

(2013) 04 MP CK 0117

Madhya Pradesh High Court

Case No: Writ Petition 12439 of 2012

Mohammad Sadik and Others

APPELLANT

Vs

Khursheed Ahmed

RESPONDENT

Date of Decision: April 18, 2013

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 33 Rule 1, Order 33 Rule 2, 151
- Constitution of India, 1950 - Article 227, 341, 342
- Court Fees Act, 1870 - Section 35

Citation: (2013) 4 MPHT 406 : (2013) 3 MPLJ 365

Hon'ble Judges: K.K. Trivedi, J

Bench: Single Bench

Advocate: M. Shafiqullah, for the Appellant; Mukhtar Ahmed, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K.K. Trivedi, J.

A question has been raised in this petition under Article 227 of the Constitution of India, whether on a plaint while claiming exemption from payment of Court Fees, proceedings under Order 33, Rules 1 and 2 of CPC (hereinafter referred to as CPC for brevity) are required to be done or merely because of the pleadings in the plaint, proceedings can be done for grant of such exemption. Facts giving rise to filing of this writ petition are that the respondent/plaintiff filed a suit seeking possession, valuing his suit for Rs. 40,000/- and damages Rs. 7,000/- against the petitioners, alleging that the petitioners were the lessees of the respondent/plaintiff. However, they were not making the payment of the lease amount. As a result, a cause of action arose in favour of the respondent/plaintiff for filing of the said suit in the year 2004. The suit was presented in the year 2005. For the purposes of payment of Court Fees in paragraph 8 of the plaint it was contended that the suit was valued at Rs.

40,000/- for possession and Rs. 7,000/- for damages and the respondent being a member of the weaker section of society, was entitled to the exemption from payment of Court Fees in view of the Notification of the State Government dated 1-4-1983.

2. On presentation of the plaint, the same was registered as Miscellaneous Judicial Case and an enquiry was conducted by the Court whether the respondent was entitled to grant of any exemption from payment of Court Fees or not. The notices were issued to the competent authorities with respect to submitting a report as also the petitioners herein who were defendants before the Civil Court. The respondent submitted his evidence, the proof of income as on the date of presenting the plaint and demonstrated that his total income on the date of presentation of the suit was not more than six thousand rupees per annum from all sources. The statements of witnesses were recorded and the enquiry was conducted when after such prolonged proceedings, an objection was filed by the petitioners herein u/s 151 of CPC raising contentions that the proceedings were required to be done in the manner indicated under Order 33, Rules 1 and 2 of CPC for examining whether the respondent was an indigent person and was not required to pay any Court Fees, but the proceedings were not done in the said manner. A reply to the said objection was filed by the respondent and since the said application has been rejected by the impugned order dated 24-7-2012, the present writ petition is required to be filed under Article 227 of the Constitution of India.

3. It is, vehemently, contended by learned counsel for petitioners that in fact the respondent was claiming exemption, in his capacity as an indigent person whose income was not more than six thousand rupees per annum and, therefore, he was required to move an application independently under Order 33, Rules 1 and 2 of Civil Procedure Code, seeking permission to sue as an indigent person. No such application was made and, therefore, it was not proper for the Court below to conduct an enquiry with respect to the financial status of the respondent. The entire proceedings done in this respect are void ab-initio and against the procedure laid down in the Civil Procedure Code. When the objection was raised in this respect, the same has been rejected without looking to the law laid down by the Courts, therefore, the order impugned is bad in law. In fact, the suit as presented by the respondent is liable to be dismissed.

4. Per contra, it is contended by learned counsel for the respondent that the respondent was not seeking any leave to file a suit as an indigent person. On the other hand, he was claiming exemption from payment of Court Fees in terms of the Notification issued by the State Government in exercise of power u/s 35 of the Court Fees Act, 1870. Thus, it is contended that the procedure as laid down under Order 33 of CPC was not attracted at all. It was not necessary for the respondent to move an independent application seeking exemption as nothing is prescribed in this respect either in the Court Fees Act or under the Civil Procedure Code, or even in the

Notification so issued by the State Government, therefore, if before registration of the plaint as a suit, the particular claim of exemption from payment of Court Fees is being enquired by the trial Court, by registering the plaint as Miscellaneous Judicial Case, no wrong was committed. Further for almost 8 years period, the petitioners though were aware of such proceedings have never raised any objection and only when after receiving the reports from all authorities, after examining the evidence of the parties, the Court has fixed the case for final hearing in the matter of grant of exemption from payment of Court Fees, such an objection was raised. The objection having been considered and rejected in appropriate manner, the order passed by the Court below is required to be upheld and this petition is liable to be dismissed.

5. Heard learned counsel for the parties at length and perused the record.

6. After hearing learned counsel for the parties, this Court is of the considered opinion that such an objection raised by the petitioners was rightly rejected by the Court below. Firstly, the respondent was not seeking permission to sue as an indigent person as prescribed under Order 33, Rule 1 of Civil Procedure Code. Had it been a case that the respondent claiming himself to be an indigent person sought permission of the Court to sue as an indigent person, the respondent was required to move the application in accordance to the provisions of Order 33 of Civil Procedure Code. On the other hand, the respondent was claiming benefit of exemption granted by the State Government from payment of Court Fees. The State Government in exercise of its power u/s 35 of the Court Fees Act issued a Notification on 1-4-1983, which reads thus:--

Notification dated 1-4-1983.--Notification No. F. 9.83-b-XXI, dated 1-4-1983-Published in M.P. Rajpatra (Asadharan) dated 1-4-1983, p. 1068.--

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.

7. If a suit is filed by a person of the categories mentioned in the Notification for the relief within the Articles mentioned in the Notification such person is exempted from payment of Court Fees. The said person is required to present a plaint by making such a declaration in the plaint itself with respect to grant of exemption. The Notification itself exempts such category of persons from payment of Court-fees. The only thing required to be examined was whether the respondent falls within the categories mentioned in the said Notification and whether the suit filed by him falls within the Article for which exemption from payment of Court Fees is granted by the State Government. At the same time, it was to be examined whether the respondent/plaintiff was having less than six thousand rupees annual income on the date of presentation of the suit or not. There is no provision made under the Court Fees Act for seeking such an exemption by making a separate application. Of course it was a right act on the part of the trial Court to register the plaint of the respondent as a Miscellaneous Judicial Case till an enquiry is completed with respect to the claim of exemption from payment of Court Fees, in terms of the Notification of the State Government. In view of this, there was no need of filing a suit either as an indigent person or along with an application seeking exemption from payment of Court Fees by the respondent. In the plaint averments, these facts the respondent was required to assert in appropriate manner. The respondent has said only this much that he was claiming exemption from payment of Court Fees in view of the Notification dated 1-4-1983, but he has not disclosed as to what would be his category and on which part of claim made in suit, the respondent was claiming exemption from payment of Court Fees. There was nothing indicated in the plaint that the annual income of the respondent, on the date of presentation of the suit, was less than six thousand rupees per annum. This being so, in fact either in the plaint sufficient material should have been indicated by the respondent or an independent application should have been filed seeking exemption from payment of Court Fees.

8. Now apart from the aforesaid, even if any application was made by the respondent and as has been held herein above, independently application was not required to be made if the sufficient facts were pleaded in the plaint, the petitioners

have taken part in the said enquiry which the lower Court has started after registering the plaint of the respondent as Miscellaneous Judicial Case. They cross-examined the witnesses as is clearly indicated in the documents filed along with the return of the respondent. The order sheets placed on record with the return indicate that after registering the plaint as Miscellaneous Judicial Case, the Court issued the notices to the Collector, the State Government and other defendants. The report from the Collector was submitted. The said report was taken note of. Thereafter, a reply was submitted by the petitioners and the case was fixed for hearing objections on the point of payment of Court Fees. The evidence was thereafter recorded and an opportunity to adduce the evidence in rebuttal was granted to the petitioner. The case was thereafter fixed for arguments on several occasions and, ultimately, an application was filed by the petitioners raising objection that in absence of any such application made for grant of exemption from payment of Court Fees, the entire case was liable to be dismissed. These facts indicate that the petitioners were interested in delaying the process of the suit and were not interested to see that issues are properly decided. In case it is found by the Court below that the respondent was not entitled to any exemption, still the plaint was not to be rejected as an opportunity is to be granted to pay ad-valorem Court Fees and then to register the suit in regular basis. Still the plaint submitted by the respondent has not been registered as a suit and the enquiry is going on in respect of claim of exemption from payment of Court Fees even after lapse of about 8 years period.

9. Unfortunately, learned counsel for the petitioners has again placed reliance in the cases which are with respect to filing of a suit by an indigent person. In case of [Pinku Trading Corpn. Ltd. Vs. Bank of Baroda and Others](#), and in the case of [Doddananjappa and Others Vs. The Sub-Registrar and Others](#), , the Court was dealing with the procedure to be adopted while considering an application for grant of permission to sue as an indigent person is made under Order 33, Rule 1 of Civil Procedure Code. As has been referred to herein above, such a submission made by the learned counsel for the petitioners is wholly misconceived as even under the Notification, nothing is said that the exemption would be claimed as an indigent person by any of the specified category of persons if a suit is required to be filed.

10. As the requirement of the enquiry and whether the Notification would give a benefit or not in the matter of grant of exemption from payment of Court Fees is the judicial domain of the Court. For the said purposes, the enquiry is to be conducted in a limited manner. This Court on certain occasions examined such a Notification and has reached to the conclusion that the Court is required to see whether the exemption is admissible to a particular plaintiff or not, in the matter of payment of Court Fees. This being so, it cannot be said that the Court below has erred in law in rejecting the application made by the petitioners. In view of the above discussions, there is no substance in the writ petition which fails and is hereby dismissed. However, there shall be no order as to costs.