

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

LETTERS PATENT APPEAL STAMP NO. 32041 OF 2011
IN
WRIT PETITION NO. 4959 OF 2011

Zahrunnisa Begum W/o. Bashir Ahmed. ..Appellant.

Versus

Abdul Hakim S/o Abdul Jalil & Others. .. Respondents.

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Mr. P.N.Kalani and Mr. D.V. Katneshwarkar, Advocate for Appellant;

Mr. H.I. Pathan, Advocate for Respondent No.1.

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CORAM : R.M.BORDE AND P.R.BORA, JJ.

Date : 07th July, 2015

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Per Court:-

1) Order passed by the learned Single Judge in Writ Petition No.4959/2011 on 21st October, 2011 is questioned in the present Appeal. The order dated 28.04.2011 passed by the 2nd Joint Civil Judge, Senior Division, Parbhani in Special Civil Suit No. 7/2010 was assailed in the aforesaid Writ Petition. The question before the Civil court was whether the plaintiff in the aforesaid Special Civil Suit No.7/2010 i.e. present Appellant being a woman litigant, is exempted from the payment of court fees as per Maharashtra Government Notification dated 1st October, 1994. The learned Civil Judge held that, being a woman the plaintiff was exempted from from paying the court fees.

2) The aforesaid Special Civil Suit was filed by the plaintiff i.e. the present Petitioner claiming damages of Rs.5,00,000/- from the defendants therein alleging violence on their part in subjecting her to Civil and Revenue litigations. The learned Single Judge allowed the Writ Petition holding that, the Civil Suit and the revenue proceeding filed against the plaintiff may not come within the ambit and purview of term "related to violence" and consequently held the plaintiff liable to pay the court fees on the amount of damages claimed by her.

3) In the present appeal, it is the contention of the appellant that, the learned Single Judge failed in properly appreciating the impetus of the two judgments relied upon by the appellant first in the case of **Usha Badri Poonawala Vs. K. Kurian Babu reported in 2002 (3) Bom. C.R.215** and another in the case of **Sanjay Mahavirprasad Jain Vs. Mrs. Virshali W/o Sanjay Jain reported in 1997(4) Bom.C.R. 299**. Placing the reliance on the judgments of the Hon'ble Apex Court in the case of **Sri Rathnavarmaraja Vs. Smt. Vimla reported in AIR 1961 Supreme Court 1299** and in the case of **A.Nawab John & Ors. Vs. V.N. Subramaniam reported in 2012 (4) ALL MR 481 (SC)** it is also contended that, the determination of the court fees is a matter between the Plaintiff and the Court and Defendant has no right to challenge the decision of the trial court.

4) Shri Pathan, learned Counsel appearing for the Respondents has supported the order passed by the learned Single Judge.

5) We have carefully gone through the order passed by the learned Single Judge as well as the documents filed on record, which include the suit plaint in the Special Civil Suit No.7/2010. On perusal of the averments in the suit plaint, it does not appear to us that, any case is made out by the plaintiff for claiming exemption in the court fees as per Maharashtra Government Notification dated 01.10.1994. In the aforesaid Civil Suit, the damages are claimed by the plaintiff alleging that, she suffered mental torture and agony on account of the the Civil Suit and the Revenue proceedings initiated against her by the Defendants. It is evident as has been observed by the learned Single Judge that, the plaintiff has filed the aforesaid suit claiming damages alleging malicious civil prosecution. Considering the contents in the suit plaint, even if the term violence is interpreted liberally still the case of the plaintiff cannot come within the ambit and purview the term 'relating to violence' as has been held by the learned Single Judge.

6) The learned Single Judge has rightly distinguished the judgments relied upon by the present appellant in the case of **Usha Badriprasad Poonawala** and **Sanjay Mahavirprasad Jain**. In the case of Usha Badriprasad Poonawala the suit was filed for damages on account of defamation caused to the plaintiff in a communication by the defendant therein addressed to a fellow member of the Rotary Club. As rightly observed by the learned Single Judge, in that context, it was held that the suit for damages on account of defamation would be included in term violence. In the matter of **Sanjay Mavirprasad Jain** the suit was filed for damages on account of loss of reputation by publishing false advertisement in the news paper and the plaintiff woman was exposed to mental torture, her

reputation was ruined and for that she had claimed damages. In the circumstances, it was held that the action would amount to 'violence'. It is quite evident that, the observations made and conclusions drawn in both the aforesaid cases may not apply to the facts of the present case. We therefore, do not see any illegality or any perversity in the orders passed by the learned Single Judge.

7) The other objection raised by the appellant that, the decision of the trial court on the point of court fees was final since that was the matter between the plaintiff and the Court, is also liable to be rejected. The judgments relied upon by the learned Counsel for the appellant in support of his said arguments pertain to the determination of the court fees by the trial court and its sufficiency or insufficiency under the provisions of Section 12 of the Court fees Act. However, in the present case, the issue involved was whether the plaintiff can be exempted from the payment of court fees as per the Maharashtra Government Notification dated 01.10.1994. As such the decision of the trial court on the issue was liable to be challenged.

8) For the reasons stated above, the Letters Patent Appeal stands dismissed.

(P.R.BORA)
JUDGE

(R.M.BORDE)
JUDGE

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