

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 763 of 2018**

Ravishankar Prasad, son of Mathura Prasad, aged about 23 years, R/o. Qtr. No. 6-A, Sector-6, Street No. 6, Bhilai Nagar, Tahsil and District Durg (C.G.)

----Petitioner/plaintiff

Versus

1. D.N. Jha, aged about 52 years, son of Parmanand Jha, Through : Principal Bhilai Vidyalaya, Sector-01, Post Office Bhilai, District Durg (C.G.)
2. Principal, Bhilai Vidyalaya. Sector-01, Post Office Bhilai, District Durg (C.G.)
3. Bhilai Steel Plant, through : Managing Director, Post Office Bhilai, District Durg (C.G.)
4. State of Chhattisgarh, Through : Collector, Durg (C.G.)

---- Respondents/defendants

For Petitioner	: Shri Uttam Pandey, Advocate.
For Respondent No.1	: Shri A.D. Kuldeep, Advocate.
For Respondent No. 3	: Shri Ashish Surana, Advocate.
For Respondent No. 4	: Shri Vimlesh Bajpai, GA

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

09/01/2019

1. By the impugned order dated 06.07.2018, the petitioner's application under Section 35 of the Court Fee Act for exemption from court fee has been dismissed on the ground that the Tahsildar has not assessed the income of petitioner.
2. I have heard learned counsel appearing for the petitioner.
3. The trial Court has rejected the application under Section 35 of the Court Fee Act relying upon the report of Tahsildar, in which, the Tahsildar has not submitted any report with respect to the income of the petitioner and without obtaining fresh report from the Tahsildar, application under Section 35 of the Court Fee Act filed by the petitioner has been rejected.

4. 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.”

5. 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.

6. 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. ...”

7. Reverting 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. Vimlabai** (supra), it was incumbent on the part of the trial Court to seek report from the authority concerned about the income of the petitioner before deciding the application under Section 35 of the Court fee Act for exemption of court fee, which has not been done by the trial Court and rejected the application under Section 35 of the Court Fees Act without any material about the income of the plaintiff, therefore, the impugned order is liable to be set aside.

8. Accordingly, the impugned order is set aside. The matter is remitted to the trial Court for deciding the application afresh after hearing and disposal in accordance with law after obtaining report about the income of the plaintiff from the authority concerned expeditiously.

9. The writ petition is allowed to the extent indicated hereinabove.

Sd/-
(Sanjay K. Agrawal)
Judge

