

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2708 OF 2014

Shri Madhukar Pitambar Zawar and Anr. .. Petitioner

vs.

State of Maharashtra .. Respondent

Mr.Vilas B. Tapkir for the petitioner

CORAM : K. K. TATED, J.
DATE : JUNE 20, 2016

P.C.:

- 1 Heard the learned counsel for the petitioner.
- 2 Though respondent State of Maharashtra is duly served, no one appeared on behalf of the them when the matter was called out.
- 3 By this petition, under Article 227 of the Constitution of India, petitioner plaintiff is challenging the order dated 20.4.2013 passed by Civil Judge, Senior Division, Pune in Refund Application No.12 of 2013 in Regular Civil Suit No.373 of 2012 rejecting petitioner plaintiff's application for refund of court fees according to law.
- 4 The learned counsel for the petitioner submits that they preferred Special Civil Suit No. 373 of 2012 in the court of Civil Judge, Senior

Division for cancellation of Sale Deed and declaration and for possession, permanent injunction and damages. He submits that the suit was settled between the parties before framing issue and recording evidence. Hence, petitioner plaintiff filed application dated 10.4.2012 below Exhibit-30 for consent decree and refund of court fees. That application was allowed by the court by order dated 2.5.2012 and directed refund as per rules. The said order reads thus:

“The Plaintiffs and defendants have settled the dispute amicably by filing consent term. Consent decree be drawn in view of consent term. Court Fee be refunded as per rule.”

5 Counsel for plaintiff submits that pursuant to the said order, plaintiff filed Refund Application no.12 of 2013 on 18.3.2013 for refund of court fee according to law. He submits that that application was rejected by Trial Court by order dated 20.4.2013.

6 The learned counsel for the petitioner plaintiff submits that as per section 43 of the Maharashtra Court Fees Act, petitioner is entitled refund of 50% of court fees. He submits that at the time of passing the impugned order, Trial Court has not considered section 43 of the Maharashtra Court Fees Act. Hence, impugned order passed by Trial Court be set aside directing to refund of court fees according to law i.e. as per section 43 of the Maharashtra Court Fees Act.

7 Heard the learned counsel for the applicant plaintiff. The dispute

in the present proceeding filed by the plaintiff was settled out of court. To that effect, they filed application below Exhibit-30 dated 10.4.2012. That application was allowed by Trial Court on 2.5.2013. Thereafter plaintiff filed Refund Application dated 12 of 2013. Section 43 of the Maharashtra Court Fee Act clearly shows that if matter is settled out of court then the plaintiff is entitled 50% court fees. The Division Bench of this court in the matter of *State of Bombay v. Bai Moti*, 1957 Bombay Law Report 668 held that if consent decree is obtained by the parties before recording of evidence and or trial then plaintiff is entitled 50% refund of court fees.

8 Considering the submissions made by the learned counsel for the plaintiff, section 43 of the Maharashtra Court Fees Act and the law declared by the Division Bench of this court in the matter of *State of Bombay v. Bai Moti*, I am satisfied that plaintiff has made out a case for allowing this Writ Petition. Hence, following order is passed:

- a) Order dated 20.4.2013 passed by Civil Judge, Senior Division, Pune in Refund Application No.12 of 2013 in Regular Civil Suit 373 of 2012 is set aside.
- b) Refund Application No.12 of 2013 dated 18.3.2013 filed by the plaintiff is allowed.
- c) Trial Court to pass appropriate order for refund of court fees according to section 43 of the Maharashtra Court Fees Act, 1959.

d) No order as to costs.

JUDGE