

(2002) 01 BOM CK 0063

In the Bombay High Court

Case No : Civil Rev. Application No. 1212 of 2001

Usha Badri Poonawalla

APPELLANT

Vs

K. Kurian Babu

RESPONDENT

Date of Decision : 09-01-2002

Acts Referred:

Bombay Court Fees Act, 1959 — Section 46

Citation : AIR 2002 Bom 292 : (2002) 3 BomCR 215 : (2002) 2 BOMLR 408 : (2002) 2 MhLj 951

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Advocate : S.R. Chitnis and S.M. Oka, for the Appellant; Nitin Deshpande, for the Respondent

Final Decision : Allowed

Judgement

D.Y. Chandrachud, J.—Rule, returnable forthwith. Respondent waives service. By consent taken up for hearing and final disposal.

2. The petitioner has filed a suit in the Court of the Learned Civil Judge, Senior Division, Pune, being Special Civil Suit No. 915 of 1998 in which, based on the allegation that the defendant had defamed her, in a communication addressed to a Fellow Member of the Rotary Club, Pune, the petitioner has claimed damages in the amount of Rs. 50 lakhs. An application was moved by the Defendant claiming that the suit was liable to be dismissed for want of payment of the requisite Court fee. By the impugned order dated 17th April 2001, the Learned Joint Civil Judge, Senior Division, Pune has directed the petitioner to pay the Court fee on the claim of Rs. 50 lakhs.

3. The dispute in the present case turns upon the construction of the Notification dated 1st October, 1994 issued by the State Government in exercise of the power conferred by Section 46 of the Bombay Court Fees Act, 1959. The relevant part thereof reads as follows :

"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 similar question arose before a Learned Single Judge of this Court in Sanjay Mahavirprasad Jain Vs. Mrs. Vrishali Jain, . In that case the husband had filed a petition for restitution of conjugal rights u/s 9 of the Hindu Marriage Act, 1955. Apart from filing her reply to the application, the Respondent-wife denied that she had ever been married to the petitioner. The Respondent sought to file a counter claim as and by way of damages in the amount of Rs. 5 lakhs claiming that the petitioner had destroyed her reputation by publishing a false advertisement in the newspapers and as a result of which she was exposed to mental torture, and whereby her reputation was ruined. Before the Learned Judge, an objection was raised on the ground that the Court fee had not been paid on the counter claim as required under the Bombay Court fees Act, 1959, and on behalf of the Respondent, reliance was sought to be placed on the exemption notification dated 1st October, 1994. The learned Single Judge adverted to the language of the notification under which the payment of Court fee was exempted in respect of cases "relating to" maintenance, property disputes, violence and divorce. The Learned Single Judge held that the words "relating to" were words of amplitude. As a result, the exemption would not be limited strictly to cases of maintenance, property disputes, violence or divorce, but even cases relating to the aforesaid four subjects would be within the purview of the notification. Similarly while dealing with the expression "cases of violence", the Learned Single Judge held that violence against women is of many kinds, including physical violence, mental violence, sexual violence, and social violence. The intention of the Legislature in exempting women from the payment of Court fees in relation to such cases and the object of the notification was to remove the impediment in the way of women litigants to seek justice, social, economic and political, as enshrined in the preamble of the Constitution. The cases where women litigants could claim such an exemption would be very many and could not be exhaustively defined. In para 8 of the judgment, the Learned Single Judge held thus :--

"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 mental violence but in a way 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."

4. The judgment of the Learned Single Judge is thus, authority for the proposition that a claim by a woman litigant on the basis of an act of alleged defamation would constitute a case relating to violence within the meaning of the notification dated 1st October, 1994. The expression "violence" in the context of that notification has to be construed liberally so as to include violence of a kind which will damage the reputation of a woman. I am in respectful agreement with the view taken by the Learned Single Judge.

5. Whether the issue is approached from the perspective of the prevalent trend of thought in the international community; or in India, from the point of view of constitutional precept and doctrine, the law recognises that the socio-economic canvass of violence against women extends not merely to physical violence, but to other forms of gender discrimination including mental or, as it has been referred to in various contexts, psychological violence. Violence against women takes several forms : rape, child sexual abuse, trafficking in women, domestic violence, pornography, selective abortion of female fetuses and dowry deaths are all forms of violence which denigrate the dignity of women. (For a comprehensive analysis, see "Domestic Violence And Law : Report of Colloquium on Justice for Women-Empowerment Through Law, Butterworths India, 2000 Edition page xliii). The Declaration on the Elimination of All Forms of Violence Against Women was adopted by the General Assembly of United Nations on 20th December, 1993. Article 1 defines violence against women as meaning any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. According to Article 2 , violence against women encompasses : (a) physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation, (b) Physical, sexual and

psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution, (c) Physical, sexual and psychological violence perpetrated or condoned by the State wherever it occurs. A United Nations" document entitled "The Beijing Declaration and the Platform for Action" (Department of Public Information, United Nations, New York, 1996) prescribes in a Chapter entitled "Strategic Objectives and Actions", the actions to be taken inter alia by Governments. One of those, in paragraph 61(a) is to ensure access to free or low-cost legal services, including legal literacy, especially designed to reach women living in poverty. The document emphasises in paragraph 112 that violence against women is an obstacle to the achievement of the objectives of equality, development and peace. Violence against women both violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms. Amongst the actions to be taken by Governments, paragraph 124(d) provides for the adoption, implementation, periodical review and analysis of legislation to ensure its effectiveness in eliminating violence against women. Governments, similarly, are mandated by Paragraph 124(h) to provide women who are subjected to violence with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm they have suffered.

6. When the issue is considered from the perspective of the Indian Constitutional framework regard must be have to the provisions of Article 15(3) which provides that nothing in the article shall prevent the State from making any special provision for women and children. Article 15(1) provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Under Article 51A(e), it is the fundamental duty of every citizen to renounce practices derogatory to the dignity of women. Access to justice is an intrinsic part of the right to life under Article 21 of the Constitution. The Constitution places a significant degree of importance upon preserving and protecting the institutions of the judicial arm of the State and the independence of the judiciary. The notification which has been issued by the State Government granting an exemption from payment of Court fees to a certain class of women litigants is, therefore, designed to ensure that women who are subjected to forms of violence and other situations envisaged in the notification issued under the Court Fees Act have an efficacious remedy of access to justice for redressing their grievances. That being the beneficial object of the notification, the interpretation to be placed on the said notification must be such as will subserve the achievement and implementation of the goal which it is intended to achieve. The exemption notification must, therefore, be interpreted so as to advance and promote the object of ensuring that women who suffer from gender discrimination and violence are not impeded in seeking access to justice by being required to pay upfront, a substantial Court fee which few of the class can afford. The Notification subserves a salutary object. The interpretation to be placed on

the notification by the Court must, therefore, be one of width and amplitude.

7. Before concluding, it would be necessary to advert to the fact that the earlier notification of 1st October, 1994 was followed by a subsequent notification dated 23rd March, 2000 by which the expression "property disputes" was sought to be clarified by means of an explanation. The subsequent notification has been construed by the judgment of a Learned Single Judge H.L. Gokhale, J. in Mrs. Jyoti S. Doshi Vs. M/s Hindustan Hosiery Mills, . We are not really concerned with the terms of the second notification in the present case, but it would be necessary to note that the judgment of my Learned Brother, H.L. Gokhale, J. refers to the judgment of Sirpurkar, J. to which reference has been made earlier.

8. In the circumstances, the petitioner is entitled to succeed. The impugned order dated 17th April, 2001 is quashed and set aside. The application filed by the respondent, Exh. 10, stands dismissed.

9. The Civil Revision Application is disposed of in the aforesaid terms. No order as to costs.