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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 26.11.2019

+ W.P.(C) 12476/2019

PREMPAL SINGH

..... Petitioner

Through: Mr. Wills Mathews, Ms. Sweta
Parwar & Mr. Paul John Edison, Advocates.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Jasmeet Singh, CGSC with Mr.
Srivats Kaushal, Adv. for UOI.
Mr. Kaushibh Anshuraj, Adv. for R-2.
Mr. K. Parameshwar & Mr. M.V.
Mukunda, Advocates for R-3.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

: **D.N. PATEL, Chief Justice** (*Oral*)

C.M. Nos.50923-50924/2019 (*exemption*)

Allowed, subject to all just exceptions.

W.P. (C) No.12476/2019 & C.M. No.50925/2019

1. This writ petition has been preferred for the following prayers :-

A. Issue a writ, order, directions including a writ in the nature of Mandamus or any other appropriate writ, declaring Section 7(i) of the Court Fees Act, 1870, court fees payable, for Money in suit filed for damages or compensation, arising out of Human Rights Violation is ultra vires to Articles 14, 19, 21 and 39 A of the Constitution of India, and hence null and void.

B. Issue a writ, order, including a writ in the nature of Certiorari or any other appropriate writ, quashing Section 7 (i) of the Court Fees Act, 1870, court fees payable for Money, in suit filed for damages or compensation arising out of Human

Rights Violations, as per Schedule 1 , Ad Valorem Fees Sl. No.1, in original and appellate jurisdictions, being ultravires to Article 14, 19, 21 and 39 A of the Constitution of India, and hence null and void.

C. Issue a writ, order, declaration including a writ in the nature of mandamus or any other appropriate suitable writ/orders declaring that, collecting court fees on any claims/suits/ legal proceedings by the courts of law, arising out of Human Rights Violations is ultravires to Article 14, 19, 21, 39 A of the constitution of India and hence is illegal.

D. Issue directions to the respondent no. 3 to register the RFA Vide Diary number 231555/2018 filed by the petitioner pending before this Hon'ble court ,and place the same before the Hon'ble Judges for hearing without/waving the condition of depositing court fees.

E. Pass any further order or orders which this Hon'ble court may deem fit and proper in the interest of justice and award the cost of the present writ petition. ”

2. Learned counsel appearing for the petitioner argued at length and has submitted that earlier a W.P. (C) No.11079/2006 was preferred. This writ petition was preferred for getting damages against the State for varieties of reasons. The said writ petition was allowed vide order dated 25.03.2010 and Rs.5,32,750/- was awarded as damages along with interest @ 6 % per annum for eight years.
3. It is submitted by the counsel for the petitioner that this amount has already been received by this petitioner and the same has also been utilized and therefore now this petitioner has no money to pay court fee, for filing Regular First Appeal.
4. It further appears from the facts of the case that this petitioner has

preferred a Civil Suit No.19612/2016 for getting damages of Rs.54,95,210 plus court fees of Rs.56,000/- from the defendants because the plaintiffs were implicated in various FIRs and were also arrested and had remained in custody in those FIRs, in which they were subsequently acquitted.

5. The aforesaid civil suit was dismissed vide order dated 18.5.2018 on the ground of limitation.

6. Being aggrieved and feeling dissatisfied by the judgment and decree dated 28th May, 2018 passed in Civil Suit No.19612/2016, Regular First Appeal have been preferred by this petitioner as Diary No.231555/2018. As the court fees has not been paid in the said Regular First Appeal, this petition has been preferred for waving the court fee mainly on the ground that there is violation of the human rights of this petitioner and hence exception should be carved out under Section 7(i) of the Court Fees Act, 1870.

7. Learned counsel appearing for the petitioner submitted that Section 7 (i) of the Court Fees Act, 1870 is unconstitutional and violative of Articles 14, 19, 21 and 39A of the Constitution of India and that in cases of violation of human rights, where a suit for damages is being filed, such type of person or petitioner may be exempted from the payment of court fees. It is also submitted by the counsel for the petitioner that they are aware of the provisions of CPC especially Order XXXIII thereof but they do not come within the ambit and purview of Order XXXIII of CPC. The money already paid by the respondents in the W.P. (C) No.11079/2006 at Rs.5,32,750/- along with interest @ 6 % per annum for eight years along with a cost of Rs.30,000/- have been utilized and now this petitioner has no money to deposit the court fees and hence, the present petition has been preferred.

8. Having heard the learned counsel for both the sides and looking to the facts, we see no reason to entertain this writ petition mainly for the reason that :

(i) Section 7 (i) of the Court Fees Act, 1870 does not exempt persons, who file suits for violation of human rights from the requirement of paying the court fee. Merely because this petitioner has already utilized Rs.5,32,750/- plus Rs.30,000/- plus interest @ 6% per annum for eight years, the present petition has been preferred challenging the vires of the aforesaid Section of the Court Fees Act, 1870. Nothing has been argued how this Section is violative of Articles 14, 19, 21 and 39A of the Constitution of India. Looking to the provisions of Court Fees Act, 1870 especially Section 7 (i) thereof, we see no reason to hold that the same is violative of Articles 14, 19, 21 and 39A of the Constitution of India.

(ii) Looking to the provisions of CPC, there is already a provision under Order XXXIII to file a suit/appeal without Court Fee. The ingredients of the essential characteristics of Order XXXIII of CPC ought to be present when such application is preferred for not being able to pay the court fees for filing a suit/appeal in a money claim.

9. It further appears from the facts of the case in W.P. (C) No.11079/2006, this court has already awarded damages of Rs.5,32,750/- and Rs.30,000/- towards cost and interest @ 6 % per annum for eight years.

10. It appears that Civil Suit No.19612/2016 was preferred by this petitioner for getting damages at Rs.54,95,210/- plus Rs.56,000/- towards court fee. This suit has been dismissed vide order dated 28th May, 2018 because it was beyond the period of limitation.

11. Regular First Appeal has been preferred by this petitioner with diary

No.231555 of 2018. The court fee is to be paid by this appellant in the Regular First Appeal as per the provisions of the Court Fees Act, 1870. We see no reason to show any leniency to this petitioner in the payment of the court fees. **We cannot be more charitable than the law. The highest charitable person in the court of law is law itself. Charity beyond law is cruelty to others.** As stated hereinabove, Code of Civil Procedure is taking all care of the poor persons who want to file a suit or appeal without court fees especially under Order XXXIII thereof. If the facts of this petitioner are covered by Order XXXIII of CPC, he can get the advantage of filing a suit or an appeal without payment of the court fee.

12. Earlier an amount of Rs.5,32,750/- was given to this petitioner towards the damages and Rs.30,000/- towards the cost. It is submitted by counsel for the petitioner that this amount has already been utilized and now he has no money to pay the court fees. If the petitioner wanted to file a suit and appeal then before being any further expenditure, minimum court fees ought to be saved by this petitioner. We cannot help this petitioner in view of the provisions of the Court Fees Act, 1870 nor can we carve out any exception in the Court Fees Act, 1870 as that would tantamount to judicial legislation. Hence, there is no substance in this writ petition and the same is, therefore, dismissed.

CHIEF JUSTICE

C.HARI SHANKAR, J.

NOVEMBER 26, 2019
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