

(2004) 04 BOM CK 0135

Bombay High Court

Case No: Writ Petition No. 5389 of 2003

Shri Babu Jaya Yedage, Shri
Jayaram Babu Yedage, Shri
Sakharam Ramchandra Yedage
and Shri Jayaram " Jaywant Sahu
Yedage

APPELLANT

Vs

Shri Kasam Mohammed Patel,
Sou. Khatija Kasam Patel and
Kum. Rizwana Kasam Patel

RESPONDENT

Date of Decision: April 6, 2004

Acts Referred:

- Constitution of India, 1950 - Article 227

Citation: AIR 2004 Bom 321 : (2004) 3 ALLMR 19 : (2004) 4 MhLj 10

Hon'ble Judges: V.C. Daga, J

Bench: Single Bench

Advocate: S.R. Page, for the Appellant; L.S. Gaikwad, for the Respondent

Judgement

V.C. Daga, J.

This petition is directed against the order dated 16th June, 2003 passed by the Civil Judge, Senior Division, karad below Exh.28 in Special Civil Suit No. 463 of 2000 rejecting the application moved by the defendant for direction to the plaintiff to pay necessary court fee on the valuation of the suit claim.

The Facts:

2. The facts in short reveal that the respondents/original plaintiffs have filed Special Civil Suit, claiming compensation to the tune of Rs. 7,50,000/- from the petitioners on the ground that the accidental death of Shakeel Kasam Patel was caused due to the negligence of the petitioners/original defendants, on payment of court fee only on the claim of Rs. 2,50,000/- out of Rs. 7,50,000/- contending that the plaintiff Nos.

2 and 3 being women litigants are exempted from payment of court fee as per notification dated 1st October, 1994. The said suit came to be registered as Special Civil Suit No. 463 of 2000 and allotted to the Court of Civil Judge, Senior Division, Karad.

3. The original defendants/present petitioners on being served with the suit summons filed their written statement, inter alia; denying the entire claim set up by the respondents/original plaintiffs and also moved an application marked as Exh.28 contending therein that plaintiff Nos. 2 and 3, the said women litigants cannot be allowed to claim benefit of the exemption notification dated 1st October, 1994 as the suit of the present nature is not in respect of the cases relating to (a); (b) property dispute; (c) violence and (d) divorce as such they may be directed to pay necessary court fee on the balance amount of claim amounting to Rs. 5,00,000/-. The above application was objected and opposed by original plaintiff Nos. 2 and 3 contending that the notification dated 1st October, 1994 is very much application to their case and they are very much within the net of the exemption notification. The said application was heard by the Civil Judge, Senior Division, Karad, who was pleased to hold that in view of notification dated 1st October, 1994, plaintiff Nos. 2 and 3 were exempted from payment of court fee, consequently, application moved by the defendant seeking direction to plaintiff Nos. 2 and 3 to make payment of court fee came to be rejected by impugned order dated 16th June, 2003. The above order is a subject matter of challenge in this petition filed under Article 227 of the Constitution of India.

The Submissions:

4. Sri S.R. Page, learned counsel appearing for the petitioners contends that the notification dated 1st October, 1994 does not cover suit of the present nature. In other words, he submits that the present suit is not covered by any of the clauses of the notification. He further submits that the trial Court could not have rejected the said application in view of the law settled by this Court in various cases including that of [Smt. Ashabai Shiral and anothers Vs. The Executive Engineer, M.S.E.B. \(O and M\) Division](#), ; [Mrs. Jyoti S. Doshi Vs. M/s Hindustan Hosiery Mills](#), and *Shri Bipin Dalpatbhai Shah v. Vasantben Rasilal Zaveri*, 2001 (4) ALL MR 1. Mr. Page, thus, prayed for setting aside the impugned order dated 16th June, 2003 and suitable directions directing plaintiff Nos. 2 and 3 to pay requisite court fee.

5. Mr. Gaikwad, learned counsel appearing for the respondents/original plaintiffs tried to support the impugned order but found it difficult to take his submissions to logical end in view of various adverse judgments holding the field. He, faced with the series of adverse judgments of this Court found it difficult to support the impugned order. He, thus, came out with a purshis dated 5th April, 2004, which is taken on record and marked "X" for identification; wherein he urged that plaintiff Nos. 2 and 3, not being in a position to pay the court fee as required under the Bombay Court Fees Act, 1959, for want of movable and immovable property or any

source of income, be permitted to move an application before the trial Court for considering them as indigent persons.

Consideration:

6. At this juncture, without referring to the various cases cited and referred to hereinabove, suffice it to say that in the case of Ashabai (supra), learned single Judge of this Court had taken a view that in a suit filed by a woman litigant, claiming compensation for death of her husband due to electric shock, was not eligible to claim exemption from payment of court fee since it was not a property dispute. The Court further held that notification dated 1st October, 1994 did not include claims arising out of tortious liability. This decision was rendered on 29th July, 1998. The present suit appears to have been filed on 13th March, 2000. In the teeth of the law laid down by this Court and reiterated from time to time through various judgments cited herein, it is not difficult to reach to the conclusion that plaintiff Nos. 2 and 3 are liable to pay court fee as per the Bombay Court Fees Act. In this view of the matter, the impugned order is liable to be quashed and set aside.

7. It is, thus, held and declared that plaintiff Nos. 2 and 3 are not entitled to exemption under notification dated 1st October, 1994. They shall be liable to pay court fee as per the Bombay Court Fees Act, 1959. However, in view of the prayer made, it is clarified that plaintiff Nos. 2 and 3 (respondent Nos. 2 and 3 herein) shall be at liberty to file an application to the trial Court for being considered as indigent persons under the relevant provisions of the C.P.C. and, if such application is moved by plaintiff Nos. 2 and 3, the trial Court shall consider their request and if they are found to be indigent persons, benefit of the said provision should be given to them irrespective of the fact that application is filed long after the filing of the suit. As the suit is already presented to the trial Court, question of limitation would not come in the way of considering that request of the plaintiff Nos. 2 and 3.

8. In view of the above, the learned trial Judge is directed not to call upon plaintiff Nos. 2 and 3 to deposit ad valorem court fee on the suit claim till the application is filed by them for being considered as indigent persons under the provisions of C.P.C. Respondent Nos. 2 and 3 (original plaintiff Nos. 2 and 3) are directed to move necessary application before the trial Court within four weeks from today.

9. With this direction to the trial Judge to consider the request of the original plaintiff Nos. 2 and 3 on the ground that they are indigent persons and to register the suit if they can establish that they are indigent persons, petition is allowed. Rule is made absolute in terms of this order with no order as to costs.