

**Civil Revision No. 169/2015**

**29.09.2016**

Shri Mukhtar Ahmed, learned counsel for the applicant.

Shri Ishtiyag Husain, learned counsel for the respondent.

With the consent of both the parties, heard finally.

Being aggrieved by the order dated 12.03.2015, passed by XIXth Additional District Judge, Jabalpur, in MJC No.36/2013, whereby the application of plaintiff/respondent for exemption from payment of Court fees on the basis of notification No. 9-1-83-B-xxi dated 14.02.2011 issued under Section 35 of the Court Fees Act was allowed and she was permitted to sue as an indigent person.

Main contention of Shri Mukhtar Ahmed, learned counsel for the defendant/applicant is that the plaintiff/respondent has suppressed the fact that she was getting a maintenance of Rs.2,000/- per month, i.e., Rs.24,000/- per annum in addition to Rs.18,000/- per annum as mentioned in the income certificate (Ex. P-1), hence not entitled to the benefit of said notification. The trial Court without taking into consideration this “maintenance income”

of plaintiff/respondent has erred in holding that the plaintiff's income is less than Rs.25,000/-.

Shri Ishtiyag Husain, learned counsel for the plaintiff/respondent submitted that defendant/petitioner has no right to challenge the said impugned order in view of the provisions of Section 115 of the C.P.C. It is further submitted by him that the grievance, if any is between the State and the plaintiff/respondent and such order can only be challenged if it affects the jurisdiction of the court.

The learned counsel has placed reliance on the case of **Vimalchand and another Vs. Gyanmala AIR 1989 Madhya Pradesh 140**, wherein this court has held as under :-

The other aspect of the matter is that according to clause (b) of proviso to sub-section (1) of Section 115 of the C.P.C. No order under revision is to be reversed or varied if it has not caused any failure of justice or caused any irreparable injury to the party against whom it is made. This aspect of the matter was recently considered by me in C.R. No.16/87 (Hukumchand Vs. Kailsh) decided on 23.06.1988, by permitting the non-applicant to prosecute the suit as an indigent person, the defendants before this Court cannot be permitted to raise a grievance unless it is linked with the jurisdiction of the Court, as mainly the matter of Court-fees is between the plaintiff and State.

[see C.R. No.489/75 decided on 03.12.1979 reported in (1080) 1 MPWN 238 (Ramchanda Vs. Ku. Hemlata)] The applicant before this Court could not point out anything or could not suggest that the impugned order affects the jurisdiction of the Court, which is trying the suit. In view of this no interference is called for in this revision.

It is pertinent to note that, no such objection about the jurisdiction of the Trial Court was raised here.

I have heard the learned counsel for the parties at length and perused the record.

It is apparent from the impugned order, that the plaintiff/respondent had disclosed before the trial Court that an order for Rs.2,000/- per month as interim maintenance was granted in her favour on 09.07.2014. Though, it was not stated as to whether it was regularly paid to her or not. Even if, it is regularly paid to her, then also this meager amount of maintenance is awarded for the sustenance of the poor wife and such meager amount cannot be taken into consideration for the purpose of determining her capacity to pay the court fees. If she is required to pay the maintenance amount towards the court fees, how the poor lady will survive is difficult to perceive.

For this reason, under Section 60 of C.P.C., the maintenance amount has been exempted from the attachment.

However, from a perusal of impugned order, it is evident that the trial Court had considered the deposition of plaintiff/respondent in detail and also after taking into consideration the income certificate (Ex. P-1) given by the Tehsildar, wherein the income of the plaintiff/respondent was mentioned as Rs.18,000/- per annum, came to the conclusion that Rs.18,000/- could not be said to be the individual income of the plaintiff and she was found entitled to the claim under the said notification.

In the case of **Smt. Vimlabai Vs. State of M.P. AIR 1997 Madhya Pradesh 134**, this Court has held as under :-

The words 'persons' whose annual income in relation to the plaint and liability of the Court-fees would only mean the plaintiff who is party and would not include in its mischief any other person who is not party to the suit. The other key words 'from all sources' would not mean the income of any other person. The words 'from all sources' means the sources of the person who has filed the suit, the plaintiff and not the sources of the other persons who are otherwise liable for maintaining the plaintiff. The arguments of the learned counsel for the State is accepted, it

would lead to a situation, where benefit of the notification cannot be given to anybody.

In view of the aforesaid facts, this revision has no merit as no illegality or material irregularity affecting the merits of the case was detected from the record nor the order can be said to be without the jurisdiction or passed with an erroneous approach. Consequently, the revision is dismissed.

The record of the case be sent forthwith and the trial Court is directed to proceed with the suit expeditiously.

The parties shall appear before the trial Court on 23.11.2016.

**(Smt. Nandita Dubey)**  
**Judge**

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