

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Writ Petition No.271 of 2016

Harsha Pradeep Patil.

.. Petitioner.

Versus

Sayankabai Ragho Patil & Others.

.. Respondents.

Shri. M.M. Bhokarikar, Advocate, for petitioner.

Shri. P.P. Dhorde & Smt. V.P. Dhorde, Advocates, for
respondent Nos.1 to 5.

CORAM: T.V. NALAWADE, J.

DATE : 13 OCTOBER 2016

ORDER:

1) The petition is filed to challenge the order made on Exhibit 43 from Regular Civil Suit No.181/2012 which is pending in the Court of the Civil Judge, Junior Division, Jalgaon. The said suit is filed by the present petitioner for relief of partition of joint Hindu family property against brother-in-law and others. Husband of the petitioner is dead and so she has claimed the share of her husband from the joint Hindu family property. The

application at Exhibit 43 was filed by the defendants for rejection of plaint on the ground that present petitioner, plaintiff has not paid requisite court fees on the claim. The petitioner has not paid court fees as she is claiming that she is exempted from the payment of Court fees in view of the Government Notifications issued in this regard. The trial Court has held that the subject matter of the suit, the relief of partition, is not covered by the said Government Notifications and so the application is allowed and the petitioner is directed to pay court fees. Both the sides are heard.

2) Both the sides placed reliance on some reported cases in which there is interpretation of the two notifications issued by the State Government. The notifications are as under :-

"REVENUE AND FORESTS DEPARTMENT

Mantralaya, Bombay 400032, dated 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 same 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 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 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."

"REVENUE AND FORESTS DEPARTMENT

Mantralaya, Bombay 400032, dated 23rd March, 2000

Bombay Court Fees Act, 1959.

No. S. 30/2000/673/CR-199/M-1 - 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 amends the Government Notification, Revenue and Forests Department No. STP.1094/CR-859/M-1 dated the 1st October, 1994, as follows:-

In the said Notification, the following Explanation shall be added at the end, namely:-

“Explanation - The expression “property disputes” shall mean property disputes arising out of and concerning matrimonial matters.”

By order and in the name of the Governor of Maharashtra.

P.G. CHHATRE
Deputy Secretary to Government.”

3) In the case reported as **AIR 2000 Bombay 474 (Mrs. Jyoti S Doshi v. M/s. Hindustan Hosiery Mills)** decided by the learned Single Judge of this Court on 2-5-2000 both these notifications were considered. The said case was for recovery of money given by the plaintiff, woman to a company as loan and the benefit of the notifications issued by the Government was claimed by her. Learned Single Judge considered the following point:-

"Whether suits filed by women litigants as Directors of company or as Partners of firm will be eligible to get exemption of court fees in the pending matters due to the Government Notifications ?"

4) The learned Single Judge held that both the notifications of the years 1994 and 2000 were not for the benefit of the women who had filed matters in the capacity of Director or as a Partner. It was held that if the

matter was filed in private capacity benefit was available. It was further held that benefit can be given in the pending matters to the women litigants who had filed matters like probate petitions and succession certificate applications. Subsequently, similar view was taken by the other learned Single Judge of this Court in Writ Petition No.6071 of 2006 decided at Principal Seat on 12-10-2007 (**Manoramabai vs. Arun**). The learned Single Judge in the matter held that the plaintiff, woman who had filed the suit for declaration of her title and injunction against her son was entitled to get benefit of the notification. The learned Single Judge referred the case of **Smt. Ramila vs. Mr. Harsha** reported as **2004(5) Mh.L.J. 506**. In that case this Court, the learned Single Judge, had held that benefit of the notifications is available in partition suits filed on the basis of rights which had accrued due to law of succession.

5) It appears that in view of the case decided in the year 2000 by the learned Single Judge (cited supra) and as there was difference of opinion of other learned Single Judge the matter of application of the notifications

to the probate proceeding was referred to larger Bench. The Division Bench, as larger Bench, decided the point in the case reported as **2008(3) AIR Bom R 820 (Re : Girish Kanaiyalal Munshi)**. The Division Bench considered the following point :-

"Whether a woman litigant who files a petition for grant of Probate of a Will is exempted from payment of Court Fees as per Government Notification dated 1st October, 1994 duly amended by an explanatory notification dated 23rd March 2000 ?"

6) In the aforesaid case, the Division Bench considered almost all the cases decided by the learned Single Judges of this Court in the past, including the matters mentioned above and considered the view expressed by the learned Single Judge of this Court who had referred the matter to larger Bench. The Division Bench accepted the views of the learned Single Judge who had made request of reference and held that the petition for probate of will is neither a petition in relation to any property in dispute nor it arises out of or concerning a matrimonial matter. When the larger Bench gave aforesaid decision and held that benefit was not available, following observations made at paragraph 26-D.

"**26.** After hearing the learned Senior Counsel Dr. Tulzapurkar and the learned Advocate General and in light of the extensive arguments forwarded on behalf of the petitioner and the State, the various judgments of this Court regarding the exemption from payment of Court fees by women litigants and several other relevant judgments of this Court and the Hon'ble Supreme Court, the following issues can be clearly outlined.

A)

B)

C)

D) Lastly, the words 'property dispute arising out of or concerning matrimonial matters' should be given their plain and simple meaning, that is, a dispute arising between parties to a marriage, (attention may be brought to the reference made by Deshmukh J. to the Family Courts Act sub-section (1) of Section 7, to elucidate the meaning of the term 'matrimonial matters') and should therefore exclude testamentary petitions wherein not only is there an absence of dispute, other than in cases when somebody files a caveat, it is not a matter between two parties to a marriage."

7) In the case reported as **2013(7) ALL MR 138 (Shrinivas vs. Savitribai)** learned Single Judge used the observations made by the Division Bench at paragraph 26-D, quoted above, and held that woman litigant, who has filed suit for partition against her in-laws after the death of her husband, is not entitled to exemption of Court fees under the aforesaid Government Notifications.

8) This Court would like to use the observations made by the Division Bench, quoted above, and also the interpretation of the decision made by the learned Single Judge in the case of Shrinivas (cited supra). This Court holds that when suit is filed by woman litigant for relief of partition against her in laws, she cannot get the benefit of the aforesaid Government Notifications as the matter is not between the woman litigant and her husband and such matters are excluded due to explanation added to the Notification in the year 2000. So, this Court holds that no interference is warranted in the order made by the learned Judge of the trial Court. In the result, the petition stands dismissed.

Sd/-
(T.V. NALAWADE, J.)

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