

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (Art. 227) No.226 of 2018

1. Smt. Sarojni Nishad, W/o Late Raj Kumar Nishad, aged about 30 years, Occupation House wife/Agriculture Labour.
2. Ku. Gomti, D/o Late Raj Kumar Nishad, aged about 12 years.
3. Ku. Meena, D/o Late Raj Kumar Nishad, aged about 9 years.
4. Kamlesh, S/o Late Raj Kumar Nishad, aged about 7 years.
5. Ku. Reena, D/o Late Raj Kumar Nishad, aged about 4 years.
6. Bhagwani Nishad, S/o Tihari Nishad, aged about 60 years, Occupation Labour/Agriculture.

Petitioner No.2 to 5 are minor through their natural mother Smt. Sarojni Nishad, W/o Late Raj Kumar Nishad, aged about 30 years. All are R/o Sheetala Para, Arang, Post & Tehsil Arang, District Raipur (C.G.)

Ghasnin Bai, W/o Bhagwani Nishad has died, therefore, she has not been arrayed as petitioner.

(Plaintiffs)
---- Petitioners

Versus

1. Harpal Singh Sibbal, S/o Sardar Singh Sibbal, aged about 37 years, R/o Gurunanak Nagar (Near Gurudwara), Telibandha, Raipur, Tehsil and District Raipur (C.G.)
2. Executive Engineer, Divisional Office, Chhattisgarh State Electricity Board, Arang, Tehsil Arang, District Raipur (C.G.)

(Defendants)
---- Respondents

For Petitioners:	Mr. Govind Dewangan, Advocate.
For State:	Mr. Ashish Surana, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

14/12/2018

1. This is an unfortunate case where the trial Court took eleven years in deciding the indigency of plaintiff No.1 and her four minor

children, as she lost her husband by electrocution. The judicial officers dealing with application for exemption from payment of court fees adjourned the matter mercilessly and routinely without appreciating the fact that plaintiff No.1 is a widow who lost her husband and has approached the Court claiming compensation, and failed to exhibit sincerity and respect to the cause brought before the court and that is why, it took eleven years in deciding as to whether the applicants / plaintiffs are entitled for the benefit of notification under Section 35 of the Court Fees Act, 1870 and remittance of court fees.

2. The husband of plaintiff No.1 Shri Raj Kumar Nishad died on account of electrocution on 18-9-2006. Plaintiff No.1 along with her two minor children, father-in-law and mother-in-law laid a claim before the District Judge, Raipur, on 7-5-2007 stating inter alia that she is entitled for compensation to the extent of Rs.15,25,000/-. She also filed an application under Section 35 of the Court Fees Act, 1870 that she is unable to pay the court fees. That application was enquired into by the learned Additional District Judge in which plaintiff No.1 has clearly stated that she is only earning her livelihood by working as daily-wager and getting Rs.40-50/- per day. But the learned Additional District Judge was not satisfied and directed for calling of report from the Tahsildar, Aarang on 6-7-2007 and ultimately, on 3-4-2010, the Additional District Judge directed that notice be issued and report be called from the Collector and thereafter, the matter was routinely adjourned time to time and thereafter, the report received as late as on 27-9-2017. The aforesaid report states as under: -

श्रीमती सरोजनी निषाद पति स्व० राजकुमार निषाद के पारिवारिक सदस्यों एवं स्व० राजकुमार के दो भाईयों कुमार व नंदकुमार के संयुक्त नाम पर 0.538 हे० कृषि भूमि अभिलेख में दर्ज हैं जिससे सरोजनी निषाद की वार्षिक आय 40,000/- चालीस हजार रुपये होती हैं ।

आवेदिका, सरोजनी निषाद के पारिवारिक सदस्यों में 01 पुत्र एवं 03 पुत्रियां क्रमशः कमलेश, गोमती, मीना, रीना है । जिसमें से बड़ी पुत्री गोमती विवाह पश्चात् ससुराल में निवासरत है तथा ना०बा० रीना एवं मीना अध्ययनरत है । सरोजनी निषाद ससुर भगवानी व दो देवरों के साथ संयुक्त परिवार में पक्का मकान में निवासरत हैं ।

3. Along with the report, a certificate was also filed to the effect that the annual income of plaintiff No.1 is Rs.40,000/- per annum. The learned Additional District Judge relying upon the said report, on 26-10-2017 blindly accepted the report holding that as per the notification dated 1-4-1983 income should be less than Rs.25,000/- per annum for getting the benefit of exemption of court fees, but as income of plaintiff No.1 is Rs.40,000/- per annum, she is not entitled for the benefit of exemption from court fees under the said notification. Questioning that order, this writ petition has been preferred.
4. I have heard learned counsel for the petitioners / plaintiffs as well as learned Panel Lawyer for the State.
5. The notification dated 1-4-1983 reads as under: -

“In exercise of the powers conferred by Section 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 and 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 purpose 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. The income mentioned as Rs.6,000/- has been enhanced to Rs.25,000/- by notification dated 20th June, 2008. A careful perusal of the notification reveals that a person belonging to the particular class as mentioned in the notification if is earning less than Rs.25,000/- per year, then he would not be required to pay court fess on the plaint.
7. The M.P. High Court in the matter of **Smt. Vimalabai v. State of M.P. and others**¹ while considering the notification issued on 1-4-1983 held that requirement of annual income being below prescribed limit, income of other persons on whom plaintiff is dependent is not relevant and the words “from all sources” would mean source of plaintiff only. It has been held as under: -

1 AIR 1997 MP 134

“6. ... The material words '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' cannot be ignored. The words 'persons' whose annual income in relation to the plaint and liability of the Court-fees would only mean the plaintiff who is party and would not include in its mischief any other person who is not party to the suit. The other key words 'from all sources' would not mean the income of any other person. The words 'from all sources' means the sources of the person who has filed the suit as the plaintiff and not the sources of the other persons who are otherwise liable for maintaining the plaintiff. The arguments of the learned counsel for the State if is accepted it would lead to a situation where benefit of the Notification cannot be given to anybody. It is in the interest of those persons whose income is less than Rs. 6,000/- per year. The person or persons would only mean the plaintiff and plaintiffs and nonelse. ...”

8. Reverting to the facts of the present case in light of the aforesaid notification and the interpretation extended by the High Court of M.P. in **Smt. Vimalabai** (supra), it is quite vivid that in the present case, the concerned Patwari has submitted a report before the Tahsildar that the income of plaintiff No.1 and her family members i.e. two brothers of her husband – Kumar and Nand Kumar who hold 0.538 hectares of agricultural land is more than Rs.40,000/- per annum. No other basis for reckoning annual income as Rs.40,000/- has been given in the said report. The said report has been accepted and a certificate has been issued and that has been produced before the Court and the learned trial Court has blindly accepted that report, whereas, as per the notification, the income of the plaintiff only has to be assessed which the trial Court has failed to notice. Moreover, as per the notification, the annual income of the plaintiff has to be seen immediately from the date of presentation of the claim from all sources, that has also not been assessed. Income of plaintiff No.1 on the date of presentation of

the report has been assessed and it has been presented which has been accepted by the Court.

9. In the present case, plaintiff No.1 has clearly recorded a statement as back on 19-8-2008 before the trial Court and clearly stated that her income is only Rs.40-50/- per day and taking average income as Rs.45/- per day as on 7-5-2007, monthly income comes to Rs.1,350/- and yearly income comes to Rs.16,200/-. Taking the income as Rs.7,500/- from the part of land which she jointly possesses along with her husband's two brothers, her income cannot be said to be more than Rs.25,000/- per annum. Therefore, plaintiff No.1 Sarojni Nishad was clearly entitled for exemption from payment of court fees in view of the notification under Section 35 of the Court Fees Act, 1870. The trial Court is absolutely unjustified in rejecting the application without looking into the notification dated 1-4-1983 and the requirement of notification and even did not appreciate the evidence available on record and rejected the application which cannot be accepted this Court.
10. Accordingly, the impugned order is set aside and it is held that plaintiff No.1 is entitled for remittance of court fees by virtue of the notification dated 1-4-1983. She is entitled for remission of court fees on the said application. Record be sent back to the trial Court and the said Court is directed to dispose of the suit by trying it day-by-day as it is pending since 2007 and plaintiff No.1 had lost her husband and application for compensation is pending consideration. The suit would be disposed of on or before 28-2-2019. Compliance report be sent to the Registry of this Court that suit has been disposed of as directed.

11. The judicial officer is expected to be vigilant and sensitive while dealing with a cause particularly when a person who has approached the court, is a downtrodden, poor and has come to the court with a great hope of getting justice and has to decide her/his like case expeditiously & promptly.
12. A copy of this order be sent to the concerned Additional District Judge directly and also through the District Judge, Raipur by E-mail / fax.
13. The writ petition is disposed of with the aforesaid observation. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (Art.227) No.226 of 2018

Petitioners

Smt. Sarojni Nishad and others

Versus

Respondents

Harpal Singh Sibbal and another

(Head-note)

(English)

The application for remission of court fee has to be decided expeditiously and promptly.

(हिन्दी)

न्याय शुल्क में छूट हेतु आवेदन पत्र शीघ्र एवं तत्परतापूर्वक विनिश्चित किया जाना चाहिए।