

C.M.P.No.5617 of 2020
in
C.M.A.SR.No.23995 of 2020
S.M.SUBRAMANIAM, J.

The miscellaneous petition is filed, seeking exemption of Court fee of Rs.9,373/- to be paid in the civil miscellaneous appeal, which is preferred by the petitioners, challenging the judgment and decree passed in M.C.O.P.No.14 of 2018 dated 25.02.2019.

2. Exemption of Court fee cannot be granted in a routine manner by the Courts. Exemption of Court fee can be considered only if the person, who is approaching the Court, seeking exemption, must establish that he is an indigent person and incapable of paying the Court fee. Court fee being a revenue, routine exemption is impermissible. However, the litigants, who all are seeking such exemption, must prima facie establish that they are indigent persons and not in a position to pay Court fee for the purpose of moving the appeals.

3. Rule 24 of the Tamil Nadu Motor Vehicle Accident Claims Tribunal Rules provides Power to the Claims Tribunal to grant exemption from payment of Court fee. Rule 24(3) of the Tamil Nadu Motor Vehicle Accident Claims

Tribunal reads as under:

“Rule 24(3): The Claims Tribunal may, in its discretion exempt any party from the payment of fees prescribed under sub-rule(1):

Provided that where a claim of a party has been accepted by the Claims Tribunal the party shall have to pay the prescribed fees, exemption in respect of which has been granted initially before a copy of the judgment is obtained:

Provided further that where the amount of award is less than the amount of claim, the party shall be entitled to refund of the proportionate fee, namely the difference between the fee actually paid and the fee due if the claim had been made for the amount of award.”

4. The Rule stipulates that “the Claims Tribunal may, in its discretion exempt any party from the payment of fees”. Thus, the language employed in the rule unambiguously states that the Tribunal may, in its discretion. The power of discretion by the Courts are to be exercised judiciously. Wherever the Statute provides discretion to the Courts, exercise of discretion should not exceed the other provisions of the Act or Rules. Exercise of such discretion must be in consonance with other provisions and to mitigate the injustice, if any to be

caused to the litigants, in the event of refusing to grant exemption from payment of Court fee. Thus, it is made clear that the Tribunal should satisfy, whether the claimant is incapable of paying the court fee and not in a position to pay the Court fee, if such a conclusion is arrived with some materials on record. The power of discretion to grant exemption cannot be exercised in a routine manner, so as to defeat the provisions of the Act to pay Court fee and conduct the cases.

5. Payment of Court fee is the law. Grant of exemption is an exception. Thus, the rule of exception is to be granted, only if the Court satisfies that a person, who is approaching the Court is an indigent person and not in a position to pay the Court fee and on account of the non-payment of Court fee, justice to such a person cannot be denied.

6. Undoubtedly, the Rule 24(3) provides discretion. But this Court is of an opinion that in many cases, the Tribunals are granted exemption in a routine manner and directing the claimants to pay the Court fee, after disposal of the claim petitions, which is improper and it cannot be done in a routine manner. All such cases before exercising the power of discretion, the Tribunal

should find out, whether any materials are available to establish that a person, seeking exemption of payment of Court fee, is an indigent person or the circumstances as such, where the claimants are unable to pay the Court fee on account of the death of sole breadwinner or on certain extraneous circumstances. Therefore, only when such circumstances are ascertained by the Tribunal, then alone, the power of discretion can be exercised and the discretionary power cannot be exercised, so as to defeat the provisions of the statute.

7. This being the principles to be followed, this Court is of the considered opinion that in respect of the present miscellaneous petition, no acceptable reason has been stated in the affidavit filed in support of the miscellaneous petition. The petitioner has stated that due to his old age and based on the fact that he lost his son, he was unable to contract his counsel and this apart, he has not stated any language regarding his income details or other particulars, enabling this Court to arrive a conclusion that the petitioner is either an indigent person or on account of certain extraneous considerations, he was not in a position to pay the Court fee at present. When none of these grounds

are established by the petitioner, undoubtedly, he is not entitled to get the benefit of exemption of Court fee with reference to Rule 24(3) of the Tamil Nadu Motor Accident Claims Tribunal Rules.

8. The affidavit in the present case is absolutely absent with reference to the reasons, which must be candid and convincing. In the absence of any such reason, this Court is not inclined to consider the miscellaneous petition.

9. However, in order to give one opportunity, the petitioner is granted with two(2) weeks time to pay the Court fee and if the Court fee is not paid within a period of two(2) weeks from the date of receipt of a copy of this order, then the civil miscellaneous petition in C.M.P.No.5617 of 2020 as well as C.M.A.SR.No.23995 of 2020 stands dismissed automatically, without any reference to this Court.

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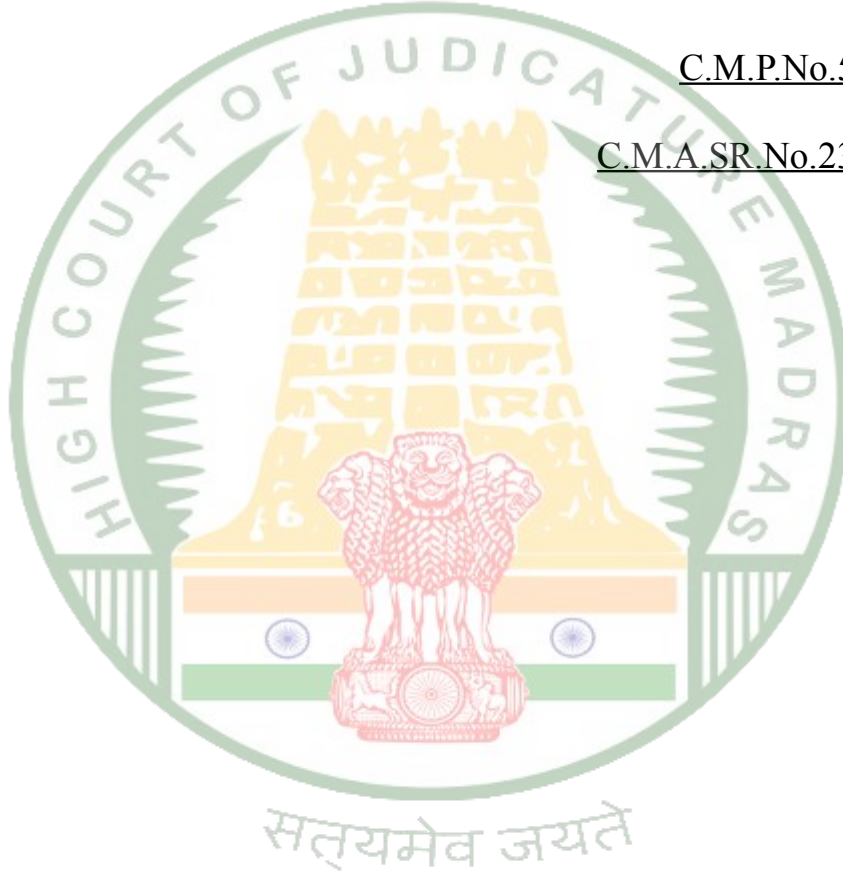
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