

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No.61 of 2016**

- Smt. Devika Joshi w/o Deepak Joshi, Aged about 25 years, C/o Pt. Chhagan Sharma, Birjhapur (Beside Shani Temple) Tahsil Dhamdha, Dist.-Durg (C.G.)

---- Appellant**Versus**

- Shri Deepak Joshi S/o Shri Manohar Lal Joshi, Aged about 29 years, R/o Opposite Shani Temple, Shanipet Jalgaon, Tahsil & Dist. Jalgaon (Khandesh) Maharashtra

---- Respondent

For the Appellant : Shri T.K. Jha, Advocate for the appellant.

For the Respondent : None appears.

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Chandra Bhushan Bajpai

Per Prashant Kumar Mishra, J**22/07/2016**

1. Present is an appeal under Section 19(1) of the Family Courts Act, 1984 assailing the legality and validity of the order passed by the Family Court directing the appellant/wife to amend the application to make it a plaint; value the *stridhan* item for the purpose of pecuniary jurisdiction and Court fee, thereafter pay the requisite Court fee in terms of Section 7 of the Court Fees Act, 1870.
2. The facts of the case, in brief, are that the appellant preferred an application before the Family Court under Section 7 Explanation (c) of the Family Courts Act, 1984, for return of *stridhan* properties on averment that the parties were married according to Hindu law on 15.07.2013 at village Birjhapur, District-Durg, however, on account of dispute between the

parties, she had to prefer an application under Section 125 of Cr.P.C. for grant of maintenance. The respondent/non-applicant is not returning the *stridhan* properties as detailed in Para-6 of the application, therefore, the respondent/non-applicant be directed to return the properties.

3. The application was presented on 21.12.2015, however, it could not be taken up by the Court as the Presiding Officer was on leave. It was posted for hearing on 07.01.2016 in the absence of the appellant. The Family Court proceeded to examine the record along with report of the reader and concluded on the strength of the law laid down by this Court in the matter of **Neelkanth Jaiswal Vs Manjulata Jaiswal, D.M.C., 2011, Page No.651** that the appellant is required to amend the petition to make it a plaint and thereafter value the items for the purposes of pecuniary jurisdiction, Court fees and pay requisite *ad valorem* Court fee.
4. Assailing the order, Shri T.K. Jha, learned counsel for the appellant would argue that a petition under Section 7, Explanation (c) of the Family Courts Act, 1984, is not in the nature of a suit, therefore, the application is not required to be presented as a plaint. He would next submit that the Court below has committed a clear error of law in directing payment of *ad valorem* Court fee on the *stridhan* properties.
5. Since the opposite party was not noticed by the Family Court and the order has been passed at the stage of registration of the petition, we proceeded to dispose of the appeal at the admission stage.
6. Section 7 of the Family Courts Act, 1984, speaks about jurisdiction of the Family Court. It says that a Family Court shall have and exercise all the jurisdiction exercisable by any District Court or any sub-ordinate Civil Court

under any law for the time being in force in respect of suits and proceedings of the nature referred to in the explanation, and be deemed, for the purpose of exercising such jurisdiction under such law, to be a District Court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends. Explanation to Sub-section 1 of Section 7 particularly explanation(c) thereof provides that the suits or proceedings referred to in Sub-section 1 are the suits and proceedings between the parties to a marriage with respect to the property of the parties or of either of them. Thus, the Family Court has jurisdiction to decide a dispute between the parties to a marriage concerning their property qua the marriage.

7. The subject application though captioned to be an application under Section 7(1) Explanation (c) of the Family Courts Act, 1984, in essence it is a petition under Section 27 of the Hindu Marriage Act, 1955 (for short 'the Act, 1955,'), for return of the *stridhan*. Though Section 27 is couched in the language as if it can only be moved in a pending proceeding, however, as observed by the Supreme Court in **Pratibha Rani Versus Suraj Kumar and another, 1985 (2) SCC 370**, Section 7 provides alternative remedy to the wife to recover the *stridhan* by a properly constituted suit. An independent suit under Section 27 is, thus, maintainable for which the Family Court has been conferred jurisdiction under Section 7 (1) Explanation (c).
8. The first question arising for determination is whether the application under Section 7(1) Explanation (c) of the Family Courts Act, 1984, is to be presented in the form an application or it is required to be presented as plaint, as directed by the Family Court in the impugned order.

9. The issue need not detain this Court for too long in view of the clear statutory presumption as provided under Section 20 of the Act, 1955, which states that every petition presented under the Act, 1955, shall state as distinctly as the nature of the case permits the facts on which the claim to relief is founded and except in a petition under Section 11, shall also state that there is no collusion between the petitioner and the other party to the marriage. It is further provided that the statements contained in every petition under this Act shall be verified by the petitioner or some other competent person in the manner required by law for the verification of *plaints*, and may, at the hearing, be referred to as evidence. The mandate is thus, ingrained in the statute itself that a petition under Section 7 (1), Explanation (c) of the Family Courts Act, 1984, read with Section 27 of the Act, 1955, is required to be presented in form of *plaint* failing which the mandatory pre-requisites under Section 20 of the Act, 1955, would be missing and the application itself would entail outright dismissal at the threshold. We are, therefore, of the view that the family Court has not committed any error in directing the appellant to present/amend the application in form of a *plaint*.

10. The second aspect of the matter is about valuation of the suit for the purposes of pecuniary jurisdiction and Court fees. Valuation of a suit for the purposes of pecuniary jurisdiction is made or is required to be made when the jurisdiction of the Court is divided or distributed on the basis of valuation of the suit, however, in the case at hand, no other Court except the Family Court has jurisdiction to entertain any claim in relation to *stridhan* because Section 8 (a) of the Act, 1984 excludes the jurisdiction of all other Courts for the matters provided in sub-Section (1) of Section 7,

therefore, the valuation of the suit for return of *stridhan* has no bearing on the jurisdiction. It would be different if the appellant is required to mention the value of the property which is sought to be repossessed by the wife, however, it cannot be termed as valuation for pecuniary jurisdiction.

11. The next limb of the second question is about the requirement of payment of Court fee in terms of Section 7 of the Court Fees Act, 1870, as directed by the trial Court. Section 6 of the Court Fees Act, 1870, provides for fees on documents filed, etc. in Mufassil Courts or in public offices providing that except in the Court herein before mentioned, no document of any of the kinds specified as chargeable in the first or second schedule to this Act annexed shall be filed, exhibited or recorded before any Court of Justice or shall be received by any public officer, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document. Section 7 provides for computation of fee payable in certain suits like:-

- for money;
- for maintenance and annuities;
- for other movable property having a market-value;
- for movable property of no market-value;
- to enforce right to share in joint family property;
- for declaratory decree and consequential relief ;
- for an injunction;
- for easements;
- for accounts;
- for possession of land, houses and gardens;
- to enforce a right of pre-emption;
- for interest of assignee of land revenue;
- to set aside an attachment;
- to redeem;
- to foreclose;
- for specific performance;
- between landlord and tenant.

Thus, it is apparent that Section 7 of the Court Fees Act, 1870, nowhere provides for computation of fee payable for any matrimonial suit or a suit or proceedings contemplated under Section 7 of the Family Courts Act. The

question, therefore, would be as to what would be the amount of Court fee payable in respect of a suit under Section 7 (1) Explanation (c) read with Section 27 of the Act, 1955. The answer we may find in the second schedule of the Court Fees Act, 1870, where the amount of fixed Court fee in application/petition/suits are provided. Entry 20-A of the second schedule as amended in the State of Madhya Pradesh (now State of Chhattisgarh) provides for fixed Court fee of Rs.40/- to be affixed in a petition or memorandum of appeal under the Special Marriage Act, 1954 or the Act, 1955. It is thus, fixed Court fee of Rs.40/- which is payable in all suits presented before the Family Court in relation to proceedings under the Act, 1955.

12. It may also be considered that if the present is a petition under Section 7 (1) Explanation (c) of the Act, 1984 whether it can be treated as a plaint under Section 20 of the Act, 1955, however, as discussed above, there being no provision for payment of Court fee for the suits or proceedings for which Family Court has been conferred jurisdiction under Section 7 and the issue of payment of Court fee has to be ascertained and cannot be left in vacuum, this Court has to fall back on the substantive law which confers right on the wife or any party to the marriage to maintain a suit or proceeding under the matrimonial law which governs their relationship. It is for this reason, we have drawn support from the language of Section 20 of the Act, 1955 and Entry 20-A of the IInd schedule of the Court Fee Act to settle the issue about payment of Court fee. If we consider it from a different perspective; when the family Court itself directs the appellant to present the application in form of plaint which is the requirement under Section 20 of the Act, 1955 then if for one reason, the requirement under the Act, 1955, is treated mandatory, for the other purposes also i.e. for payment of Court fee, the provision applicable in

relation to a petition under the Act, 1955 by way of entry 20-A second schedule, Court Fees Act, 1870, would also be applicable. We, thus, conclude that Court fee of Rs.40/- is payable on the subject application and the plaintiff is neither obliged to mention the pecuniary valuation nor pay *ad volerum* Court fee on the value of the *stridhan* sought to be repossessed.

13. The appeal, thus, stands partly allowed.

14. Let copy of this judgment be circulated to all the Family Courts and the District Judges in the State.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Chandra Bhushan Bajpai)
Judge

Nisha