

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 24th OF JANUARY, 2024

MISC. PETITION NO. 2306 OF 2023

BETWEEN:-

BHAGWANLAL SHARMA

**....PLAINTIFF/
PETITIONER**

(BY SHRI ANURAG GOHIL – ADVOCATE FOR THE PETITIONER)

AND

- 1. GOVERNMENT KAMLA NEHRU KANYA UCHCHATAR MAHAVIDYALAYA, THROUGH PRINCIPAL, GOVERNMENT KAMLA NEHRU KANYA UCHCHATAR MAHAVIDYALAYA, TEEN SHED, T.T. NAGAR, BHOPAL.**
- 2. DISTRICT EDUCATION OFFICER, THROUGH CONCERNED OFFICER, TULSI NAGAR, DISTRICT BHOPAL.**
- 3. DR. NEERAJ GAUD,**
- 4. KUMARI AYUSHI GAUD**

5. STATE OF MADHYA PRADESH, THROUGH
DISTRICT MAGISTRATE, OLD
SECRETARIAT, DISTRICT BHOPAL.

.....DEFENDANTS/
RESPONDENTS

(BY SHRI NARENDRA R. BHAVSAR WITH SHRI R.K. PATEL -
ADVOCATES)

.....
Reserved on : 24.11.2023

Pronounced on: 24.01.2024

This petition coming on for hearing this day, the court passed the following:

ORDER

By this petition, the petitioner is questioning the validity of the order dated 19.01.2023 (Annexure P/3) passed by the trial court allowing the application filed by the respondent Nos. 3 and 4 under Order 7 Rule 11 of the Code of Civil Procedure asking relief that since the suit is undervalued, therefore, the plaint be rejected.

2. The trial court allowed the application and directed plaintiff/petitioner to pay *ad-valorem* court fees because he filed the suit for declaration and also for mandatory injunction.

3. As per the facts of the case, the plaintiff/petitioner filed a suit in which he paid the court fees with respect to the relief of declaration but no court fees for the relief of mandatory injunction was paid because as per the plaintiff/petitioner, the said relief was consequential in nature. The trial court while allowing the application observed that the mandatory injunction is not a consequential relief to the declaration, as claimed, and as such separate court fees is required to be paid by the

plaintiff. Accordingly, the trial court directed the plaintiff/petitioner to pay the separate court fees in respect of the relief of mandatory injunction.

4. From perusal of the plaint available on record, it is seen that the a declaration has been sought by the plaintiff that the direction issued by the respondent Nos. 1 and 2 granting retiral dues of late Smt. Kiran Sharma (Gaud), Teacher, Government Kamla Nehru Girls Higher Secondary School, Bhopal in favour of respondent Nos. 3 and 4/defendants and the proceeding initiated thereof be declared null and void and consequently it is also claimed that by granting mandatory injunction, the said amount be paid to the plaintiff.

5. The sole ground of challenging the impugned order is that the relief of injunction in a suit of declaration cannot be said to be a separate relief but it is consequential to the declaration sought and therefore no separate court fees is required to be paid. Learned counsel for the petitioner has placed reliance upon a judgment passed in **Civil Revision No. 433 of 2006-Ashok Kumar Gebani & others vs. Ramhet Agrawal & others** decided on 16.07.2007 in which the Court found that in a suit for declaration, relief of injunction restraining other party cannot be said to be a consequential relief.

6. However, I am not convinced with the submission made by the learned counsel for the petitioner and in my opinion the judgment relied by him is also not applicable in the facts and circumstances of the case in hand. It is a case in which declaration sought by the plaintiff but by way of relief, which is claimed to be a consequential relief. He is asking an independent claim for himself and therefore the relief of declaration and other relief connected thereto and claimed by the plaintiff/petitioner cannot be considered to be consequential to the declaration claimed. The

relief, which is said to be a consequential relief, can be claimed independently by the plaintiff.

7. The legal position, as is involved in the present case, has been dealt with by the Delhi High Court in the case of **Sujata Sharma vs. Manu Gupta & Ors** reported in **2010 SCC Online Del 506** wherein the Court relied upon the case of **Hans Raj Kalra v. Kishan Lal Kalra and Ors** reported in **ILR 1976 Delhi**, in which the Court observed as under:

10. In support of her submission another decision has been referred being ***Hans Raj Kalra v. Kishan Lal Kalra, ILR 1976 Delhi 745*** as regards the issue of court fee payable on mere declaration and/or consequential relief. The court held as follows:

“(20) It is fairly well settled that it is not the form of the plaint or the manner in which the relief is worded in it, but the substance of it, which is determinative of its real nature and character and in determining whether a suit is a suit for a mere declaration or for a declaration with a consequential relief a Court must not be carried away by the form of the plaint but must look to the substance of it (1). It is equally well settled that the question whether the suit would be governed by Section 7(iv)(c) or Article 17 of Schedule II of the Court Fees Act must be determined not on what relief the plaintiff should ask to be able to succeed but according to the relief actually claimed in the plaint (2). It is equally well settled that the question whether a suit comes within the terms of Section 34 of the Specific Relief Act or not will have no impact on the question of valuation of the suit for the purpose of court fees but must be determined on the basis of what the plaintiff actually seeks and not on the basis of what he may be entitled to sue for (3). In case the suit is for a declaration implicate it would be necessary for the Court to consider whether a consequential relief is implicit in the declaration. If it is, the provisions of Section 7(iv)(c) of the Court Fees Act would be attracted (4). If on the whole and in substance a suit appears to ask for some relief other than or in addition to a

mere declaration the suit must be held not to be one for a bare declaration even though the plaint may be cast in a declaratory form (5). It is, however, open to the Court, in considering the question, to take into account the maintainability or otherwise of a suit for a bare declaration (6). The consequential relief must be such that it will constitute further relief within the meaning of Section 34 of the Specific Relief Act (7). It must be a relief to which the plaintiff would not be entitled unless a certain title was established and unless the plaintiff would necessarily be entitled to such relief on such title being established (8). A relief is consequential to a declaration if it follows on such a declaration and depends on it (9). What ensues or follows must have a necessary connection with the cause. Cause and consequence are co-relative terms, one implying the other. What the courts must, therefore, see is whether the relief, other than the declaratory decree, follows as a natural consequence from the declaration or in other words flows from it (10). But the mere fact that a certain relief flows from the right declared will not by its own force make it a consequential relief unless it is asked for as incidental to the declaration.”

Emphasis supplied

Further in **Sujata Sharma (supra)**, the Delhi High Court observed as under:-

15. As to what constitutes ‘consequential relief’, counsel for the defendants has referred to the observation in **Mt. Zeb-ul-Nissa v. Din Mohammad, AIR 1941 Lahore 7 (FB) (6)** which was also upheld by the Supreme Court in **Shamsher Singh v. Rajinder Prasad, AIR 1973 SC 2384 (7)**. The said observation states as follows:

“The expression ‘consequential relief’ in Article 7(iv)(c) means some relief, which would follow directly from the declaration given, the valuation of which is not capable of being definitely ascertained and which is not specifically provided for anywhere in the Act and cannot be claimed independently of the declaration as a ‘substantial

relief’.”

16. ‘Further relief’ as mentioned in Section 34 of the Specific Relief Act, 1963 must arise from the cause of action on which the declaratory suit is based. However, the operation of Section 7(iv)(c) of the Court Fees Act, 1870 is limited to cases where a consequential relief is claimed in addition to a declaratory relief. The section does not apply to all cases falling within the ambit of Section 34 of the Specific Relief Act as though every ‘consequential relief’ would be ‘further relief’, there would be ‘further relief’ which would not constitute ‘consequential relief’. No relief is consequential unless it cannot be granted without a declaration.

17. It is settled law that a declaration with consequential relief falls within the meaning of Section 7(iv)(c) of the Court Fee Act, 1870 and the plaintiff in such a case is required to value the suit for the purposes of court fee which is payable ad-valorem according to the value of the relief sought.”

Emphasis supplied

8. In view of the aforesaid, I am of the considered view that the Court has rightly observed that although a declaration was claimed, but by a mandatory injunction claiming whatever amount was to be paid towards the retiral dues of late employee in favour of respondent Nos. 3 and 4 be paid in favour of plaintiff/petitioner is not a relief consequential to the said declaration. By the said relief, the plaintiff is not only depriving the defendants to get the relief, which is already granted in their favour, but the plaintiff is also claiming that the said amount be paid to him. The declaration and consequential relief claimed by the plaintiff are very much distinct to each other. The injunction claimed is not consequential to the declaration made. The amount towards the retiral dues of late employee is being claimed by the plaintiff for himself, therefore trial court has rightly observed that the relief of

declaration and injunction needs to be valued separately and *ad valorem* court fees is required to be paid. I do not find any illegality or perversity in the order passed by the trial court. The case on which the petitioner is relying upon is not applicable in the facts and circumstances of the present case.

9. The petition is without any substance and is hereby **dismissed** accordingly.

(SANJAY DWIVEDI)
JUDGE