

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 20 of 2017**

1. Smt. Meera Devi Wd/o Late Shyamsundar, Aged About 58 Years
2. Anand Sahu, S/o Late Shyamsundar, Aged About 37 Years

Both are R/o Chetan Chowk Pendra, Tahsil Pendra, District Bilaspur, (Chhattisgarh)

3. Jaishree, D/o Late Shyamsundar, W/o Sonu Sahu, Aged About 41 Years R/o C/o S. R. Sahu Geetanjali Construction Company, Bilaspur, Tahsil And District Bilaspur, (Chhattisgarh)
4. Jyoti, D/o Late Shyamsundar, Aged About 39 Years R/o C/o Behind Panchsheel Club, Near Shiv Mandir, Ward No. 19, Mahasamund, Tahsil And District Mahasamund, (Chhattisgarh)
5. Kirti, D/o Late Shyamsundar, W/o Girish Sahu, Aged About 35 Years R/o Manav Mandir, Rajnandgaon, Tahsil And District Rajnandgaon, (Chhattisgarh)
6. Priya, D/o Late Shyamsundar, W/o Sanjiv Sahu, Aged About 32 Years R/o Arti Fancy Stores, Main Road, Nehru Nagar, Near Congress Bhawan, Mahasamund, District Mahasamund, (Chhattisgarh)
7. Priyanka Sahu, D/o Late Shyamsundar, W/o Abhisheek Gupta, Aged About 33 Years R/o Trimurti Enterprises And Tractor Parts Vikreta, Main Road Lakhanpur, Tahsil And District Surguja, (Chhattisgarh)

---- **Petitioners****Versus**

1. Smt. Sushila Bai Wd/o Late Paras Ram Sahu, D/o Late Paltu Ram, Aged About 68 Years Presently Residing At Mairri Vila House No. Q- 17, Behind Chhattisgarh Agan, Adarsh Nagar, Durg, District Durg (Chhattisgarh), Though In The Impugned Order Mentioned As Amit Kirana Stores Borsi Road, Vidyut Nagar Durg, Tahsil And District Durg, (Chhattisgarh)
2. Smt. Kala Devi, W/o Kanhaiya Lal, Aged About 71 Years D/o Paltu Ram, R/o Infront Of Police Station, Near Hanuman Mandir, Pendra Road, Tahsil And District Durg, (Chhattisgarh)
3. State Of Chhattisgarh, Through: The Collector, Bilaspur, District Bilaspur, (Chhattisgarh)

---- **Respondents**

For Petitioners	:	Shri Ashok Soni, Advocate
For Respondent/Caveator	:	Shri Ashish Surana, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

12/01/2017

1. This petition under Article 227 of the Constitution of India challenges the order passed by the trial Court allowing the plaintiff's application under Section 35 of the Court Fee Act.
2. The plaintiff has preferred a suit for partition, separate possession and permanent injunction. The plaintiff claimed that her annual income is less than Rs.25000/-, therefore, she is entitled to exemption from payment of Court fee in view of the State Government's notification issued under Section 35 of the Court fee Act. By an order passed on 09.10.2014, the trial Court rejected the application against which the plaintiff preferred civil revision No.122/2014. The civil revision was allowed vide order dated 13.07.2016 setting aside the order passed by the trial Court on 09.10.2014 and remitted the matter back to the trial Court to consider the matter afresh after hearing learned counsel for the parties and after calling report from the revenue authorities with regard to the income of the applicant/plaintiff. This Court also directed the trial Court to decide the application within a period of 10 weeks.
3. On the strength of report received from the Tehsildar, Durg regarding plaintiff's income, the trial Court has passed the present impugned

order allowing the plaintiff's prayer for exemption from payment of court fee.

4. It is argued that the petitioner was not supplied copy of the report sent by the Tehsildar, Durg nor they were heard by the Tehsildar, therefore, the impugned order is in contravention of the direction issued by this Court.
5. I am not convinced with the argument raised by learned counsel for the petitioners. The reason being, on the date when the impugned order was passed, petitioners' counsel was present before the trial Court and the order has been passed in open Court in his presence. The order-sheet also reflects that on the said date the report from Tehsildar, Durg was available with the Court, however, it does not record that petitioner's counsel made any prayer for adjournment for supply of the report received from the Tehsildar, Durg. It is settled law that if any party to the litigation raises any plea that certain state of affairs or facts is not correctly recorded in the order-sheet, the appropriate procedure is to file an affidavit before the same Court which has passed the order and not before the higher Court.
6. Be that as it may, the impugned order only decides the issue concerning exemption from payment of Court fee. The petitioners/defendants are not adversely affected by the said order because the issue concerning payment of court fee is between the plaintiff and the State.

7. This Court in **Kailash Bai Vs. Shailendri Bai & Others**¹, held thus in paragraph 7:-

“7. So far as second ground regarding non-payment of Court fee in the suit under Section 35 of the Court Fees Act is concerned, this ground was not urged before the Court below and it is being taken for the first time. Even otherwise, the matter of Court fee is between the plaintiff's and the State. The plaintiff No.1 is a widow.”

8. In the matter of **Dharamraj Singh Vs. Vaidya Nath Prasad Khare and Others**², it has been held by the Madhya Pradesh High Court in para 7:-

“7. In a suit in which fixed Court fee is payable as per Article 17 Schedule II of the Court Fees Act, the market value of the immovable property, is normally the criterion for purposes of the pecuniary jurisdiction. In the present case the suit for purposes of pecuniary jurisdiction has been valued at Rs. 85,500/- so far as the relief of declaration is concerned, and it cannot be said to be improper. The plaintiff is not required to pay the Court fee on the valuation for the purpose of pecuniary jurisdiction. The Trial Judge has wrongly directed the plaintiff to pay the Court fee on the value of Rs. 85,500/- and that order is set aside. The Trial Judge is advised to study the law relating to the Court fee and suits valuation by referring to the statutory provisions and the case law on those provisions and then should proceed to decide the question of valuation of the suit for purposes of Court fee and jurisdiction.”

9. The M.P. High Court in **Shanti Devi Sharma (Smt.) and another Vs. Radheyshyam Palod and another**³ held thus in para 25:-

1 2002(2) CGLJ182

2 AIR2002 Madhya Pradesh 194

3 2000(2) JLJ 75

“25. In so far as the present case is concerned, the relief of injunction for making the suitable direction seems to be consequential relief in respect of declaration as sought for by the plaintiffs. In the circumstances, therefore, it cannot be held that the plaintiffs are required to revalue their suit for claiming injunction and then to pay Court-fee on it. However, the question of payment of Court-fee is not limited to be decided between the parties, but it is a question between the plaintiffs and the State through Court and, therefore, such a question always remains open to be considered even after decision of the case and the Court is, therefore, to make a suitable order to realise remaining Court fee, from the plaintiffs. However, no suit can be dismissed without affording an opportunity to pay the remaining Court fee to the plaintiffs. Therefore, where the plaintiffs had not been asked to make good the remaining Court-fee, if any, the rejection of the plaint on this count was bad in law.”

10. For all the above stated reasons, this Court does not find any substance in this writ petition. It fails and is hereby dismissed.

Sd/-

Judge
Prashant Kumar Mishra

Ashu