

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
PUBLIC INTEREST LITIGATION NO. 72 OF 2016

Majlis Manch
through its Director Adv. Flavia Agnes .. Petitioner
V/s.
Registrar, Family Court at Bandra
and Ors. .. Respondents

Ms. Flavia Agnes, Advocate – the petitioner in person.
Ms. Neha Bhide for respondent no.1.

**CORAM: DR. MANJULA CHELLUR, CJ. &
M.S. SONAK, J.**

DATE : 25th AUGUST 2016

P.C.:

The petitioner claiming to be an NGO providing legal assistance and representation to women in the Family Courts at Bandra, Mumbai since the date of its inception, is before us contending that the benefit extended to women under the heading “Welfare of Women” in the Notification dated 1st October 1994 issued by Government of Maharashtra, which exempts women litigants from tendering court fee in cases pertaining to maintenance, property rights, violence and divorce, is taken away by the guidelines issued by Family Courts in Bandra wherein clause 7 indicates “*for every male child court fee is essential*”. This interpretation of the

Family Court is causing severe hardship to women litigants who approach the Courts with applications claiming maintenance for their male children.

2. According to the petitioner, payment of court fee, so far as a mother claiming maintenance for her minor male child, is discriminatory and burdensome since the case has to be prosecuted is by a woman / mother of the minor child and she has to bear the expenses irrespective of whether the child is a male child or a female child.

3. The petitioner has sought for the following prayer:

“(a) That this Hon'ble Court be pleased to issue a writ of Mandamus or a writ in the nature of mandamus or any other appropriate writ directing the Respondent to exempt women litigants from court fees when they file for maintenance in civil proceedings on behalf of their minor sons in accordance with notification dated 1st October 1994 issued by the Government of Maharashtra.”

4. The petitioner has relied upon two judgments of this High Court, viz. ***Vidya Shivajirao Patil, 1999 (3) Bom.C.R. 787*** and ***Mrs. Jyoti S. Doshi vs. M/s Hindustan Hosiery Mills, AIR 2000 Bombay 474.***

5. We have taken into consideration the averments in the petition, arguments of learned counsel for the petitioner and so also the principles laid down in the above two decisions. We notice that the petitioner, an NGO, has represented more than 50,000 women within State of Maharashtra in various Courts through their Majlis Legal Centres. According to the petitioner, the limited and faulty interpretation of the Family Court guidelines is causing great hardship to women litigants. No doubt, in matrimonial disputes and litigations filed on behalf of wife either as a petitioner or as a respondent, many a time the wife seeks maintenance both as final remedy and also interim relief. This could be maintenance of the wife and so also maintenance for her minor children including a minor male child.

6. If she were to claim maintenance for her minor child, she is required to pay court fee on the quantum of maintenance she seeks for her minor child. The very fact that they approach the Court seeking maintenance is for the reason that they are not capable of maintaining their minor child and the duty is cast on the husband to pay maintenance to the minor child. Irrespective of whether it is a male child or a female child as long as they are within the age group which entitles them to seek maintenance, they are entitled to such maintenance either from the father or from the mother, as the case may be. The wife, who files matrimonial dispute either against her husband or the family of the husband, may be

under certain circumstances, can seek maintenance. If she were to to pay court fee based on the quantum of maintenance she seeks, she may be eventually compelled to withdraw the prayer for maintenance which results in not only injustice to male minor child but also to woman as a mother who is not in a position to maintain her child. The interpretation of clause 7 of the guidelines in issue if understood in its narrow sense, it would definitely result in the faulty interpretation, that is in general women are exempted from payment of court fee relating to cases of maintenance, property rights, domestic violence, divorce, etc., but an exception is carved out when she seeks maintenance on behalf of her minor male child. The notification has to be clear that even in case of a maintenance petition on behalf of a male child, such exemption is extended to women so far as payment of court fee. In such cases if a minor male child is considered as an entity under the law so as to compel the minor male child not to have the benefit of exemption of court fee, ultimately sufferer would be the mother who is already under difficulties, emotionally and physically, if she were to be compelled to pay the court fee in case she seeks maintenance on behalf of her son (minor).

7. Similarly, this proposition may even lead to multiplicity of proceedings since mother need not pay huge court fee if she were to seek maintenance by initiating proceedings under section 125 of Cr.P.C. Whenever she seeks maintenance for minor male child, she

will approach the concerned Court under section 125 of Cr.PC., but for all other matrimonial disputes she is driven to approach either the Family Court or the Court which has jurisdiction to entertain the matrimonial disputes. This would result in multiplicity of proceedings and more hardship and inconvenience to the litigant mother who has to fight not only matrimonial disputes but also disputes pertaining to maintenance for her children since she has to run to different Courts for different reliefs if she were to seek maintenance for her minor male child. The mother, who seeks maintenance for her minor child, would be unable not only to maintain the child for want of funds on the ground of inability to pay court fee thereby she is put to further mental and physical struggle.

8. Perusal of the question placed before us definitely leads to two categories of maintenance petitions to be filed by mother. One group of petitions would be if she were to claim maintenance for minor female child as well as for herself which could be very well sought in the pending petitions for other reliefs so far as her matrimonial rights. Another group would be the maintenance petitions if she were to claim maintenance for her minor male child. Since the law and other circumstances or situation to be considered by the Court of law, to grant maintenance would be one and the same, both for female minor child and male minor child, we definitely find discrimination in this clause questioned before us.

9. We are of the opinion, so far as payment of court fee is concerned, if the mother were to seek maintenance for her minor male child, the provision in issue cannot have a narrow interpretation. This would expose them to hardship apart from multiplicity of litigation. The obligation of the mother and her love and affection towards the child, including the responsibility of basic needs of the child, i.e. food, clothing and shelter apart from education, whether it is a boy or a girl, there cannot be any distinction. Time and again, Courts have opined that the claim of maintenance on behalf of wife and children has to be as a measure of social justice especially enacted to protect women and children, and this would certainly come within the sweep of Article 15(3) of the Constitution which is once again reinforced as the directive principles of State Policy under Article 39 of the Constitution.

10. Keeping above obligation towards the women, while rendering social justice there has to be a clear distinction in respect of nature of claim which requires extending benefit to women so far as exemption from payment of court fee. Since the exemption to women litigants from payment of court fee is in the arena of social legislation, we are of the opinion that purposive interpretation of the provision has to be made rather than restricting the interpretation by choking its application. There should not be checks and balances with narrow interpretation, which come in the way of extending the benefit to women to get the benefit, either as a legislation or

ordinance or norms or guidelines.

11. We are of the opinion that there has to be exception to clause 7 of the guidelines of the Family Court in question and should be read in to mean that the women are exempted from payment of court fee even in respect of claims on behalf of their male minor children, if it were to be maintenance claim. Accordingly, the notification / norms / guidelines of the Family Court is held to be non-applicable so far as the maintenance claim of the mother on behalf of minor male child.

12. Accordingly, the PIL is disposed of.

(M.S. SONAK, J.)

(CHIEF JUSTICE)