
(1996) 05 MP CK 0027

In the Madhya Pradesh High Court

Case No : Civil Revision No. 117 of 1992

Smt. Vimalabai

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 16-05-1996

Acts Referred:

Court Fees Act, 1870 — Section 35

Citation : AIR 1997 MP 134 : (1997) 1 MPLJ 227

Hon'ble Judges : Ramesh Surajmal Garg, J

Bench : Single Bench

Advocate : R.S. Trivedi, for the Appellant; Sen, Dy. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.S. Garg, J.

The plaintiff-applicant being aggrieved by order 19-2-92 passed in Civil Original Suit No. 9-B/91 by the learned fifth Additional District Judge, Ujjain, holding that the plaintiff is not entitled to exemption from the Court-fees under Notification No. F.9.83-b-XXI dt. 1-4-1983 published in M.P. Rajpatra (Asadharan) dt. 1-4-1983, page 1068 have filed this revision.

The plaintiff had filed the suit stating that despite her family planning operation she had conceived and later on delivered a female child. On basis of these facts she sued the authorities under common law for recovery of damages. In the suit she pleaded that her monthly income is not above 400 rupees. The matter was contested even on the matter of Court-fees. The learned trial Court refused to exempt the present applicant basically on the ground that the plaintiff has not stated in her statement/application about the income of her husband as in the opinion of the Court the responsibility to maintain the child was also of the husband.

Shri Trivedi submits that the approach of the learned Court below is patently

wrong and if an interpretation has made by the learned trial Court is accepted it would make the Notification nugatory. His further submission was that this Notification is a piece of beneficent legislation and has been brought in existence to help and assist poor persons. According to him the Notification applies to those persons who are parties before the Court. On the other hand Shri Sen submits that according to the Notification a person would be entitled to exemption if from all sources the income of the plaintiff is less than Rs. 6,000/- per year. According to him income of the husband has to be clubbed with the income of the wife, as she is the plaintiff.

After hearing the parties in my opinion the revision deserves to be allowed.

The Notification dt. 1-4-1983 reads as under:--

"In exercise of the powers conferred by Section 35 of the Court-fees Act, 1870 (No. 7 of 1870), the State Government hereby remits 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 to the said Act payable on plaint by the following categories of the 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.

EXPLANATION--For the purposes of this notification:--

- 1) "Member of Scheduled Castes" means a member of any caste, race or tribe or part of or group within caste, race or tribe specified as such with respect to the State of Madhya Pradesh under Article 341 of the Constitution of India;
- 2) Member of Scheduled Tribes" means a member of any tribal community or part of or group within a tribe or tribal community specified as such with respect to the State of Madhya Pradesh under Article 342 of the Constitution of India.

According to the Notification a person belonging to the particular class as mentioned in the Notification if is earning less than Rs. 6,000/- per year then he would not be required to pay the Court-fees on the plaint. The material words "payable on plaint by the following categories of the persons whose annual

income immediately preceding the date of presentation of plaint from all sources does not exceed rupees six thousand" cannot be ignored. The words "persons" whose annual income in relation to the plaint and liability of the Court-fees would only mean the plaintiff who is party and would not include in its mischief any other person who is not party to the suit. The other key words "from all sources" would not mean the income of any other person. The words "from all sources" means the sources of the person who has filed the suit as the plaintiff and not the sources of the other persons who are otherwise liable for maintaining the plaintiff. The arguments of the learned counsel for the State if is accepted it would lead to a situation where benefit of the Notification cannot be given to anybody. It is in the interest of those persons whose income is less than Rs. 6,000/- per year. The person or persons would only mean the plaintiff and plaintiffs and nonelse. The approach of the learned trial Court that as the liability for maintaining the child was of husband also, therefore, his income has to be clubbed with the income of the wife, who is the plaintiff is patently erroneous, illegal and is contrary to law. In my opinion the plaintiff whose income is less than Rs. 6,000/- per year would certainly be entitled to claim benefits under the Notification. The order passed by the learned trial Court suffers with material irregularities and non-exercise of the jurisdiction which is legally vested in it by law. The order deserves to and is hereby set aside. The revision is allowed. It is ordered that the plaintiff is entitled to be exempt from payment of the Court-fees payable on the plaint filed by her. The trial Court shall proceed with the suit in accordance with law as expedi-tiously as possible.