

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7525 OF 2024

Anjlli Patil alias

Anjlil Gaurav Sharma

.. Petitioner

Versus

Bajaj Allianz Life Insurance Company Ltd & Ors. .. Respondents

.....

- Mr. Vaibhav Kulkarni a/w Mr. Ravindra Parihar & Ms. Trupti Sawant for Petitioner
- Mr. Abhishek Chitnis a/w Ms. Niyati Shah for Respondent No. 1

.....

CORAM : MILIND N. JADHAV, J.

DATE : JULY 04, 2024

JUDGMENT:

1. Heard Mr. Kulkarni, learned Advocate for Petitioner and Mr. Chitnis, learned Advocate for Respondent No. 1.

2. Present Writ Petition takes exception to the order dated 12.02.2024 passed by the learned Trial Court below unnumbered Exhibit dated 31.01.2024 which is an Application moved by Defendant No. 1 (Respondent No. 1 herein). The Application was moved for rejection of Suit Plaint under O VII R 11(c) of the Code of Civil Procedure, 1908 (for short "**CPC**"). After hearing both sides, learned Trial Court in its wisdom partly allowed the Application, *inter alia*, directing Plaintiff (Petitioner herein) to properly value the Suit Plaint and pay requisite court fee stamp since that was the only sustainable objection raised by Defendant No. 1 in its Application.

3. Briefly stated Plaintiff is the wife of an Army Officer. She filed Special Civil Suit No. 2401/2023 seeking declaratory relief, damages, her reinstatement and injunction pursuant to her termination. She was serving with Defendant No. 1 Company as 'Vice President' and was terminated against which she approached the Civil Court. In the Valuation Clause as stated in the Suit Plaint, she categorically pleaded that being the wife of an Army Officer, she stood exempted from payment of court fee stamp in view of State Government Notifications dated 11.11.1965 and 02.03.1977 read with Government Circular dated 14.12.1990.

4. In short, the question before me for adjudication is whether Petitioner (Plaintiff) would be entitled for remission of court fees?

5. With the able assistance of both the learned Advocates appearing for the parties, I have perused the aforementioned Government Notifications and Circular. Relevant Notification for consideration is Notification dated 11.11.1965 since the subsequent Notification of 1977 in fact expands the scope and ambit of entitlement of family members for remission of court fees. Notification dated 11.11.1965 is appended at page Nos. 31-32 of the Petition, relevant portion of which reads thus:-

Notification No. CTF/1365/166738/N dated 11/11/1965

Notification dated 11.11.1965

Revenue and Forest Department Notification No.
CTF/1365/166738/N

11. In exercise of the powers conferred by Section of the WP 206 of 2013 Bombay Court Fees Act, 1959 (Bom. XXXVI of 1959), the Government of Maharashtra hereby remits in the whole of State the fees payable in respect of any documents of any kinds specified in the First and Second Schedules to the said Act, which are or to be Filed, exhibited or recorded in any Civil or Criminal Court by an Indian Soldier or a member of his family."

Explanation: - For the purposes of this Notification -

(a) "Indian Soldier" means any person subject to the Army Act, 1950 (XLVI of 1950) of the Air Force, 1960 (XLV of 1960), or the Navy Act, 1957 (XLH of 1957), who is domiciled in the State of Maharashtra.

(b) "member of a family" means a wife, child, father, mother, minor brother or unmarried or widowed sister, **wholly dependent on an Indian Soldier.**
(emphasis supplied)

5.1. Admittedly Petitioner stands covered as member of the family of the Indian Soldier as stated therein. Principal objection raised by Defendant No.1 Company is with respect to the later part of clause (b) (emphasis supplied). It would read as the family member "**wholly dependent on an Indian Soldier**".

6. Mr. Chitnis has made an earnest effort to convince me that exemption granted under the aforesaid Notification is subject to the explanation carved out therein and more specifically clause (b) which would apply to the present case. According to him, Plaintiff is not wholly dependent on her husband due to various reasons recorded by the Trial Court in paragraph No.19 and hence the impugned order deserves to be upheld.

7. At the outset, he would submit that there is no pleading and averment in the Suit Plaint to the effect that Plaintiff is wholly dependent on her husband and hence in the absence of such pleading Plaintiff is disentitled from claiming any relief of remission, as also applicability of the said Notification to her case. Though before the learned Trial Court it was pleaded by Defendant No. 1 that Plaintiff was a Director of two companies and designated partner of two partnership firms, today before me the same is not pressed in view of the material available on record to show that she is no longer associated with the two companies and has resigned from the said companies as Director as also she has no nexus with the partnership firms. According to Defendant No. 1, Plaintiff has falsely submitted that she is dependent on her husband, but in order to qualify this proposition, Defendant No. 1 is not in a position to show as to how the words “*wholly dependent*” are to be construed in the context of the facts pertaining to the Plaintiff. The meaning of “*wholly dependent*” will have to be first understood in order to read the same in the explanation provided in the aforementioned Notification. The word “*dependent*” is the pre-dominant word in the two words “*wholly dependent*”. Black’s Law Dictionary (Eighth Edition) defines the word “*dependent*” as one who relies on another for support and one not

able to exist or sustain oneself without the power or aid of someone else. The meaning is very broad.

8. While probing into the meaning of the term “*wholly dependent*”, this Court draws assistance from the decision of the Supreme Court in the case of ***State of M.P. and Ors. Vs. M.P. Ojha and Ors.***¹ which has been followed by the Kerala High Court in the case of ***Mohan Abraham Vs. State of Kerala and Ors.***² The Supreme Court in paragraph No. 14 has opined that ordinarily, dependence would mean financial dependence but for a member of family it would mean other support, maybe physical as well. It has further held that “wholly dependent” would therefore include both financial and physical dependence. Paragraph No. 14 reads thus:-

“14. The expression “wholly dependent” is not a term of art. It has to be given its due meaning with reference to the Rules in which it appears. We need not make any attempt to define the expression “wholly dependent” to be applicable to all cases in all circumstances. We also need not look into other provisions of law where such expression is defined. That would likely to lead to results which the relevant Rules would not have contemplated. The expression “wholly dependent” has to be understood in the context in which it is used keeping in view the object of the particular Rules where it is contained. We cannot curtail the meaning of “wholly dependent” by reading into this the definition as given in SR 8 which has been reproduced above. Further, the expression “wholly dependent” as appearing in the definition of family as given in Medical Rules cannot be confined to mere financial dependence. Ordinarily dependence means financial dependence but for a member of family it would mean other support, may be physical, as well. To be “wholly dependent” would therefore include both financial and physical dependence. If support required is physical and a member of the family is otherwise financially sound he may not necessarily be wholly dependent. Here the father was 70 years of age and was sick and it could not be said that he was not wholly dependent on his son. Son has to look, after him in

1 AIR 1998 SC 659 : (1998) 2 SCC 554

2 ILR 2021 (1) Kerala 1086 : 20212 (2) KLJ 172

his old age. Even otherwise by getting a pension of Rs. 414 per month which by any standard is a paltry amount it could not be said that the father was not "wholly dependent" on his son. That the father had a separate capacity of being a retired Government servant is immaterial if his case falls within the Medical Rules being a member of the family of his son and wholly dependent on him. A flexible approach has to be adopted in interpreting and applying the Rules in a case like the present one. There is no dispute that the son took his father to Bombay for treatment for his serious ailment after getting due permission from the competent authority. It was submitted before us that the father being a retired Government servant could himself get sanction for treatment outside the State as a special case from the competent authority. It is not necessary for us to look into this aspect of the matter as we are satisfied that under the relevant Medical Rules, the father was member of the family of his son and was wholly dependent on him and the 2nd respondent was thus fully entitled to reimbursement for the expenses incurred on the treatment of his father and other Traveling expenses."

8.1. In the present case, it is seen that Plaintiff admittedly is residing with her husband and their two children in a Hindu Undivided Family house belonging to her husband where he is the manager of the family. She stays in her husband's house for all her support whether it be physical, emotional or otherwise for self and for her children for which she is entirely dependent on her husband and his house. This support would be in the form of maintenance, day to day expenses, and all needs of the family. It is not the Defendant No. 1's case that Plaintiff has pursuant to her termination from Defendant No. 1 Company taken up another job or assignment from which she is presently earning in order to qualify herself as not wholly dependent on her husband. The ethos and intention of the legislature to grant remission from payment of court fee in such a case which has been in existence since 1965 needs to be considered. Much water has flowed under the bridge whereby grant of remission from payment of court fee has also been

allowed by several statutory provisions enacted by the Center as well as the States in the case of female litigants. However the present case before me is a case which falls into a specific rather special category and clause altogether different than the another case. Once it is proved that the Plaintiff is no longer employed and independent at the time of filing of the suit, she would have to fall into the exempted category. It is not a crime in this country for an Indian soldier's wife or for that matter family members of an Indian soldier to get themselves educated, earn and make progress in life. The question that the said family member being wholly dependent would have to be considered with reference to context in the facts of each case and in the present case when the Suit is filed, it is an admitted position that Plaintiff is not employed, she is in fact residing with her husband and also taking care of their children. Therefore it cannot be said that she would be in a position to sustain herself on her own merely because in the past she may have had accumulated a big bank balance or as is being held in the present case that in the past she had purchased one car worth Rs. 50 Lacs by obtaining a vehicle loan and also obtained a housing loan. It is all the more reason to now believe that the Plaintiff would not be wholly dependent but entirely dependent on her husband because now she would have rely upon him to bear the EMIs for the house and car which she purchased, lest they do not become NPA and she

would then have to bear hefty bank interest if the installments are not paid and eventually she may even lose them. All this undoubtedly would cause severe trauma to her. In such a situation in her life, the only solace that she would find is in her husband's company and house where she is residing and therefore it cannot be said that she is not wholly dependent on her husband. Once again it is not a crime in this Country to have an independent source of income or have a loan balance, but that cannot be considered as the sole yardstick to classify a family member or not wholly dependent. The entire purpose and ethos of the Notifications would stand defeated if the impugned order is allowed to sustain. The specific defence that the Plaintiff has not pleaded that she is wholly dependent on her husband in the Suit Plaint cannot be a ground to reject her case and direct payment of court fee.

9. Pursuant to the hearing held on 01.07.2022, since Mr. Chitnis informed the Court that court fee was already paid by the Plaintiff, I had called upon the Advocate for Plaintiff to inform the Court under what circumstances the said court fee was paid. Additional affidavit dated 02.07.2024 has been filed by the Plaintiff where in paragraph No. 3, it is stated that court fee had to be paid by her in order to press her Application for interim relief below Exh. 5.

10. In view of the above observations and findings, the impugned order dated 31.01.2024 stands quashed and set aside resultantly

holding that Plaintiff is entitled to remission of court fee in its entirety. Application dated 31.01.2024 filed by Defendant No. 1 is dismissed. Suit shall proceed on its own merits strictly in accordance law without being influenced by any of the observations made in order this order. This Court has not expressed its opinion on the merits of the case. Though averment is made by Mr. Kulkarni for expeditious disposal of the suit before the Trial Court, such request is declined since the suit is filed in December 2023 only and this Court cannot burden the Trial Court by expediting the suit which is filed recently, in view of the tremendous backlog and pressure of work and old matter being handled by the Trial Court.

11. In view of the above order, the court fee paid by the Plaintiff shall be refunded back by the Registry of the Trial Court to the Plaintiff within a period of four weeks from today by following all compliance as required in law without any delay.

12. All parties and Registry of Trial Court to act on an authenticated server copy of this order and Registry shall not insist on a certified copy for processing the refund of court fee to the Plaintiff as directed.

13. Though Mr. Chitnis has ended up on the losing side, I would like to record my appreciation for him having assisted the Court and conducted the matter fairly and with erudition.

14. Writ Petition is allowed and disposed in the above terms.

Amberkar

[MILIND N. JADHAV, J.]

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signed by
RAVINDRA
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AMBERKAR
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