

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11335 OF 2017

STATE OF MAHARASHTRA AND ANOTHER
VERSUS
BHIKAJI MOHAN DHANWAT

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AGP for Petitioners : Shri Bhagat N.T.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: September 19, 2017

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PER COURT :-

1. The petitioners / defendants are aggrieved by the order dated 28.6.2016, which is challenged on 3.8.2017 in this petition, by which, the application Exhibit 29, filed by the plaintiff has been allowed and he has been permitted to carry out amendment and to pay the court fee on the amount of Rs.49,17,200/-.

2. The grievance of the petitioners is that in RCS No. 652 of 2011, the plaintiff has prayed for permission to excavate the sand upto 8500 Brass. It is further prayed that the State be enjoined from auctioning the said Sand Block (Ghat) during the pendency of the suit. Now, the plaintiff prays for adding a

prayer clause in the nature of seeking a refund of Rs.49,17,200/-.

3. Learned AGP strenuously submits that the prayer seeking recovery of the amount should not be permitted as it is towards court fees that the said amount is to be deposited. So also, it would change the nature of the cause of action.

4. Having considered the submissions of the learned AGP and having gone through the record, it appears that the plaintiff has already put forth a claim / prayer for permission to excavate 8500 Brass of sand, since he has purchased the said Sand Block by paying about Rs.55,00,000/- to the Government, when the reserve price was Rs.36,29,500/-.

5. It is stated by the plaintiff in his application Exhibit 29 that in several matters the Courts have declined permission to excavate the sand and refund of amount is directed. By way of abundant precaution and in order to ensure that his rights are not truncated, the plaintiff has sought leave to add the prayer seeking refund of the amount of Rs.49,17,200/-. The trial Court has permitted the plaintiff to carry out the amendment on the condition that he would pay the court fees on the amount of

Rs.49,17,200/-.

6. I find that the plaintiff has put forth a prayer in the alternative as he would be left remediless, if his prayer for permission to excavate 8500 Brass of Sand is rejected. He has already paid Rs.55,00,000/- to the Government. In this backdrop, the impugned order can neither be termed as being perverse, nor erroneous.

7. This petition being devoid of merits is dismissed.

(RAVINDRA V. GHUGE, J.)

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akl/d