

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No.709 of 2017**

Smt. Sukmati Wd/o. Late Laxminnarayan & D/o. Late Budhu,
aged about 54 years, R/o. Village Badekilepal, Tahsil
Bastanar, District Bastar, C.G. At present R/o. Vijay Ward,
Jagdalpur, District Jagdalpur (CG)

---- Petitioner

Versus

Edward Tirki S/o. Late Mohan Tirki, aged about 65 years, R/o
Patelpara, Fundurdihari, Ambikapur, P.S. & P.O. Ambikapur,
District Surguja (CG)

---- Respondent

For Petitioner	:	Mr.Manoj Paranjape, Advocate
For State	:	Mr.Arun Sao, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

09/10/2017

1. In a suit for specific performance of contract, the petitioner/plaintiff filed an application under Section 35 of the Court Fees Act for remission of the court fees. By the impugned order, that application has been rejected by the trial Court, against which, this writ petition has been filed.
2. Mr.Manoj Paranjape, learned counsel for the petitioner would submit that the trial Court is absolutely unjustified in rejecting the application by taking into consideration the income as shown in the year 2013 while submitting the application for grant of caste certificate and also committed legal error in taking into account that the amount allegedly received by the petitioner by alienating her husband' property, therefore, the impugned order deserves to be set aside.

3. On the other hand, Mr. Arun Sao, learned Deputy Advocate General appearing for the State, would oppose the submission and submit that the trial Court is absolutely justified in rejecting the application.

4. I have heard learned counsel appearing for the parties and perused the impugned order.

5. Notification dated 1.4.1983 provides as under:-

“In exercise of the powers conferred by S. 35 of the Court-fees Act, 1870 (No.7 of 1870), the State Government hereby remits in the whole of the State of Madhya Pradesh, the Court-fees mentioned in Articles 1-A and 2 of the first Schedule and Articles 5, 17 & 21 of the second schedule to the said Act payable on plaint by the following categories of the persons whose annual income immediately preceding the date of presentation of plaint from all sources does not exceed rupees six thousand namely-

- (i) member of Scheduled Tribes;
- (ii) member of Scheduled Castes;
- (iii) minors;
- (iv) women;
- (v) artisan;
- (vi) unskilled labourer;
- (vii) landless labourer;
- (viii) person belonging to the weaker section of the society.

Explanation.-for the purposes of this notification:-

(1) 'Member of Scheduled Castes' means a member of any caste, race or tribe or part of or group within caste, race or tribe specified as such with respect to the State of Madhya Pradesh under Article 341 of the Constitution of India;

(2) 'Member of Scheduled Tribes' means a member of any tribal community or part of or group within a tribe or tribal community specified as such with respect to the State of Madhya Pradesh under Article 342 of the Constitution of India”

6. Notification dated 1.4.1983 has been considered by the High

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Court of Madhya Pradesh in **R.N.Rai V. Sheshnarayan Rai and others**¹, in which the High Court of Madhya Pradesh has specified two conditions for applicability of the notification which reads as under:-

“(i) that the person claiming remission, must belong to one or either of the categories of persons mentioned in the notification; and

(ii) his annual income immediately preceding the date of presentation of the plaint from all sources, does not exceed Rs.6000.”

7. In **Noojahan Vs. Krishna**² the High Court of Madhya Pradesh has further held that for claiming exemption of payment of court fees under Section 35 of the Court Fees Act, date of cause of action and ability of plaintiff on that date should be seen and prior earning of the plaintiff is not to be taken into account.

8. In **Shantibai Vs. Lala**³ the High Court of Madhya Pradesh has further held that income certificate granted by the Tahsildar generally should not be doubted.

9. In the present case, the trial Court ought to have looked into the plaintiff's income on the date of application immediately preceding the date of presentation of the plaint from all sources to find out whether it exceeds rupees 24,000/-. The trial Court while passing the impugned order has misdirected himself by looking into the income of the year 2013 and ignored the certificate issued by Tahsildar as well as Deputy

1 1990 MPLJ 528

2 1997 (2) MPWN 87

3 1996 MPWN 63

Collector in this regard, which is in teeth of the notification dated 1.4.1983 and the principle of law laid down by the Madhya Pradesh High Court in **R.N. Rai** (supra).

- 10.** Accordingly, the impugned order is set aside. The matter is remitted to the trial Court for hearing and disposal on the said application strictly in accordance with law keeping in view the observation made hereinabove within a period of two months from the date of receipt of copy of this order.
- 11.** The writ petition is allowed to the extent indicated hereinabove. No cost(s).

Sd/-

(Sanjay K. Agrawal)

Judge

B/-