

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**CIVIL REVISION APPLICATION NO. 723 OF 2015**

1.Smt. Minakshi Ramakant ..Applicants  
Warde and Ors.

Vs

1. Shri Pravin Shashinath Warde .. Respondents  
and Ors.

Mr. Nitin P. Deshpande, Advocate for Applicants.

Mr. Suresh M. Kamble, Advocate for Respondents no.18 and 19.

**CORAM : R.G.KETKAR,J.**

**DATE : 15/01/2016**

**PC:**

1. Not on Board. At the request of Mr. Deshpande, taken up in production board. Heard Mr. Nitin Deshpande, learned counsel for the applicants and Mr. Suresh Kamble, learned counsel for respondents no. 18 and 19.

2. By this application under Section 115 of the Code of Civil Procedure, 1908, (for short, 'C.P.C. '), original defendants no.11 to 17 have challenged the Judgment and order dated 3.10.2015 passed by the learned 2<sup>nd</sup> Jt. Civil Judge, Sr. Dn., Alibag below Exhibit 89 in Spl. Civil Suit No.98 of 2012. By that order, the learned trial Judge granted time till 8.10.2015 to the plaintiffs to pay court fees as directed by order dated 28.7.2015 passed below Exh.80.

3. Mr. Deshpande submitted that defendants no.11 to 17 filed

application under Order VII, Rule 11(b) for rejection of the plaint on the ground that the suit is under valued. By order dated 28.7.2015, the learned trial Judge allowed the application and directed the plaintiff to properly value the suit as per Section 6(iv)(ha) of the Maharashtra Court Fees Act, (for short, 'Act') for prayer clause (B) and as per section 6(iv)(d) or maximum court fees as per provisions of the Act for prayers clause (A). The plaintiffs were directed to deposit proper court fees on or before next date.

4. Mr.Deshpande submitted that the plaintiffs filed application Exh.85 under section 114 read with Order 47, Rule 1 of C.P.C. for review of the order dated 28.7.2015. That application was rejected on 30.9.2015. The plaintiffs thereafter filed application Ex.89 for extension of 8 days time for depositing the court fees. By the impugned order, the learned trial Judge extended the time till 8.10.2015 for paying court fees as per order dated 28.7.2015 passed below Exh.80.

5. Mr. Deshpande submitted that the order passed by the learned trial Judge is without jurisdiction and is contrary to Section 148 of C.P.C. Section 148 is amended with effect from 1.7.2002 and after the amendment the court is empowered to enlarge time not exceeding 30 days in total. He submitted that on 28.7.2015, the learned trial judge directed the plaintiffs to pay

the deficit court fees. Instead of depositing deficit court fees, they filed application for review which was rejected on 30.9.2015. Even thereafter, they did not deposit the deficit court fees and filed application for extension of time. In view of Section 148 the learned trial Judge could not have extended the time. Mr. Kamble supported the applicant.

6. Perusal of the impugned order shows that the learned trial Judge has noted that the plaintiffs were all along ready and willing to comply the order below Exh.80. Having regard to conduct of the plaintiff as also infact that Section 148 is directive, it does not take away the jurisdiction of the Court under section 149 of C.P.C. to enlarge time. The learned trial Judge also considered the decision in Indian Statistical Institute Vs. M/s Associates Builders, (1978) 1 SCC 483 and observed that the Court has ample power under section 149 to allow person by whom the fee is payable to pay at any stage of the proceedings. In view thereof, I do not that the learned trial Judge committed any order. Petition fails and the same is dismissed. Liberty is reserved to the parties to apply for expeditious disposal of the suit. If such application is made, the learned trial Judge will pass appropriate order thereon. Order accordingly.

(R.G.KETKAR, J.)