

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 1448 OF 2016

MR. MITHALAL PUKHRAJ JAIN
AND ORS.

...Petitioners

Versus

M/S. MAHALAXMI DEVELOPERS
THROUGH ITS PARTNER
MRS. SHILPA P. THAKKAR AND ORS.

...Respondents

....

Mr. Mahesh V. Vishwakarma, Advocate for the Petitioners.

Mr. R.A. Thorat, Senior Advocate i/b. Jignesh Shah a/w. Mr.
Suryajeet P. Chavan, for Respondent Nos.1 to 3.

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CORAM : R. G. KETKAR, J.

DATE : 12th FEBRUARY, 2016

P.C.

1. Heard Mr. Mahesh Vishwakarma, learned Counsel
for the petitioners and Mr. R.A. Thorat, learned Senior
Counsel for the respondents, at length.

2. Rule. Mr. Shah, waives service for the respondents.
At the request and by consent of the parties, Rule is made

returnable forthwith and the Petition is taken up for final hearing.

3. By this Petition, under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as the 'plaintiffs', have challenged the judgment and order dated 3.10.2015 passed by learned Joint Civil Judge, Senior Division at Panvel below Exh.19 in Special Civil Suit No.113 of 2015. By that order, learned trial Judge allowed the application Exh.19 preferred by defendant No.2 under Order VII Rule 11 of Code of Civil Procedure, 1908 (for short, 'CPC') and directed the plaintiffs to pay deficit Court fees stamp of Rs.1,48,800/- within 30 days.

4. The plaintiffs have instituted the suit against the respondents, hereinafter referred to as 'defendants', *inter alia* for declaration that the suit agreements dated (1) 26.5.2011, (2) 16.9.2011 and (3) 18.5.2011 executed by and between the plaintiffs and defendant Nos.1, 3 & 2 respectively are illegal and *void ab initio*; in the event said

agreements cannot be cancelled, for direction to the defendants to pay the balance consideration amount of Rs.3,42,45,000 along with friendly loan amount of Rs.53,55,000/- aggregating to an amount of Rs.3,96,00,000/-.

5. Defendant No.2 filed application under Order VII Rule 11 of CPC for directing the plaintiffs to properly value the suit by depositing deficit court fee stamp of Rs.1,48,800. Defendant No.2 contended that as far as prayer clause (a) is concerned that is covered by Section 6(iv)(ha) of the Maharashtra Court Fees Act, (for short, 'the Act'). As far as prayer clause (e) is concerned, the plaintiffs have claimed Rs.3,96,00,000/- which is to be valued as per Section 6(i) of the Act. The plaintiffs have paid the Court fee stamp of Rs.1,51,200/-. The maximum Court fee payable is Rs.3 Lakhs. The plaintiffs are, therefore, liable to pay deficit Court fee stamp of Rs.1,48,800/-. By the impugned order, learned trial Judge has allowed the application and directed the plaintiffs to deposit the deficit

Court fee stamp of Rs.1,48,800/-.

6. Mr. Vishwakarma submitted that the substantive prayer made by the plaintiffs is in terms of prayer clause (a). The value of the property is Rs.3,21,00,000/-, as mentioned in the agreements. He relied upon Section 6(iv)(ha) of the Act and the table of rates of *ad valorem* fee leviable on the institution of the suit. He submitted that in terms of Section 6(iv)(ha) of the Act the plaintiff is liable to pay one half of *ad valorem* fee leviable on the value of the property. In terms of Schedule-I, the maximum Court fee payable is Rs.3 Lakhs. Accordingly the Court fee paid by the plaintiffs, namely, Rs.1,51,200/- in terms of Section 6(iv)(ha) of the Act is proper. He further submitted that prayer clause (e) is in the alternative. In other words, if the Court is not inclined to grant prayer clause (a), in that event only the Court will be required to consider whether the plaintiffs are entitled to prayer clause [e]. He submitted that Section 18 of the Act lays down that where a suit embraces two or more distinct subjects, the plaint

shall be chargeable with the aggregate amount of the fees to which the plaint in suit embracing separately each of such subjects would be liable under the Act. He submitted that prayer clause (e) is alternative prayer in case the Court is not inclined to grant the relief in terms of prayer clause (a). In other words, he submitted that prayer clause (e) is not in addition to prayer clause (a) and, therefore, Section 18 of the Act will not be applicable.

7. On the other hand, Mr. Thorat submitted that prayer clause (a) and prayer clause (e) are distinct and/or separate prayers and the plaintiffs will have to value the Suit in terms of Section 18 of the Act by paying the court fees on both the prayer clauses. In any case, he submitted that on the basis of the chart given in Schedule-1, the Court fees for value of the property, namely, Rs.3,21,00,000/- is Rs.5,40,000/-. As per Section 6(iv)(ha), the plaintiffs are required to pay one half of *ad valorem* fee leviable on the value of the property which comes to Rs.2,70,000/-. The plaintiffs herein have paid

Rs.1,51,200/- and they are liable to pay the deficit Court fee of Rs.1,18,800/-.

8. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record.

9. Mr. Vishwakarma submitted that the maximum Court fee payable is Rs.3 Lakhs and accordingly the plaintiffs have paid one half of the *ad valorem* fee leviable on the value of the property. It is not in dispute that the total consideration mentioned in all three agreements comes to Rs.3,21,00,000/-. Having regard to the table of rates of *ad valorem* fees on the institution of the Suit, the Court fee payable on Rs.3,21,00,000/- comes to Rs.5,40,000/-. The submission of Mr. Vishwakarma that the plaintiffs are liable to pay maximum Court fee of Rs.3 Lakhs cannot be accepted in view of this table. The total value of the property mentioned in the agreements comes to Rs.3,21,00,000/- and on that the Court fee payable is

Rs.5,40,000/-. In view of Section 6(iv)(ha) of the Act, the one half *ad volarem* fees comes to Rs.2,70,000/-. If the value of the property and the corresponding Court fee exceeds Rs.3 lakhs then in that event the plaintiffs are liable to pay maximum court fees of Rs.3 lakhs.

10. As far as prayer clauses (a) & (e) are concerned, whether prayer clauses (a) and (e) are alternate, distinct separate are concerned, perusal of application Exh.19 filed by defendant No.2 also shows that defendant No.2 specifically asserted in para-7 that prayer clause (e) is in the alternative. In view thereof, it cannot be treated as distinct/separate prayer. Hence, the impugned order requires to be modified in the following terms :

- (i) The plaintiffs are liable to pay the court fee of Rs.2,70,000/- (half of Rs.5,40,000/-). As the plaintiffs have paid Rs.1,51,200/- court fees, they are liable to pay deficit Court fee of Rs.1,18,800/-. Said amount shall be

deposited in the trial Court within 30 days from today. Impugned order is modified accordingly.

- (ii) Rule is partly made absolute in the aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)