

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL NO. 384 OF 2015
IN
NOTICE OF MOTION NO. 1956 OF 2012
IN
SUIT NO. 3724 OF 1996**

Smt. Subai Mura Rabari wd/o. Mura Sura Rabari	..	Appellant
versus		
Paras Devraj Gundecha & Ors.	..	Respondents

Mr. Chirag Mody with Mr. Ashok Purohit and Mr. Tejas Gokhale i/b.
Ashok Purohit & Co. for Appellant.
Mr. Mayur Khandeparkar with Mr. Tejas Shah and Mr. D. C. Shah i/b.
M/s. Lilani Shah & Co. for Respondents.

**CORAM: DR. MANJULA CHELLUR, C. J. AND
M. S. SONAK, J.
DATE : 24 AUGUST 2016**

P.C.:

1] This appeal is directed against the order dated 18 November 2014 by which the learned Single Judge has dismissed notice of motion no. 1956 of 2012 for restoration of the suit dismissed by order dated 19 April 2011 for non payment of requisite court fees, despite grant of several opportunities in this regard.

2] The appellant instituted the suit in the year 1996 by claiming exemption in the matter of payment of court fees on the ground that she was a woman litigant. The suit seeks a declaration that the consent decree issued in a previous suit is not binding upon the appellant and for declaration that the respondents have no right, title or interest in the suit property described in schedule A to the plaint.

3] The respondents relying upon the notification by which exemption in payment of court fees was granted to woman litigants took out a notice of motion no. 1910 of 2006 in the civil suit urging for rejection of the plaint on the ground that the notification exempted payment of court fees to woman litigants only in case where the suit relates to '*property disputes arising out of and concerning matrimonial matters*'. It was submitted that since the property dispute in present case had no nexus with any matrimonial matters, the exemption was wrongly claimed. This notice of motion was allowed by the learned Single Judge vide order dated 19 April 2011. However, consistent with the provisions of Order VII Rule 11(c), the appellant was granted the appellant eight weeks time to supply the court fees on the basis of the subject matter of the suit and its valuation. The appellant failed to pay the court fees within the period prescribed, which expired on or about 19 June 2011. The plaint accordingly, stood rejected as per the order.

4] In August of 2012, i.e. after delay of over fourteen months, the appellant took out notice of motion no. 1956 of 2012, seeking restoration of the suit, the plaint in which stood rejected under Order VII Rule 11 (c) on account of failure on the part of the appellant to supply the court fees, within the period prescribed by the court in its order dated 19 April 2011. By the impugned order dated 18 November 2014, the notice of motion no. 1956 of 2012 came to be dismissed.

5] Mr. Chirag Mody, the learned counsel for the appellant has submitted that the view taken by the learned Single Judge that powers under Sections 148 and 149 of the Code of Civil Procedure, 1908 (CPC) can be exercised by the court on one occasion only is not correct. In this regard, reliance was placed upon the decision of the

Madhya Pradesh High Court in the case of ***Bhanu vs. Dalmia and Co. and Anr.***¹ Mr. Mody submitted that the appellant was a poor lady and some time was required to arrange the court fee amount. Such cause as well as belated offer to pay the court fees deserved acceptance in the facts and circumstances of the present case.

6] On the other hand, Mr. Mayur Khandeparkar, the learned counsel for the respondents submitted that the very claim of the appellant from exemption in court fees was misconceived and in any case, there was no justification whatsoever for failure to pay the court fees within the period permitted by the court. Mr. Khandeparkar submitted that the notice of motion no. 1956 of 2012 which has been dismissed by the impugned order was lodged through a power of attorney which is indicative of the circumstance that the appellant has permitted the litigation to be taken over by a third party, for some consideration, which finds no disclosure. Further, Mr. Khandeparkar submitted that the learned Single Judge upon taking into consideration the cause shown has rightly declined to exercise discretion in favour of the appellant looking to the gross negligence on the part of the appellant in pursuing the suit in this manner right from the year 1996. Mr. Khandeparkar also submitted that the rejection of a plaint under Order VII Rule 11 of CPC is a decree and therefore, notice of motion seeking restoration of the suit was not maintainable and was rightly dismissed by the learned Single Judge.

7] Rival contentions now fall for our determination.

8] Although, the impugned order does take the view that powers under Sections 148 and 149 of CPC can be exercised on one

¹ AIR 1959 MP 169

occasion only, perusal of the impugned order indicates that the learned Single Judge has evaluated the cause shown by the appellant for failure to comply with the direction for payment of court fees within a period of eight weeks from the date of order dated 19 April 2011. Upon evaluation of such cause, learned Single Judge has declined to exercise discretion in favour of the appellant considering that there was hardly any cause shown for the failure to deposit the court fees within the prescribed period. The appellant, in the affidavit made by the power of attorney in support of the notice of motion had stated that '*she does not have much source of income*'. No particulars as regards source of income were provided. No particulars as to the efforts made by the appellant for generating funds for payment of court fees were provided. The circumstances in which power of attorney holder has been involved in the proceedings have also not been explained. The learned Single Judge upon due evaluation of the cause shown as also the circumstance that since the year 1996 the appellant has chosen to prosecute the suit by avoiding payment of court fees and thereafter, avoided the payment of court fees despite securing indulgence from the court, has, declined to exercise discretion in favour of the appellant. The exercise of such discretion, in the facts and circumstances of the present case, can hardly be described as arbitrary, capricious or perverse.

9] In the aforesaid circumstances, no useful purpose would be served by deciding the issue as to whether powers under Sections 148 and 149 of the CPC can be exercised on more than one occasion. We therefore leave the point open to be decided in an appropriate case. In the present case, despite observation that such power can be exercised only on one occasion, the learned Single Judge has evaluated the cause shown by the appellant but found that on the

basis of the cause shown, the appellant was not entitled to any further discretionary relief or indulgence.

10] Incidentally, we may observe that the provisions of Section 148, which concern the general power of the court in matters of enlargement of time were not attracted to the facts and circumstances of the present case. The present case was governed by the provisions contained in Order VII Rule 11 of the CPC which permit the court to reject the plaint where relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within time to be fixed by the court, fails to do so. The proviso to Order VII Rule 11 of CPC stipulates that the time fixed by the court for correction of the valuation or supply of requisite stamp paper shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by '*any cause of an exceptional nature*' for correcting the valuation or supplying the requisite stamp paper, as the case may be, within the time fixed by the court and that the refusal to extend such time would cause grave injustice to the plaintiff. In the facts and circumstances of the present case, it cannot be said that the appellant was prevented by '*any cause of an exceptional nature*' from supplying the requisite court fees.

11] Besides, in terms of section 2 (2) of CPC the expression '*decree*' shall be deemed to include the rejection of plaint under Order VII Rule 11 of CPC. Order VII Rule 13 of CPC expressly provides for the rejection of the plaint on any of the grounds herein-before mentioned (under Order VII Rule 11 of CPC) shall not on its own force preclude the plaintiff from presenting the fresh plaint in respect of the same cause of action.

12] For all the aforesaid reasons, we dismiss the present appeal.
There shall however be no order for payment of costs.

(M. S. SONAK, J.)

CHIEF JUSTICE

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