

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2836 OF 1997

Mrs.Rekha w/o Vijay Deshpande,
age: 55 years, Occ: Agriculturist,
R/o Pimpalgaon Konzira,
Tq.Sangamner, Dist. Ahmednagar.

Petitioner

Versus

01 Civil Judge, Senior Division,
Sangamner, District Ahmednagar.

02 State of Maharashtra

Respondents

Mrs. M.L.Sangit, Advocate for the petitioner.
Mr.S.R.Yadav, AGP for the Respondents.

CORAM : RAVINDRA V. GHUGE, J.

DATE : 18/07/2019

ORAL JUDGMENT :

1 The petitioner is aggrieved by the order dated 9th August, 1996, passed by the learned Civil Judge, Senior Division, Sangamner, by which the Court has declined to refund the Court fees to the petitioner-lady keeping in view the Government Resolution dated 01.10.1994.

2 I have considered the strenuous submissions of the learned Advocate for the petitioner. It is contended that the son of the petitioner - deceased Sameer met with an accident on 14.11.1995 and passed away. He had drawn an insurance policy with the Life Insurance Corporation of India. He had certain provident fund accumulations as well. The learned Advocate for the petitioner is unable to state as to the employment details of deceased-Sameer. The name of the petitioner was not mentioned as a nominee insofar as the Provident Fund and Group Insurance Scheme is concerned. The petitioner deposited Rs.4225/- towards court fees for seeking the succession certificate with reference to the maturity amount of insurance policy, which is Rs.One lac.

3 The petitioner moved an application before the trial Court seeking refund of the said amount on the basis of the G.R. Dated 01.10.1994. The trial Court considered the said G.R. and noted that the State Government has decided as a policy to refund the Court fees paid by lady litigants in matters pertaining to maintenance, property disputes, violence or divorce. It is clear and there is no room for ambiguity that beyond these four categories, the Government is not agreeable to refund of Court fees of lady litigants.

4 The learned advocate for the petitioner submits that the trial Court has taken a narrow and technical view in the matter. The petitioner had applied for a succession certificate with reference to the provident fund accumulations and the insurance amount. Since the succession certificate required payment of Court fees of Rs.4225/-, which the petitioner has already paid, the Government should refund the said amount. Reliance is placed upon the judgment of this Court in the matter of **Pankuwarbai wd/o Dalpatrao Mutha and others Vs. Ramesh Chandra s/o Dalpatrao**, 1998 (4) Bom.C.R. 477.

5 The facts recorded by this Court in the matter of **Pankuwarbai** (*supra*), are that after the demise of one Ganeshchand Mutha, who happens to be the son of petitioner no.1 Pankuwarbai, other co-petitioners initiated civil action for grant of succession certificate in respect of the debts, securities, cash, shares and insurance policy. This Court noted that the order passed by the trial Court was a cryptic order running into three lines. It was further held that a woman litigant who suffers poverty should not be deprived of a legitimate claim. The notification issued by the Government of Maharashtra was scrutinised and this Court

concluded that a wide meaning needs to be granted to the notification issued by the Government of Maharashtra.

6 The learned AGP relies upon the judgment of the learned Division Bench of this Court in the matter of **Girish Kanaiyalal Munshi Vs. Sudha Girish Munshi & another**, 2008 AIR (Bombay) 136. He submits that the G.R. dated 01.10.1994 is duly interpreted by various Courts and litigants. Finally, the State of Maharashtra introduced a clarificatory notification dated 23.03.2000 with an explanation to indicate that the expression 'property disputes' shall mean the property disputes arising out of or concerning matrimonial matters. The learned Division Bench considered various judgments delivered by the various Courts including the judgment delivered by the learned Single Judge in the matter of **Pankuwarbai** (*supra*).

7 Finally, the learned Division Bench concluded that the matters involving property disputes cannot include the property involved in matrimonial disputes. It was also held that a petition for probate of Will is never a petition in relation to any dispute concerning any property. It was, thus, concluded that a petition filed by a widow for seeking probate would not be brought within the

ambit of the notification.

8 In the instant case, the petitioner, who is a mother of deceased Sameer, has preferred an application for seeking a succession certificate. Such an application for seeking succession certificate will never be a petition or a suit in relation to any dispute concerning any property. As has been observed in the judgment delivered in the matter of **Girish** (*supra*), such a case would not arise out of matrimonial matter but would arise out of the death of a person.

9 It would be apposite to reproduce the conclusions of the learned Division Bench in paragraphs no.25 and 26, as under:

“25 As per our request, the learned Advocate General Mr. Ravi Kadam, very ably assisted the Court, with regard to interpretation of the aforesaid Government Notification as under:

a) It was as a result of various decisions of the Court wherein the term 'property disputes' was given a wide interpretation, that the Government issued the explanatory Notification dated 23-

3-2000, as an amendment to the Notification dated 1-10-1994, to clarify that the words 'property disputes' would be restricted to those arising out of and concerning matrimonial matters.

b) Thus it is clear that the intention of the 2nd Notification was to change the then existing Notification, and if despite the amendment, the situation continues to remain the same, then the amendment would be an exercise in futility.

c) Therefore it is imperative that the Notification and in particular the words 'arising out of and concerning matrimonial matters' be construed literally in their clear and ordinary meaning so that the ambit of the words 'property disputes' is not interpreted in such a wide manner which would be contrary to the intention of the Government behind issuing the Notification.

d) In reference to the judgment of Dharmadhikari, J., in the case of Ramila Rajnikant Kilachand Vs. Harsh R. Kilachand and ors. (supra), relied upon by the petitioners, the learned Advocate General stated that:-

i) The words 'matrimonial matters' arising in the Government Notification of 23/3/2000, which

connote only cases of disputes between the parties to a marriage, cannot be replaced by the wider term 'matrimonial relationship'.

ii) The learned Single Judge erred in interpreting the law viz. the Notification, in a manner as it 'ought to be' and not what 'it is'.

e) Lastly, petitions relating to testamentary matters arise not out of a matrimonial matter, but out of death.

f) In the circumstances petitions filed by a widow for probate of her deceased husband's Will, will fall outside the purview of the Notifications granting exemption from payment of Court fees.

26 After hearing the learned Senior Counsel Dr.Tulzapurkar and the learned Advocate General and in light of the extensive arguments forwarded on behalf of the Petitioner and the State, the various judgments of this Court regarding the exemption from payment of Court fees by women litigants and several other relevant judgments of this Court and the Hon'ble Supreme Court, the following issues can be clearly outlined.

A) The intention of the Government behind

issuing the 2nd Notification 23rd March, 2000.

a) The Notification dated 23-3-2000, which qualified 'property disputes' as disputes arising out of and concerning matrimonial matters, was issued as a consequence of various judgments of this Court wherein the term 'property disputes' was given a wide interpretation.

b) The Notification dated 23-03-2000 is in the form of an amendment Notification. In view of this, it is pertinent to note the reference made by Deshmukh, J. in his judgment of 04-06-2007, to the judgment of the Privy Council in the case of *D.R. Fraser and Co.Ltd. v. The Minister of National Revenue*, AIR 1949 (36) PC 120, wherein the Privy Council has observed that, 'When an amending act alters the language of the principal statute, the alteration must be taken to have been made deliberately'.

c) The 2nd Notification was issued with the intention of changing the then existing situation and if despite the amendment the situation continues to be the same, the amendment would be an exercise in futility.

d) Hence the intention of the Government

behind issuing the 2nd Notification is amply clear from plain simple interpretation of the words of the Notification themselves, that the term 'property disputes' would be restricted to only those concerning or arising out of matrimonial matters and would hence exclude petitions filed for probate of Wills.

B) Interpreting it widely would go beyond the intent of the Government.

a) Notwithstanding the fact that the Notification exempting a certain class of women from payment of Court fees is a beneficial piece of legislation, an extended meaning to the words 'property disputes' would tantamount to indulging in exercise of legislation in the garb of interpretation. A similar view was taken by Palkar, J. in his judgment in the case of Smt.Ashabai w/o Shivaji Shiral and Anr. v. The Executive Engineer, MSEB, 1999 (2) Bom CR 194.

b) A petition for probate of a Will is neither a petition in relation to any 'property dispute' nor does it 'arise out of or concern a matrimonial matter.'

c) A petition for probate of a Will is never a

petition in relation to any dispute concerning any property but is in relation to the validity of otherwise of a Will. The judgment of the Supreme Court in the case of Delhi Development Authority v. Mrs. Vijaya Gurshaney and Another, AIR 2003 SC 3669, which Deshmukh, J. referred to in his judgment of 04-06-2007 clearly brings to light the aforementioned view, wherein it was held that a testamentary Court is only concerned with finding out whether or not the testator executed the testamentary instrument of his free will and grant of a probate or Letters of Administration does not confer title to property. (Emphasis supplied)

d) As rightly contended by the learned Advocate General Mr.Ravi Kadam, on behalf of the State, testamentary cases do not arise out of matrimonial matters but rather arise out of 'death'.

C) Furthermore it is pertinent to differentiate between matrimonial matters and matrimonial relationship as the two terms are not synonymous and hence the term 'matrimonial matters' arising in the Notification of 23-03-2000 cannot be replaced by 'matrimonial relationship' so as to bring a petition filed by a widow for probate of her deceased husband's Will, within the ambit of the Notification.

D) Lastly, the words 'property dispute arising out of or concerning matrimonial matters' should be given their plain and simple meaning, that is, a dispute arising between parties to a marriage, (attention may be brought to the reference made by Deshmukh, J. to the Family Courts Act sub-section (1) of Section 7, to elucidate the meaning of the term 'matrimonial matters') and should therefore exclude testamentary petitions wherein not only is there an absence of a dispute, other than in cases when somebody files a caveat, it is not a matter between two parties to a marriage.

10 Since it has now been concluded that the petitions filed by the widows, seeking probate of husband's Will and such matters arising out of the death of a person would fall outside the purview of the notification dated 01.10.1994. An application seeking a succession certificate can surely not be a matrimonial dispute.

11 In view of the above, this petition is devoid of merit and therefore, dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)