

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.39 OF 2015

Ravindra Pandurang Shetye and another ... Applicants
Vs.
Silver Reality Private Limited and others ... Respondents

Mr. Chetan Patil for Applicants.
Mr. Chirag Modi i/b. Mr. Gaurav Parkar for Respondents No.1 and 2.

CORAM : R. G. KETKAR, J.
DATE : MARCH 08, 2016

P.C. :

Heard Mr. Patil, learned Counsel for applicants and Mr. Modi, learned Counsel for respondents No.1 and 2 at length. On the oral application made by Mr. Patil, leave to delete respondents No.3 and 4 is granted as the respondents No.1 and 2, being the original plaintiffs, are the only contesting respondents. Amendment shall be carried out forthwith. Rule. Mr. Parkar waives service for respondents No.1 and 2. At the request and by consent of the parties, Rule is made returnable forthwith and the Application is taken up for final hearing.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicants have challenged the judgment and order dated 06.12.2014 passed by the learned Joint Civil Judge, Senior Division, Panvel below exhibit-45 in Special Civil Suit No.67 of 2013. By that order, the learned trial Judge directed respondents No.1 and 2, hereinafter referred to as plaintiffs, to pay deficit court fee of Rs.180/- on or before the next date.

3. Plaintiffs instituted Suit against the applicants, hereinafter

referred to as defendants No.1 and 2, as also respondents No.3 and 4 (defendants No.3 and 4) inter alia praying for declaration that the sale deeds, both, dated 10.03.2011 are not valid or binding or enforceable on the plaintiffs and the said sale deeds do not affect any of the rights of the plaintiffs in respect of the suit lands and the said sale deeds be delivered up and cancelled by an order and decree of the Court; for declaration that the plaintiff No.1 is the owner of the suit lands as described at exhibit-1 annexed to the plaint. In paragraph 25, plaintiffs asserted that for the purposes of suit valuation, they have paid the full court fees of Rs.40,010/- as per Section 6(iv)(ha) of the Maharashtra Court Fees Act (for short 'Act') along with permanent injunction. Defendant No.1 filed written statement at exhibit-35 as also reply to application exhibit-5. Defendant No.2 filed written statement at exhibit-37 as also reply to application exhibit-5.

4. It appears that defendant No.2 filed application exhibit-34 under Sections 8 and 14 of the Act and Order VII, Rule 11(b) and (c) of C.P.C. for rejection of the plaint on the ground that plaintiffs have not paid the requisite court fees qua each prayer, which are distinct and separate and therefore, Suit has to be valued separately under Section 6(iv)(ha), 6(iv)(d) and 6(iv)(j) of the Act. That application was decided on 28.01.2014. In paragraph 6, the learned trial Judge observed thus,

“6. As per report of Superintendent, court fee comes to Rs.41,430/-. **In addition, Plaintiff also seeks declaration regarding ownership and hence has to pay Court fee for the same. Thus, it appears that plaintiff has not properly valued the suit and paid deficit Court fee.** Hence, I pass the following order-

(emphasis supplied)”

5. The learned trial Judge partly allowed application and directed the plaintiffs to pay deficit court fees on or before 15.02.2014. On 15.02.2015, plaintiffs filed application exhibit-44 for payment of deficit

court fee as per order dated 28.01.2014. It was set out therein that the deficit fee as per the order dated 28.01.2014 was Rs.1,180/-. On 12.03.2014, defendants No.1 and 2 filed application at exhibit-45 under Order VII, Rule 11 of C.P.C. for rejecting the plaint for non-compliance of order dated 28.01.2014. On 03.04.2013, plaintiffs filed application exhibit-46 for acceptance of deficit court fees. Defendants No.1 and 2 objected the said application. On the same day, the learned trial Judge directed Superintendent to verify and accept. On that application, endorsement is made by the Superintendent that stamp deposited on 03.04.2014. Mr. Patil states that plaintiffs were liable to pay deficit court fees of Rs.240/- qua prayer clause (a). As against this, on 03.04.2014, they have paid court fees of Rs.230/-. In other words, plaintiffs have not still paid court fees of Rs.10/-.

6. By the impugned order, the learned trial Judge directed the plaintiffs to pay deficit court fees of Rs.180/- on or before the next date. It is against this order, defendants No.1 and 2 have instituted the present Application.

7. Mr. Patil strenuously contended that by order dated 28.01.2014, the learned trial Judge directed the plaintiffs to pay deficit court fees. In the order dated 28.01.2014, the learned trial Judge noted that as per the report of the Superintendent, Court fees comes to Rs.41,430/-. In addition, plaintiffs also seek declaration regarding ownership and hence, have to pay court fees for the same. He submitted that payment of court fees of Rs.41,430/- is referable to prayer clause (a). As far as declaration regarding ownership is concerned, that is referable to prayer clause (c). In view of Section 18 of the Act, plaintiffs are seeking distinct and separate prayers and have to pay court fees separately. Plaintiffs though have filed application exhibit-44 on 15.02.2014, they

have not paid deficit court fees as regards declaration of ownership in terms of prayer clause (c). In fact, there is no application at all made by the plaintiffs for extension of time / for condoning the delay in depositing the deficit court fees insofar as prayer clause (c) is concerned. Plaintiffs made application on 15.02.2014, which is referable only qua prayer clause (a). Defendants No.1 and 2 filed application exhibit-45 on 12.03.2014 for rejecting the plaint for non-compliance of order dated 28.01.2014. In paragraph 5 of the application, it is specifically asserted that plaintiffs have not paid requisite deficit amount of court fee stamps for the relief of declaration of ownership and for relief of injunction. Pending that application, plaintiffs filed application exhibit-46 on 03.04.2014 that too again for paying deficit court fees qua prayer clause (a). As far as prayer clause (a) is concerned, deficit court fee was Rs.240/-. Plaintiffs paid only Rs.230/- leaving behind deficit of Rs.10/-.

8. Mr. Patil submitted that in the impugned order, the learned trial Judge observed in paragraph 6 that plaintiffs are liable to pay court fee stamps of Rs.41,830/-. Till date, they have paid court fees of Rs.41,650/- and thus there is deficit of court fees of Rs.180/-. Circumstances shown by the plaintiffs to pay deficit court fees are satisfactory and as the substantial amount of court fees was paid and comparatively small amount remained to be paid, facts show bonafide mistake of the litigant. Hence, trial Court gave opportunity to plaintiffs to pay deficit court fees of Rs.180/- on or before next date. He submitted that the learned trial Judge, however, has not dealt with the contention advanced on behalf of defendants No.1 and 2 that plaintiffs have not paid court fee stamps qua prayer clause (c). He, therefore, submitted that the impugned order is liable to be set aside. He further submitted that plaintiffs have not amended paragraph 25 as regards suit valuation. He relied upon the decision of the Apex Court in the case of

A. Nawab John Vs. V. N. Subramaniam, 2012 (7) SCC 738, and more particularly paragraph 37, to contend that Section 149 of C.P.C. does not confer an absolute right in favour of a plaintiff to pay the court fee as and when it pleases the plaintiff. It only enables a plaintiff to seek the indulgence of the Court to permit the payment of court fee at a point of time later than the presentation of the plaint. The exercise of the discretion by the Court is conditional upon the satisfaction of the Court that the plaintiff offered a legally acceptable explanation for not paying the court fee within the period of limitation.

9. On the other hand, Mr. Modi invited my attention to application dated 15.02.2014 at exhibit-44 as also order dated 03.04.2014 passed by the learned trial Judge below exhibit-46. He submitted that in the application dated 15.02.2014 at exhibit-44, plaintiffs have shown their readiness and willingness to pay deficit court fees of Rs.1,180/-. He submitted that there was bonafide mistake in payment of deficit court fees. Plaintiffs, therefore, filed application exhibit-46 on 03.04.2014. Though that application was objected by defendants No.1 and 2, by order dated 03.04.2014, the learned trial Judge directed the Superintendent to verify and accept. Accordingly, stamps of Rs.230/- are deposited on 03.04.2014. He submitted that the said order is not challenged by defendants No.1 and 2. He further submitted that as far as prayer clause (c) is concerned, plaintiffs will take out separate application for condoning the delay in paying the deficit court fees / for extension of time for payment of deficit court fees.

10. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. In the impugned order, the learned trial Judge has considered only payment of deficit court fees qua prayer clause (a). Though in

paragraph 5 of the application exhibit-45, defendants No.1 and 2 specifically asserted that plaintiffs have not paid court fee stamps for the relief of declaration of ownership, the said submission is not at all dealt with. That apart, plaintiffs have also not amended paragraph 25 of suit valuation. As noted earlier, the order dated 28.01.2014 passed below exhibit-34 is not challenged by any of the parties. The learned trial Judge ought to have adverted to the contentions advanced by defendants No.1 and 2 in paragraph 5 of the application dated 12.03.2014, exhibit-45. Perusal of the entire impugned order shows that the learned trial Judge has not dealt with this contention at all. In view thereof, the impugned order is liable to be quashed and set aside thereby restoring exhibit-45 for deciding it afresh.

11. Mr. Modi submitted that liberty may be reserved to the plaintiffs to take out application for condoning the delay / for extension of time for payment of court fees qua prayer clause (c). Mr. Patil submits that all the contentions of the defendants No.1 and 2 may be kept open in the proposed proceedings. Mr. Modi submits that as per the impugned order dated 06.12.2014, plaintiffs have paid deficit court fees of Rs.180/- on 01.01.2015. Out of that amount (Rs.180/-), Rs.10 shall be adjusted towards payment of deficit court fees qua prayer clause (a). Hence, the following order:

- a. The impugned order dated 06.12.2014 is set aside and application exhibit-45 is restored to the file of the trial Court;
- b. Plaintiffs are at liberty to file separate application for condoning the delay / for extension of time for payment of court fees qua prayer clause (c);
- c. All contentions of defendants No.1 and 2 in that regard are expressly kept open;
- d. Both applications shall be decided in accordance with

law;

e. Rule is made absolute in the aforesaid terms with no order as to cost.

(R. G. KETKAR, J.)

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