

(1998) 11 BOM CK 0130

Bombay High Court (Aurangabad Bench)

Case No: Civil Revision Application No. 1142 of 1997 in First Appeal ST. No. 19880 of 97

Kestorabai Chaudhari and others

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision: Nov. 24, 1998

Acts Referred:

- Bombay Court Fees Act, 1959 - Section 46, 7(1)
- Civil Procedure Code, 1908 (CPC) - Section 115
- Constitution of India, 1950 - Article 7
- Land Acquisition Act, 1894 - Section 18

Citation: (1999) 3 BomCR 34 : (1999) 2 MhLj 384

Hon'ble Judges: R.J. Kochar, J

Bench: Single Bench

Advocate: R.M. Deshmukh, for the Appellant; R.S. Deshmukh, A.G.P., for the Respondent

Judgement

@JUDGMENTTAG-ORDER

R.J. Kochar, J.

Heard both the learned Advocates for the parties at length.

2. Rule, returnable forthwith by consent of the parties.

3. A cry for gender justice is the subject matter of this civil revision application, which is filed by five female applicants against the State of Maharashtra. The said civil revision application is filed in the First Appeal Stamp No. 19880/97 wherein the Taxing Officer of this Court by his order dated 21-11-1997 refused to register the said first appeal as he found that no Court fees stamp was paid by the said applicants who are the petitioners in the civil revision application. One of the petitioners however, is a male member of the family i.e. the petitioner No. 2. Petitioners have impugned in the present C.R.A. the order passed by the Taxing Officer on 21-11-1997 directing the petitioners to pay the Court fees of Rs. 5,200/- on

the claim of Rs. 74,876/-. The petitioners who are the female petitioners, are aggrieved by the said order of the Taxing Officer and, therefore, they have challenged the said order by way of the present civil revision application.

4. To appreciate the legal contentions of the parties, it is necessary to enumerate briefly the admitted factual matrix of the case. The Land Acquisition Officer had acquired the agricultural land of one Bhagwan Chaudhari (Gat No. 43 - 5 Hectare and 8 Areas). The Land Acquisition Officer had awarded compensation at Rs. 9,000/- per Hectare. The deceased owner of the land Bhagwan Chaudhari was aggrieved by and was not satisfied with the said award. Therefore, the dispute was referred to the C.J.S.D., Amalner who decided the reference by his judgment and order dated 22-4-1997. During the pendency of the reference, the original owner of the acquired land Bhagwan Chaudhari had expired and, therefore, the present petitioners were brought on record in the reference before the Court as his legal heirs and representatives. Since the present petitioners were not satisfied with the judgment and order of the Court, they have filed first appeal before this Court u/s 115 of the Code of Civil Procedure. At this stage, the Taxing Officer steps in and demands from the petitioners the requisite Court stamp fees under the Bombay Court Fees Act, 1959 for the first appeal. Since the petitioners - ladies opposed to pay any Court fees stamp on the ground that they are exempted from the payment of such Court fees, they called upon the Taxing Officer to decide the question and pass an appropriate order which he did on 21-11-1997. The Taxing Officer did not agree with the contentions of the petitioners that they were not required to pay Court fees stamps as they were exempted. According to him, they have to pay such Court fees for filing of the first appeal as per the provisions of section 7(1) of the Bombay Court Fees Act. In the opinion of the Taxing Officer, the petitioners were exempted from paying any Court fees for reference before the Civil Court for determination of compensation u/s 18(2) of the Land Acquisition Act. He however, did not accept their contention that they were exempted from payment of Court fees on the first appeal in the High Court.

5. The learned Advocate for the petitioners has relied on a judgment of the learned Single Judge of this Court in [Smt. Deepa Shashikant Godambe Vs. The State of Maharashtra and Others](#), (A.P. Shah, J.,). The learned Judge referred to the relevant notification dated October 1, 1994 issued by the Government of Maharashtra u/s 46 of the Bombay Court Fees Act, which was meant to promote welfare of the women and held as under:-

"that by Notification dated 1-10-1994 the Government of Maharashtra has remitted 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 Bombay Court Fees Act, to be filed in any Civil, Family or Criminal Courts in respect of cases relating to the aforesaid categories. A suit for specific performance is clearly a suit to obtain substantive relief capable of being valued in

terms of money and is covered by Article 7 of Schedule I to the Act. The plaintiff was entitled to the exemption. Impugned order set aside and trial Court directed to accept plaint without payment of Court fees".

For ready reference, the aforesaid Notification is also reproduced below:-

"REVENUE AND FORESTS DEPARTMENT

Mantralaya, Bombay- 400 032,

dated the 1st October, 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 of 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 and in the name of the Governor of Maharashtra.

HARSHAWARDHAN GAJBHIYE

Deputy Secretary to Government".

6. The learned Advocate for the petitioners has also relied on another judgment of this Court in [Sanjay Mahavirprasad Jain Vs. Mrs. Vrishali Jain](#). In that case also, the exemption from payment of Court fees under the aforesaid notification was sought. The learned Judge has construed the aforesaid notification and has held as under:

"that the grant of exemption from payment of Court fees in the notification dated 1-10-1994 issued u/s 46 of the Bombay Court Fees Act, in respect of cases relating to (a) maintenance; (b) property disputes; (c) violence and (d) divorce, is not limited strictly to the cases of maintenance or cases of property disputes, or cases of violence, or cases of divorce, but such exemption would certainly be available even if the case are "relating to" these aspects. The user of the word "relating to" gives a broad basis to the four subjects mentioned. There is nothing in the meaning of the word violence to suggest violence would be limited only to physical force though

every kind of unlawful physical force would amount to violence. The allegations of mental violence were sufficient to bring the wife's case within the language of the notification. The trial Court was right in granting exemption in payment of Court-Fees for the counter claim".

7. While construing the said notification, the learned Judge has held that the exemption from payment of Court fees was not merely restricted to the topics mentioned in the said notification i.e. (a) maintenance; (b) property disputes; (c) violence and (d) divorce. The learned Judge has observed that it is not restricted only to the said subjects but, the notification specifically says that the exemption is available "in respect of cases relating to" the aforesaid subjects. It is, therefore, clear that the word "relating to" obviously gives broad basis to the four subjects mentioned above. The learned Judge has given a wide and liberal interpretation to the notification as was intended by the Government of Maharashtra.

8. I have also independently applied my mind to the said notification and the words "relating to" which precede the aforesaid four topics enlarge the scope of exemption from payment of Court fees in case of the female litigants. I am in respectful agreement with both the learned Judges who have also taken, according to me, a correct view. To construe the aforesaid notification narrowly, would defeat the very purpose for which it was issued. No pedantic or technical interpretation of the said notification is possible and there is absolutely nothing in the notification to take such a view. On the contrary, by adding the words "relating to", the subjects which follow those words, would leave no manner of doubt that to promote the welfare of the women folk in the State, the hindrance of payment of Court fees is removed. Therefore, it is not possible to accept the contention of the learned Assistant Government Pleader Shri Deshmukh that the first appeal filed by the petitioners is against the amount of compensation and it does not relate to any of the four topics prescribed in the notification. There is an obvious fallacy in this submission of the learned A.G.P. The compensation which is awarded is not for nothing or a charity but, the said compensation was awarded for the property acquired by the State Government. Therefore, the matter definitely, relates to the property which was acquired by the Government of Maharashtra. The petitioners are aggrieved by the amount of compensation for the acquisition of their land and, therefore, the petitioners are entitled to challenge the said decision of the Court by filing the present first appeal u/s 115 of the C.P.C. In my opinion, there is no manner of doubt that the subject matter of the present appeal relates to the property of the petitioners and, therefore, they are entitled to be exempted from payment of Court fees in accordance with the aforesaid notification issued by the Government of Maharashtra. According to me, the Taxing Officer was not right in observing that the notification applied only at the stage of filing reference u/s 18(1) of the Land Acquisition Act and not at the stage of filing the proceedings in the Court. The Taxing Officer has totally misread the notification which is very liberally worded. There is absolutely no restriction reflected in the said notification. Since the State

wanted to promote the welfare of women in the State, the language of the notification is liberally worded. The benefit is given to "women litigants" in cases relating to maintenance, property disputes, violence and divorce. So, all the women litigants are entitled to get the benefit of exemption at any stage of the litigation and in any Court of law. In the last para of the notification, the intendment of the State Government is made crystal clear that "Government of Maharashtra hereby remits the fees payable by the women litigants" on any of the plaints, applications, petitions, memorandum of appeals or any other documents specified in the first and second schedules of the said Act to be filed in any Civil, Family or Criminal Courts in respect of the cases relating to maintenance, property disputes, violence and divorce. The present is the first appeal which is filed by the five women petitioners. Therefore, the women litigants aforesaid are entitled to the exemption from the payment of Court fees on their memorandum of appeal. The State Government never intended that the welfare of the women would be achieved only by restricting the exemption upto a particular stage of litigation and, not thereafter. To construe in the said manner, would be to do violence to the language used in the aforesaid notification. It would further amount to bring about the divorce from the intention of the State Government and the clear language used in the notification.

9. For the aforesaid reasons, I allow the civil revision application and make the rule absolute in terms of prayer Clause (A) and (C) and direct the Deputy Registrar and Taxing Officer to exempt the petitioners from payment of Court fees in the First Appeal Stamp No. 19880 of 1997 dated 21-11-1997. Since the petitioner No. 2 is not entitled to the benefit of the said notification, he may be required to pay proportionate Court fees, in accordance with law. The civil revision application is disposed of with no order as to costs.

10. Application allowed.