IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9583 OF 2014

Vasanti Ashok Halab and others … Petitioners
Vs.
The State of Maharashtra … Respondent

Mr. P. D. Pise for Petitioners.
Ms M. S. Bane, AGP for Respondent-State.

CORAM : R. G. KETKAR, J.
DATE : 2ND JULY, 2015

P.C. :

Heard Mr. Pise, learned Counsel for petitioners and Ms Bane, learned AGP for respondent - State at length.

2. Rule. Ms Bane waives service for respondent. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

3. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the order dated 29.03.2014 passed by the learned Civil Judge, Senior Division, Sangli below exhibit-1 in Miscellaneous Civil Application No. 123 of 2011 to the extent of directing the petitioners to withdraw the monetary benefits on payment of requisite Court fee. Petitioners submit that they are exempted from payment of Court fee in view of the Notifications dated 01.10.1994 and 23.03.2000 as interpreted by this Court in the case of *Bipin Dalpatbhai Shah Vs. Vasantben Rasilal Zaveri*, **2001 (4) ALL MR 1**.

4. Mr. Pise submitted that petitioners filed application under Section 372 of the Indian Succession Act, 1925 (for short 'Act'). Petitioners

sought succession certificate in their favour as legal heirs of the deceased Ashok Gangaram Halab and for declaration that they are entitled to receive all the benefits including salary to the tune of Rs.5,96,777/-, which are due from Vasantdada Spinning Mill Limited, Sangli (for short 'society'). The learned trial Judge ordered issuance of succession certificate as despite public notice, nobody opposed the application. The learned trial Judge held that petitioners are entitled to receive monetary benefits to the tune of Rs.5,96,777/- due from society "**on payment of requisite Court fee**".

5. He submitted that in the case of **Bipin Dalpatbhai Shah** (*supra*), the learned Single Judge of this Court has held in paragraph 13 as under:

> "13. Coming to the fourth petition i.e. Test. Petition No.278/2001, it is filed by the petitioner widow for succession certificate to claim certain amounts payable to the legal heirs of her deceased husband on account of his death. The petition is filed on 11th December, 2000 i.e. after the issuance of clarificatory notification dated 23rd March, 2000. Shri Saxena, the learned Advocate for the petitioner initially tried to convince me that a claim for succession certificate is covered by "property disputes" within the meaning of both the notifications. However, it is not possible to hold that such a petition raises or concerns a dispute relating to the matrimonial matters. As pointed out by Ms Kalyanram, the learned AGP it is the claim to the estate of the deceased. Shri Saxena then submitted that such a petition would fall under the category of cases relating to the maintenance as contemplated by the notification dated 1st October, 1994. He pointed out that the deceased is survived by his widow (petitioner), two sons and a daughter and that the amounts which are payable on account of the death of the deceased are really required for the maintenance of the petitioner as well as three children. I have given an anxious consideration to the submission made by Shri Saxena and I am of the opinion that the notification dated 1st October, 1994 needs to be interpreted in a liberal manner so as to extend the benefit to the woman litigants contemplated under the "Policy for Women". I have already referred to the decisions of K.G.Shah J. and Gokhale J. and Nijjar J. and I am inclined to follow the view that the women petitioner will not be required to pay the court fee only the extent they get benefit in the estate. This being the position, the petitioner in the instant case can claim exemption from payment of court fee for herself

> and her minor daughter Jyoti in so far as their shares in the amount of Rs.3,83,917/- payable on the death of the deceased is concerned. However, so far as her two sons namely Nitin and Nagesh are concerned, the court fee will have to be paid on their shares on the said amount."

6. Ms Bane submits that by Notifications, only females are exempted from payment of Court fee. In other words, petitioner No.3 will have to pay Court fee on his share. I find substance in the submission of Ms Bane.

7. In view thereof, the impugned order deserves to be modified. It is declared that petitioners No.1 and 2 are exempted from payment of Court fee on their shares. However, petitioner No.3 will have to pay Court fee in respect of his share. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)

Minal Parab