

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11699 OF 2016

Kailash Kashinath Sabale	 Petitioner
V/s.	
The Competent Authority, Reliance Gas Infrastructure Ltd., Pune	 Respondent

Mr. Prashant Darandale for the Petitioner.

Mr. Vaibhav Sugdare, i/by Ms. Prachi Tatake, for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 2ND MAY, 2018.

P.C. :

1. Heard Mr. Darandale, learned counsel for the Petitioner, and Mr. Sugdare, learned counsel for the Respondent.

2. By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 27th April 2016, passed by the Ad-Hoc District Judge-1, Khed-Rajgurunagar, Pune, thereby rejecting the Petitioner's application below "Exhibit-6" filed in Miscellaneous Civil Application No.79 of 2014, seeking time to pay the deficit Court fees.

3. It is submitted that, the Petitioner is challenging the

compensation, which was awarded to him, under Section 10 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962. It was submitted before the Trial Court that, the Petitioner was unable to pay the entire Court fee on the compensation amount claimed by him. However, he will pay the Court fee on the amount of compensation, which will be ultimately awarded to him. Hence, for the time being, his Claim Petition be accepted on the Court fee stamp of Rs.1,000/-.

4. The Trial Court has rejected the said application, after considering that this application was filed by the Petitioner on the assumption that he will be granted compensation. It was held by the Trial Court that, Petitioner is not an indigent person and hence, there was no question of granting exemption to the Petitioner from paying the Court fee. Further it was considered that, the Petitioner is also not seeking time to deposit the Court fee after 2 or 3 months, but he was seeking time for paying the Court fee after the amount of compensation is decided at the time of final adjudication. Hence, it was held that, the application was liable to be rejected.

5. Further, the request made before the Trial Court was that, the Petitioner be permitted to file the Petition by paying Court fee of Rs.1,000/- only by the Trial Court, by invoking its inherent powers under Section 151 of CPC. The Trial Court, however, held that the

provisions of Section 151 of CPC will not attract to the present case and hence, the Petitioner will have to deposit the Court fee in respect of the amount of compensation claimed by him. The Trial Court has, accordingly, rejected his application.

6. Now, in the course of arguments, learned counsel for the Petitioner submits that, in view of the provisions of Section 20(xv) of the Maharashtra Court Fees Act and in the light of the Judgment of the Gujarat High Court in the case of *Raj Dilawarsinh Chandrasinh (Dead), through LRs. Mahendrasinh and Ors. Vs. Gas Authority of India Ltd. and Ors., in Special Civil Application No.12052 of 2008, along with connected matters*, the Petitioner is required to be exempted from paying the Court fee.

7. According to learned counsel for the Respondent, Section 20(xv) of the Maharashtra Court Fees Act cannot be applicable to the present case. Hence, it becomes a disputed question of fact and law. Therefore, as rightly submitted by learned counsel for the Respondent, this point was not at all raised before the Trial Court. In such situation, it would not be proper on the part of this Court to enter into that aspect and on that count, either to uphold or set aside the order of the Trial Court, before which this point was not at all argued or advanced or not even pleaded or averred also.

8. According to learned counsel for the Petitioner, this is a legal point and this Court can consider the same.

9. It may be true that it is a law point, but then, even for deciding the law point, the Trial Court needs to be given an opportunity to consider the said law point. Thereafter only, in writ jurisdiction, this Court can decide the legality or validity of the finding given by the Trial Court on that legal point, but in the Writ Petition, to set aside or to uphold the order of the Trial Court on a totally new aspect or on law point, which was not at all argued before the Trial Court, would not be proper.

10. Hence, this Writ Petition is disposed of as dismissed, with liberty to the Petitioner to file a fresh application before the Trial Court, raising this particular aspect that, as per Section 20(xv) of the Maharashtra Court Fees Act, the Petitioner is required to be exempted from paying the Court fees.

11. If any such application is filed by the Petitioner, the Trial Court to hear both the parties and then decide it in accordance with law.

[DR. SHALINI PHANSALKAR-JOSHI, J.]