in the First and Second Schedules to that Act :

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 or any other documents specified in the First and Second Schedules to the said Act to be filed in any Civil, Family or Criminal Courts in respect of the cases relating to (a) maintenance, (b) property disputes, (c) violence and (d) divorce.

By order in the name of the Governor of Maharashtra,

HARSHWARDHAN GAJBHIYE Deputy Secretary to Government."

3. The present suit is not covered by either of the types. It is true that in one case this Court has taken a view that when divorce suit or petition for divorce is mentioned in the notification then a wider meaning is required to be attached to the word including all matrimonial suits. This view is taken by the learned Single Judge of this Court in Sanjay Mahavirprasad Jain Vs. Mrs. Vrishali Jain, .

4. Similarly in respect of dispute relating to property, another learned Single Judge of this Court has held in Smt. Deepa Shashikant Godambe Vs. The State of Maharashtra and Others, that in view of Article 7 of the First Schedule which includes any other plaint, application or petition (including memorandum of appeal), to obtain substantive relief capable of being valued in terms of monetary gain or prevention of monetary loss, including cases wherein application or petition is either treated as a plaint or is described as the mode of obtaining the relief as aforesaid. With reference to the above, the learned Judge held that the suit for specific performance is capable of being valued in terms of money and is covered by the residuary Article, i.e. Article 7. It was a suit for specific performance in respect of contract of sale of immovable property and as such with the aid of Article 7, the learned Judge has taken view that it falls in the category of property disputes as mentioned in the notification.

5. However, it must be borne in mind that a suit for recovery of money or a suit for recovery of any monetary claim arising out of negligence or any tortious act has not been included in the notification and in the absence of any such provision in the notification, the Court cannot interpret it by giving an extended meaning to the words "property disputes" by including therein a claim for compensation or any other monetary claim. It is true that this is a beneficial piece of subordinate legislation by which the Government has exempted Court fee to women litigants

in certain cases. While interpreting the beneficial piece of subordinate legislation, the Court cannot insert certain words which are not therein and give an extended meaning to the restricted terminology used in the notification. Had the Government intended to exercise its power of subordinate legislation, by giving exemption to the women litigants filing suits for monetary claim or damages or compensation arising out of tortious liability, it was open to the Government to make specific in the notification, but if it is not done, the courts cannot go further. Otherwise there would be no limit to the inclusion within the notification of suits which in fact the Government did not intend to be exempted from payment of Court fee though instituted at the instance of a woman litigant. It would amount to indulging in exercise of legislation under the garb of interpreting the Government notification, which is not permissible. Even if the notification had included suit for recovery of money from probably with the aid of residuary Article as stated in the aforesaid judgment of *Deepa v. State of Mah.*, the present suit could have been included in it. But in the absence of the same, it is not possible to differ from the view taken by the learned Judge. However, while dismissing the revision, it must be observed that the petitioners are at liberty to file an application to the Court for being considered as indigent persons under the provisions of CPC and if such an application is filed, the Court shall consider the request of the petitioners and if the petitioners are found to be indigent persons, the benefit of the said provision should be given to them irrespective of the fact that the application for the said purpose is being filed long after filing of the suit in the Trial Court. As the suit is already presented to the Trial Court, the question of limitation would not come in the way of considering that request of the petitioners. With these directions to the learned Trial Judge to consider the request of the petitioners on the ground that they are indigent persons and to register the suit if they can establish that they are indigent persons, the revision petition is disposed of with no order as to costs. Rule is discharged.

In view of the above directions, the learned Trial Judge is directed not to call upon the petitioners to deposit ad valorem Court fee on the suit claim till the application filed by them for being considered as indigent persons under the CPC is decided. The petitioners are directed to file the said application to the Trial Court within four weeks from today.