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

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Judgment delivered on: 10.04.2023

+ CM(M) 68/2019
MUMTAZ ARA

..... Petitioner

versus

GAUHAR HUSSAIN & ANR

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Ashok Gurnani, Adv.
For the Respondent : Mr. Monika Dhankar, Adv.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. Petitioner challenges the order dated 18.09.2019 in Misc. No. 61356/16 titled as "*Mumtaz Ara Vs. Guhar Hussain & Ors.*" whereby the learned Trial Court has dismissed the application under Order XLVII of CPC, 1908 seeking review of order dated 31.05.2016 for not having affixed the appropriate court fee thereto. Learned Trial Court has directed the petitioner/plaintiff to affix appropriate court fee before making further submissions there on.

2. Mr. Gurnani, learned counsel appearing on behalf of petitioner/plaintiff submits that the learned Trial Court vide its order dated 17.05.2007 had permitted the petitioner/plaintiff to sue the

respondent/defendant as indigent person after having considered the entire material available on record.

3. Mr. Gurnani, also submits that learned Trial Court had simultaneously directed the payment of appropriate court fee in case the status of the petitioner/plaintiff changes and she becomes financially capable of paying the same.

4. Learned counsel submits that after the death of the defendant no.2, on the failure of not having brought the LRs of the deceased/defendant no.2 on record, the suit had abated. Learned counsel submits that suit having been abated vide order dated 31.05.2016, the petitioner was constrained to seek review of the said order by filing the application under Order XLVII of CPC, 1908.

5. Learned counsel submits that upon the preliminary consideration of the maintainability of the said application, learned Trial Court passed the impugned order.

6. Mr. Gurnani, submits that once the learned Trial Court had held that the petitioner/plaintiff was an indigent person by its order dated 17.05.2007, unless there was any change in the status of the petitioner/plaintiff, it could not have directed the plaintiff/petitioner to affix appropriate court fee on the review application.

7. On that basis, learned counsel submits that the impugned order is untenable in law and requires interference by this court under Article 227 of Constitution of India.

8. *Per contra*, Mr. Monika Dhanker, learned counsel appearing for the respondent submits that even though the respondent had never challenged order dated 17.05.2007 recognizing the petitioner/plaintiff as

indigent person, lately the respondent has gained the knowledge that the petitioner/plaintiff is a person of means and is entirely and financially capable of affixing appropriate court fee thereon. On that basis, learned counsel submits that the learned Trial Court has not committed any irregularity or acted with any judicial impropriety and order is sustainable in law.

9. This Court has considered the rival submissions of the parties and also considered the various provisions referred to by Mr. Gurnani under Order XXXIII Rule 11 and Rule 8 of CPC, 1908.

10. So far as the status of the petitioner/plaintiff is concerned, it is clear that the order dated 17.05.2007 declaring the petitioner/plaintiff as an indigent person has not been challenged by the respondent nor has any subsequent order been passed having impact upon the status of the petitioner/plaintiff so far as, her indigency is concerned.

11. Though, the suit may have abated for reasons, which are not the subject matter of the present petition, however, the right of the petitioner/plaintiff to challenge the same or seek review thereof cannot be deprived by any court of law. Whether the petitioner is to pay court fee on such review application or not is to be considered in view of the facts and circumstances arising in the present case.

12. Once the civil court has already granted the status of an indigent person vide order dated 17.05.2007 and admittedly there having been neither any challenge to the same nor variation in the order, till such time, any such material is placed on record, either by the respondent or the learned Trial court comes to a different conclusion, on the basis of material on record, it cannot be said, *prima facie*, that the status of the

petitioner/plaintiff has changed from being an indigent person. In that view of the matter, it is not comprehensible as to on what basis the learned Trial Court has come to a conclusion that the appropriate court fee ought to have been affixed on the review application by the petitioner/plaintiff, more so, when there is no variation legally found tenable in the status of the petitioner/plaintiff.

13. In view of the aforesaid, the impugned order to the extent that it directs the petitioner to affix appropriate court fee as applicable on the application under Order XLVII of CPC, 1908 is concerned, the same is set aside.

14. Learned Trial Court shall take on record the application under Order XLVII of CPC, 1908 keeping in view the status of the plaintiff/petitioner as an indigent person.

15. This would be, however, without prejudice to the rights and the contentions of the respondent/defendant to raise all contentions and objections thereto.

16. The respondent is also at liberty to place on record any fresh material to persuade the learned Trial Court to re-visit the status of the petitioner/plaintiff as an indigent person as held by the learned Trial Court vide order dated 17.05.2007.

17. With the aforesaid liberty, the present petition is disposed of with no order as to costs in the above terms.

TUSHAR RAO GEDELA, J

APRIL 10, 2023/AT