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2019 PLRonline 3508

PUNJAB AND HARYANA HIGH COURT

Before : Justice Rakesh Kumar Jain and Justice Anupinder Singh Grewal.

BALWINDER SINGH – Appellant

Versus

SINDERPAL KAUR and another – Respondents.

FAO No. 2787 of 2017 (O&M).

17.5.2019.

Family Courts Act, 1984 Section 7 – Civil Procedure Code, 1908, Order 33, Rule 10 – Suit for maintenance – Court fee – Ad valorem – if a petition is filed before the Family Court for the purpose of maintenance then in terms of Section 7 of the Act ad volorem Court fee is not liable to be paid because the proceedings initiated are in the nature of the petition and not the suit – If no ad volorem Court fee is payable for a petition filed before the Family Court then the question of recovery of the Court fee from the defendant against whom the decree has been passed in terms of Section 33 Rule 10 of the CPC would not arise [Paras 15 and 17]

Cases Referred :-

1. *Lt. Col. Satish Chaudhary v. Kumari Sneh Lata, 2015 (1) PLR 55.*
2. *Mamta v. Hari Kishan, 2004 (3) RCR (Civil) 838.*
3. *Nachhattar Singh v. Satinder Kaur, 2007 (4) RCR (Civil) 826.*
4. *Saleesh Babu v. Deepa, (1996) 2 HLR 441 : 1996 (3) RCR (Civil) 588.*
5. *Smt. Mamta v. Hari Kishan, AIR 2004 Rajasthan 47.*

For the Appellant :- Ms. Manmohan Kaur, Advocate. For the Respondents :- Lakhwinder Singh for P.S. Dhaliwal, Advocates.

JUDGMENT

Rakesh Kumar Jain, J. – This appeal is directed against the judgment and decree of the Family Court, Barnala dated 2.3.2017 by which suit filed by both the respondents under Order 33, Rules 1 & 2 of the Code of Civil Procedure, 1908 [for short 'the CPC'] in forma

pauperis for recovery of maintenance under the Hindu Adoptions and Maintenance Act, 1956 [for short 'the Act'], by creating a charge over the property of the appellant and for permanent injunction restraining the appellant from alienating the suit property owned by him in any manner was decreed only qua respondent No.2/plantiff No.2 in the suit as plaintiff No.1/respondent No.1 had withdrawn the suit and the Family Court, Barnala had directed the recovery of maintenance allowance at the rate of Rs. 5000/- per month from the defendant/appellant by plaintiff No.2 by creating a charge over the suit property and also restraining him from alienating the suit property in any manner.

2. In brief, respondent No.1 & 2/plaintiff No.1 & 2 filed a suit in forma pauperis under Order 33, Rules 1 & 2 of the CPC for recovery of maintenance amount of Rs. 10,000/- per month for plaintiff No.1/respondent No.1 and Rs. 5000/- per month for plaintiff No.2/respondent No.2 by creating charge over the suit property and also for permanent injunction against the defendant/appellant from alienating the suit property.

3. Plaintiff No.1 was married to Iqbal Singh (son of the appellant) on 16.12.2004 as per Sikh rites at Barnala. They were blessed with a female child (plaintiff No.2), born on 29.1.2007. Unfortunately Iqbal Singh died in an accident on 15.6.2010. Plaintiff No.1 was allowed to live with plaintiff No.2 in her matrimonial home by the defendant till 23.3.2011 and thereafter the defendant sent plaintiff No.1 along with plaintiff No.2 to her parental home. The defendant did not pay maintenance thereafter w.e.f. 23.3.2011 to the plaintiffs whereas, the defendant is allegedly the owner in possession of the suit property and has been earning Rs. 4 lakh per annum out of which he could have easily paid maintenance @ Rs. 15,000/- per month as claimed by the plaintiffs. According to the plaintiffs, the defendant was asked to maintain them and not to dispossess them from the suit property but he finally refused on 8.7.2011 forcing the plaintiffs to file the present suit before the Family Court, Barnala. Plaintiff No.1 withdrew her suit filed as forma pauperis on 1.4.2013 but plaintiff No.2 sued the defendant in her capacity as an indigent person after permission was granted by the Family Court on 13.7.2016. The defendant filed written statement on 29.8.2016 in which he averred that plaintiff No.1 had solemnized the marriage with Sukhchain Singh on 9.3.2012 but started litigating with her second husband and had moved an applications under section 125 of the Cr.P.C., 1973 section 12 of the Protection of Women From Domestic Violence Act, 2005 [for short 'the Act of 2008'] and also under section 498A/406 of the IPC besides filing a petition under section 13 of the Hindu Marriage Act, 1955 [for short 'the 1955 Act'] which was later on converted into a petition under Section 13B of the 1955 Act. It is further averred that plaintiff No.1/respondent No.1 had recorded her statement on 27.7.2015 about the receipt of entire dowry articles including gold ornaments and cash amount of Rs. 5 lakh of her future maintenance from Sukhchain Singh and as such marriage of plaintiff No.1/respondent No.1 with her second husband Sukhchain Singh was dissolved on a petition filed under Section 13B of the 1955 Act and the plaintiff No.1/respondent No.1 had withdrawn all the applications filed against Sukhchain Singh and defendant has already filed an application under the Guardians and Wards Act, 1890 for seeking the custody of plaintiff No.2. It is further averred in the reply that after the marriage of plaintiff No.1 with Sukhchain Singh, plaintiff No.2 became the step daughter of Sukhchain Singh and has no right in the property of the defendant. On the aforesaid pleadings as many as four issues were framed by the trial Court.

4. Issues No.1 to 3were jointly discussed. It has been held by the trial Court that plaintiff No.1 had filed her claim in terms of Section 19 of the Act being a widowed daughter-in-law of the defendant and plaintiff No. 2 in terms of Section 20 of the Act for maintenance of the children. The Court has ultimately found that plaintiff No.2 being dependent as the daughter of the predeceased son of the defendant is entitled to be maintained and as such her suit was decreed for the payment of maintenance @ 5000/- per month and charge was created over the suit property owned by the defendant who had been further restrained from alienating the suit property. However, the decree sheet was ordered to be sent to the Collector, Barnala for recovery of the Court Fee as first charge over the suit property of the defendant under Order 33, Rule 10 of the CPC. Accordingly, decree sheet was prepared in which the stamp for the plaint was determined to the tune of Rs. 27450/- .

5. The defendant has filed this appeal by affixing the Court Fee of Rs. 20/-. On 7.12.2017, this Court had passed an order asking the counsel for the defendant/appellant as to how the appeal is maintainable without affixing the Court fee when the value for the purposes of Court fee of the decree in the suit is fixed by the Family Court at Rs. 27,450/-.

6. Learned counsel for the appellant has relied upon a Division Bench decision of the Rajasthan High Court in the case of ***"Mamta v. Hari Kishan" 2004 (3) RCR (Civil) 838*** to contend that the proceedings before the family Court is not a suit rather the proceedings before the Family Courts are in the nature of petitions or applications and therefore, ad valorem Court fee is not payable. He has further relied upon a decision of the Single Judge of this Court rendered in the case of ***"Lt. Col. Satish Chaudhary v. Kumari Sneh Lata" 2015 (1) PLR 55.***

7. On the other hand, it is further submitted that as per Rule 7 of the Punjab and Haryana High Court Family Courts Rule, 2005 [for short 'the Rules'] all causes for the relief(s) envisaged under the provisions of the Act shall be by way of petition(s). He has further referred to Rule 25 of the Rules to contend that the proceedings before the Family Court has to be as treated as civil proceedings but the provisions of the CPC shall not apply to such proceedings and it shall be entitled to devise its own procedure in accordance with the rules of natural justice.

8. Learned counsel for the appellant has further submitted that in the case of Mamta (Supra), this Court had held that the proceedings before the Family Court are of summary in nature and cannot be termed as a suit even if it is provided in Section 7 of the Rajasthan High Court Family Courts Rules, 1994 that all actions instituted before the Family Court shall be by way of plaint or petition or application or otherwise, as the Court thinks fit. It is further submitted that it was held therein that the petitions in the Family Court are in the nature of petitions or application and the Court Fee is payable under clause 11 (K) of Schedule -II of the Rajasthan Court Fees and Suit Valuation Act, 1961.

9. Learned counsel for the appellant has further submitted that in the case of Lt. Col. Satish Chaudhary (Supra), the Single Bench of this Court, while dealing with the case of the Family Court at Bhiwani, Haryana has referred to the decision in the case of Smt. Mamta and Others (Supra) in extenso and also a decision of the Kerala High Court in the case of

"Saleesh Babu v. Deepa", 1996 (3) RCR (Civil) 588 for holding that ad volorem Court Fee would not be applicable on a petition filed before a Family Court.

10. On the other hand, learned counsel for the respondent has submitted that since the Court below has determined the stamp for plaint in the decree to the tune of Rs. 27,450/- therefore, the appellant was supposed to pay ad volorem Court fee.

11. We have heard learned counsel for the parties on this issue.

12. Although the respondent had filed a suit under Order 33, Rules 1 and 2 of the CPC but the said suit was filed for the recovery of maintenance which was maintainable before the Family Court in terms of section 7 of the Family Courts Act, 1984 which deals with the jurisdiction of the Family Court to try a suit or proceedings for maintenance in terms of section 7 (f) of the Family Courts Act. Once the said proceedings for maintenance has been filed in terms of Rule 7 of the Rules, it would be a petition as it is provided therein that a petition has to be filed in respect of all types of causes for the purpose of seeking the relief as envisaged under the provisions of the Act i.e. the Family Courts Act, 1984.

13. In para No.11 of the case of Lt. Col. Satish Chaudhary (Supra), this Court, while dealing with the cases of Smt. Mamta and others (Supra) and Saleesh Babu (Supra) held that "the question of court-fee payable on a petition for maintenance in the context of HAMA and of help in this case has been considered by a Division Bench of the Rajasthan High Court in ***Smt. Mamta And Others v. Hari Kishan, AIR 2004 Rajasthan 47*** in the context of the Rajasthan High Court Family Courts Rules, 1994 and the Rajasthan Court Fees and Suits Valuation Act, 1961. The facts of the case were that the wife and children of the respondent moved an application under Sections 18 and 20 of the HAMA claiming maintenance in the sum of Rs. 25,000/- per month. The husband filed an application under Order 7, Rule 11 CPC for rejection of the application for non-payment of Court-fee payable on valuation of the petition i.e. Rs. 3 lacs. On the moot controversy, a preliminary issue was framed whether the application filed by the wife is liable to be dismissed for non-payment of court-fees. The Judge, Family Court, decided the issue against the wife who appealed to the High Court. It was contended before the Court that the proceedings for maintenance before the Family Court are summary in nature and as such an application cannot be termed as a 'suit'. Consequently, the provision of Section 22 of the Rajasthan Court Fees and Suit Valuation Act, 1961 is not a relevant factor and on such an application ad valorem Court fee is not payable on the amount claimed payable for one year. The Court was called upon to deal with Schedule II of the Rajasthan Act, 1961 where Sub-Clause (k) of Clause 11 of the Schedule II of the Act provides for fixed fees. Clause 11 identifies original petitions not otherwise provided for when filed in; (1) a Court subordinate to the High Court and (2) the High Court, and the fee prescribed therefor is Rs. 2/- and Rs. 10/- respectively. The Court reasoned that the Family Courts are empowered to make an attempt to simplify the rules and procedure so as to enable the Family Court to deal effectively with the disputes before it. One of its objectives is to bring succour to women and children who have been abandoned by their husbands/fathers and others. Rule 7 speaks of initiation of proceedings before the Family Court by way of plaint or petition or application or otherwise as the Court thinks fit. The Court opined that the framers of the rule have casually incorporated all sorts

of alternatives, i.e., plaint or petition or application. In case, the action instituted before the Family Court is taken as a plaint and tried as a suit, the Court took the view that the entire purpose of setting up Family Courts will be frustrated. With a view to deal with actions in matrimonial disputes more quickly and effectively which are different from the procedure adopted in ordinary civil proceedings, the action will have to be taken as instituted on an application. Any other interpretation asking to affix ad valorem courtfees will operate harshly and would tend to price justice out of reach of many litigants in distress thereby destroying the very object of setting up of the Family Courts. When a woman and the children ask for maintenance, they can institute proceedings by way of an application. Section 7 of the FCA directs that the Family Court shall be for the purpose of exercising the jurisdiction under the Act to be the District Court or any other subordinate Civil Court for the area, to which the jurisdiction of the Family Court extends. Thus, Section 7(1)(f) of the Act takes within its purview a suit or proceeding between the parties to a marriage with respect to the property of the parties or any of them and apply it for survival ends. Since the proceedings before the Family Court is commenced by way of a petition or an application, it is obvious that such an application would be governed by Schedule II of the Rajasthan Court Fees and Suit Valuation Act, 1961. The Court further reasoned in paragraph 15 of the judgment that a bare look at Section 22 of the Rajasthan Act shows that the said provision is applicable to suits and not applications or proceedings. Therefore, actions instituted under Sections 18 and 20 are proceedings within the meaning of Section 7

(f) and not a suit. Therefore, Section 22 has no application. To reach this conclusion, the Court drew strength from the Division Bench judgment of the Kerala High Court in ***Saleesh Babu v. Deepa; (1996) 2 HLR 441***. It is well established law that in case of fiscal Statutes the provisions must be strictly interpreted giving every benefit of doubt to the subject and lightening as far as possible, the burden of court-fees on a litigant. Where an adjudication falls within two provisions of the Court-fees Act one of which is onerous for the litigant and other more liberal, the Court would apply that provision which is beneficial to the litigant. For this proposition of law the Court placed reliance on Supreme Court decisions reported in AIR 1957 Supreme Court 657 and AIR 1976 Supreme Court 1503. Accordingly, the Court held that all the petitions in the Family Courts are in the nature of petitions or applications and the court fees is payable under the residuary Clause 11(k) of the Schedule-II of the Rajasthan Court Fees and Suit Valuation Act, 1961″.

14. It is further observed in the said decision that “in the absence of a clear provision governing court-fees payable and going by the ratio by the decision of the Rajasthan High Court, it appears to be fair and reasonable to hold that the applicant was not called upon to affix ad-valorem court-fees on her application and was liable to affix only a fixed court fees and when paid would suffice to maintain the suit or application before the Family Court”.

15. We agree with the view taken by the learned Single Judge in the case of *Lt. Col. Satish Chaudhary* (supra), and thus it is held that if a petition is filed before the Family Court for the purpose of maintenance then in terms of Section 7 of the Act ad volorem Court fee is not liable to be paid because the proceedings initiated are in the nature of the petition and not the suit.

16. Learned counsel for the appellant has then submitted that if ad volorem Court fee is not liable to be paid then the Court fee which is ordered to be recovered in terms of the Order 33 Rules 10 of the CPC is patently erroneous and illegal. In this regard we are referring to Order 33, Rule 10 of the CPC, which read as under:-

“Costs where [indigent person] succeeds – Where the plaintiff succeeds in the suit, the Court shall calculate the amount of Court fees which would have been paid by the plaintiff if he had not been permitted to sue as an indigent person, such amount shall be recoverable by the State Government from any party ordered by the decree to pay the same, and shall be a first charge on the subject-matter of the suit.”

17. We have considered the argument raised by learned counsel for the appellant and are of the considered view that if no ad volorem Court fee is payable for a petition filed before the Family Court then the question of recovery of the Court fee from the defendant against whom the decree has been passed in terms of Section 33 Rule 10 of the CPC would not arise. Therefore, we set aside the part of the order by which the Family Court has directed the recovery of Court Fee after holding that plaintiff No.2 is entitled to Rs. 5,000/- per month as maintenance from the present appellant and further directed the Collector, Barnala to recover the same.

18. Insofar as the merits of the case are concerned, in view of a decision rendered by this Court in the case of judgment in the case of ***“Nachhattar Singh v. Satinder Kaur and others” 2007(4) RCR (Civil) 826*** wherein it has been held that the father-in-law is liable to maintain grandchildren if they are unable to maintain themselves and the income of their mother/father is inadequate for their maintenance, plaintiff No.2 to whom Rs. 5,000/- per month has been awarded by the Family Court, shall remain the grand-daughter of the appellant after the death of her father even if her mother had contracted second marriage which has otherwise been failed as well.

19. No other point has been raised by the counsel for the appellant in this regard.

20. In view of the above, the present appeal is hereby disposed of.