

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

929 WRIT PETITION NO.11547 OF 2017

**TAHERA BEGUM ALTAF HUSSAIN
VERSUS
YAKUB MIYA NIJAM MIYA AND OTHERS**

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Advocate for Petitioner : Mr. Pathan Hamzakhan I.
Advocate for Respondents No. 1 & 14 : Mrs. Thakur L.R. h/f Mr. Patil
Laxmikant C.

CORAM : V. L. ACHLIYA, J.

DATE : 02/05/2019

PER COURT :

1. By consent, the petition is heard finally at the stage of admission.
2. In view of the limited challenge raised in the petition, it is not necessary to discuss the facts in detail. The petitioner herein filed civil suit for partition and possession. While the suit was presented in the office and same was lying at the stage of registration, same was rejected vide order dated 03.07.2017 passed by the Civil Judge, Senior Division, Ahmedpur, without opportunity of hearing as well as providing time to deposit the deficit court-fees.
3. In brief, it is the contention of the petitioner that no opportunity was given to satisfy as to correctness of valuation made and court-fees paid for the purpose of reliefs claim in suit before

passing the impugned order. So also the opportunity was not given to pay the deficit court-fees, as computed by the concerned official.

4. On due consideration of the submissions advanced, I am of the view that the impugned order passed without opportunity of hearing to petitioner and providing reasonable time to pay the deficit court-fees is not sustainable in Law. On scrutiny of the suit presented by the plaintiff, the office ought to have raised the objection and given an opportunity to petitioner to remove the same. In view of dispute as to valuation of the suit raised as to proper computation of court-fees, the matter ought to have been placed before the Civil Judge, Senior Division, to hear and decide the objection after giving opportunity of hearing to petitioner. It appears that no such opportunity has been given before passing the impugned order. I am, therefore, inclined to allow the petition and pass the following order.

ORDER

1. The petition is allowed in terms of prayer clause 'B'.
2. The impugned order is set aside.
3. The petitioner is directed to appear before the Court of Civil Judge, Senior Division, Ahmedpur, District Latur, on 06.06.2019.
4. On appearance of the petitioner the Civil Judge Senior

Division, Ahmedpur, is directed to hear the plaintiff through advocate and if any deficiency in payment of court-fees is found, then provide reasonable time to pay the deficit court-fees and remove the office objections.

4. The petition is disposed of in above terms.

(V. L. ACHLIYA, J.)

mkd