

HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on : 11.04.2017****Order delivered on : 18.04.2017****Writ Petition (227) No.200 of 2016**

Shyama Bai D/o Vidhun, aged about 67 years, R/o Village
Chhindkalo, Tahsil Ambikapur, District Surguja (CG)...Plaintiff

----Petitioner**Versus**

1. Vijendra Kumar Keshari, S/o Durga Prasad Keshri, aged about 40 years, R/o Village Chhindkalo, Tahsil Ambikapur, District Surguja (CG)
2. State of Chhattisgarh, Through : The Office of Collector, Ambikapur, District Surguja (CG)

....Defendants**---- Respondents**

For Petitioner	:	Mr.Ashok Kumar Shukla, Advocate
For Respondent No.1	:	Ms Priyanka Mehta, Advocate
For State	:	Mr.Majit Ali, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal**C.A. V. Order**

(1) By notification dated 1.1.1998 issued by the State Government under Section 35 of the Court Fees Act, 1870 (hereinafter called as "Act of 1870"), the petitioner/plaintiff filed an application for exemption from court fees. The trial Court by its order dated 6.2.2016 rejected that application. Feeling aggrieved against the order rejecting application under Section 35 of the Act of 1870, this writ petition under Article 227 of the Constitution of India has been filed.

(2) Mr.Ashok Kumar Shukla, learned counsel appearing for the petitioner, would submit that the petitioner being woman is victim of atrocities as her land has been grabbed by respondent No.1/defendant and therefore, she is entitled for exemption from court fees under Section 35 of the Act of 1870.

(3) On the other hand, Ms Priyanka Mehta, learned counsel appearing for respondent No.1 would submit that benefit is applicable only to those women who are subjected to cruelty in atrocities and will not be applicable in those cases where the dispute is of the property as the petitioner herself has executed the sale deed in favour of respondent No.1 and as such, the trial Court is absolutely justified in rejecting the application.

(4) Learned Panel Lawyer for the State support the impugned order.

(5) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and gone through the record with utmost circumspection.

(6) The question before the trial Court was that whether the petitioner/plaintiff is entitled for exemption from payment of court fee under notification dated 1st January, 1998 or not.

(7) The trial Court issued notices to the defendants/respondents herein and sought their reply and thereafter rejected the said

application holding that the petitioner is not entitled for exemption from payment of court fee. But it appears that the trial Court has not made any enquiry to find out whether the petitioner is entitled from exemption from payment of court fee or not; and the limited enquiry ought to have been conducted by the trial Court but no enquiry was made and it has been declared that the petitioner is not entitled for exemption from payment of court fee.

(8) Notification dated 1.1.1998, on the basis of which exemption from payment of court fee has been made, states as under:-

“Notification F. No.9-1-83-XXI-B-(2) dated the 1st January, 1998.- In exercise of the powers conferred by Section 35 of the **Court Fees Act, 1870** of Madhya Pradesh the Court Fees specified in Article 1-A and 2 of the First Schedule and Articles 5, 17 and 21 of the Second Schedule to the said Act, payable on plaint by women victims of atrocities.”

(9) The clause of women entitled to be exempted by this notification dated 1.1.1998 is women victims of atrocities. The word 'atrocities' has not been defined under the Court Fees Act and it has been defined under Section 2 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 which states as under:-

“2. Definitions. -(1) In this Act, unless the context otherwise requires,-

(a) "Atrocity" means an offence punishable under section 3;

(10) Thus, this Court is of the opinion that the trial Court has omitted to make an enquiry with regard to exemption from payment of court fee and did not consider whether the petitioner falls within the women victims of atrocities particularly considering the nature and scope of atrocities.

(11) In view of above, the writ petition is allowed. The matter is remitted back to the trial Court to consider and decide the issue afresh after holding an enquiry as to whether the petitioner is entitled for exemption from payment of court fee or not in accordance with law after giving the respondents/defendants particularly to respondent No. 2/State an opportunity of being heard.

(12) No order as to costs.

Sd/-

(Sanjay K.Agrawal)
Judge