

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

CIVIL REVISION APPLICATION NO.265/2016

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Nitin Mulye for the applicant

Mr. G. C. Gorwadkar, Senior Advocate for the respondent

CORAM : K. K. TATED, J.

DATE : AUGUST 1, 2016

P.C.:

1. Heard. By this Civil Revision Application, the applicant defendant challenges the order dated 08.02.2016 passed by the 2nd Jt. Civil Judge, Senior Division, Nasik below exhibit 17 in special civil suit No. 145/2014 directing the plaintiff to pay the courts fees as per section 6(v) of the Maharashtra Court Fees Act, 1959 (said Act) on the basis of market value of the suit property as stated in clause 20 of the plaint.

2. The learned counsel for the applicant defendant submits that in the present proceedings, the plaintiff filed special civil suit No. 145/2014 for cancellation of sale deed dated 11.04.2012 which was for Rs.4,50,00,000/- and also claimed

possession of the suit property admeasuring 1970.40 sq.mtr. at Nasik. He further submits that the plaintiff also claimed damages to the extent of Rs.1 crore as per clause 24(c). He submits that the trial court instead of directing the plaintiff to pay court fees on each cause of action, directed to pay court fees as per section 6(v) of the said Act which is contrary to law. In support of this contention, he relies on the judgments of this court in ***Syndicate Bank & Ors. Vs. M/s. S. S. Printers and Ors. 1995(3) BCR 429 and Pushpaben Vishwambarlal Khetan & Ors. Vs. Heena Narendra Patel & Ors. 2015(2) BCR 614.*** He submits that in the present proceedings the plaintiff paid aggregate court fees of Rs.3 lacs. Hence, the order passed by the trial court dated 08.02.2016 is required to be set aside with direction to the respondent plaintiff to pay courts fees on prayer clauses (a) and (c) separately.

3. On the other hand, the learned senior counsel for the respondent plaintiff vehemently opposed the Civil Revision Application. He submits that as per prayer clause (a), they already paid entire court fees of Rs.3 lacs. He submits that prayer clauses (b) and (c) are consequential prayers. If the plaintiff succeeds in prayer clause (a), then only question comes whether the plaintiff

is entitled for possession and damages. Therefore, there is no question of payment of court fees separately. He further submits that in any case, at the time of final disposal of the suit, the trial court can decide this issue of payment of court fees. He submits that the trial court, without holding any enquiry as required u/s.8 of the said Act, passed the impugned order. He submits that in the interest of justice, this Hon'ble Court be pleased to remand the matter to the trial court to hold an inquiry as required u/s.8 of the said Act with specific direction about payment of additional court fees, if any.

4. Heard both sides. It is to be noted that, though the trial court held that the plaintiff had to pay court fees as per Section 6(v) of the said Act, the court has not given any finding on the issue “whether the plaintiff has to pay court fees for each prayers as claimed by them ? Apart from that the court has not held inquiry u/s.8 of the said Act.

5. Considering these facts, in the interest of justice, I am of the opinion that the matter is required to be remanded to the trial court to decide the issue of payment of court fees by the plaintiff after holding inquiry u/s.8 of the said Act.

6. Hence, following order is passed:

a. Impugned order dated 08.02.2016 passed by the 2nd Jt. Jt. Civil Judge, Senior Division, Nasik below exhibit 17 in special civil suit No. 145/2014 is set aside.

b. The application made by the applicant defendant below exhibit 17 is remanded to the trial court for decision on its own merits after giving opportunity to both the parties, if they so desire to file an additional evidence and/or documents.

c. The trial court is directed to hold an inquiry u/s.8 of the Maharashtra Court Fees Act, 1959 and decide whether the plaintiff has to pay court fees separately on each prayers as claimed by them.

d. The trial court is directed to decide the application below exhibit 17 filed by the defendant as early as possible, in any case, within four months from the date of receipt of writ/copy of this order.

e. The Civil Revision Application stands disposed of accordingly.

f. Parties to act on an authenticated copy of this order.

JUDGE