

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.101 OF 2019

NIRAJNANBHAI SHANTILAL DOSHI AND ANOTHER
VERSUS
ASHARMSHTABEN NARENDRA SHAH AND OTHERS

...

Advocate for Petitioners : Shri Kulkarni Mukul S.

Advocate for Respondent 1 : Shri Jain G.D.

h/f Shri Choudhari D.D.

Advocate for Respondent 2 : Shri Tripathi S.H.

Advocate for Respondent 3 : Shri Nagargoje A.N.

Advocate for Respondent 4 : Ku.Kulthe S.S.

Advocate for Respondent 5 : Shri Wani G.V.

Advocate for Respondents 6 & 7 : Shri Natu S.V.

...

CORAM : RAVINDRA V. GHUGE, J.

Dated: November 06, 2019

...

PER COURT :-

1. The petitioners are aggrieved by the order dated 9.10.2018 passed by the trial Court, vide which, the applications Exhibits 1 and 116 in RCS No. 186 of 2018 are decided and the petitioners / plaintiffs are directed to value the suit claim as per the office objection dated 19.6.2018 and pay necessary court fees.
2. I have heard the learned Advocates for the respective sides.
3. This Court has considered the issue as to whether the Court fees are required to be paid on the application for probate or upon the probate being granted, in Shashikant Gangadhar Thorat and

another Vs. Punja Gangadhar Thorat and others [2011 (5) Mh.L.J. 245]. By placing reliance upon Pishorilal Sethi Vs. Arvind K. Jouhar [2009 (3) MPLJ 522 = AIR 2009 MP 128] and Jyoti Nikul Jariwala Vs. State of Maharashtra [1988 Mh.L.J. 96 - AIR 1988 Bom.123], it was held in Shashikant (supra) in paragraph Nos. 8 to 12 as under:-

"8. The Act of 1959 deals with the levy of Court Fees in respect of the matters which are filed and presented in the Court. The same will be strictly governed with the provisions encompassed in the said statute. Section 29 and Clause 10 of Schedule I, will have to be read harmoniously so that they both coexists. Sub-Section 1 of Section 29 of the said Act is couched in a negative phraseology whenever a provision is couched with a negative connotation, the same is mandatory. It lays down that no order entitling the Petitioner to the grant of probate or letters of administration shall be made upon an application for such grant until the Petitioner has filed in the Court a valuation of the property in the form set forth in the third Schedule and the Court is satisfied that the fee mentioned in Clause 10 of the first Schedule has been paid on such valuation. So also Clause 10 of Schedule I lays down the quantum of court fees. It lays down court fees payable on probate of a will or letters of administration with or without will annexed. Clause 10 of Schedule I does not 10 fa 850.09 require payment of court fees on "application" for probate. But requires the payment of court fees on "probate". Section 29 of the said Act also requires the payment of court fees only when the Court is to pass an order entitling the Petitioner to grant of probate. It also nowhere says that the court fees is required to

be paid on an "application" for grant of probate. If the Court in a contentious matter comes to the conclusion that order for grant of probate is not to be made, then in such circumstances, no court fee is required to be paid nor is payable.

9. *The golden Rule of construction is to read the statutory language, grammatically, terminologically, in ordinary and primary sense which it appears in its context, without omission or addition. We have to take the words as the legislator have given them and to take the meaning which the words naturally imply, unless that would lead to absurdity or some repugnance or some inconsistency with Ors. part of the statute. It is a cardinal rule to adhere as closely as possible to the literal meaning of the words used.*

10. *The court fees Act shall have to be strictly construed. The legislation in its wisdom has made payable the court fees only on probate or letter of administration and not on application by virtue of Section 29 and Clause 10 of Schedule I. Interpreting it in any Ors. manner would be negating the said provision itself. The language of Section 29 and Clause 10 of Scheduled I of the Act of 1959 are unambiguous and do not admit of any Ors. interpretation. The Court Fees act will have to be strictly construed. Unless and until the Court comes to the conclusion that an order entitling the Petitioner to the grant of probate is to be made till such time the Petitioner is not required to pay the Court fees. The Division Bench of the Madhya Pradesh High Court in a case of Pishorilal Sethi v. Arvind K. Jauhar cited supra has rightly considered the provisions of the Court Fees Act as applicable to the State.*

11. The judgment of the learned Single Judge of this Court in a case of Jyoti Nikul Jariwala v. State of Maharashtra cited supra, was on different premises, wherein constitutional validity of Clause 10 which does not prescribe for upper limit of the court fees payable was challenged. It do not involve the controversy involved in the present matter.

12. In the light of the above, the impugned order is quashed and set aside. The matter is remitted back to the Trial Court. The parties shall appear before the Trial Court on 29.04.2011. The present Respondent Nos. 3, 4, 7 to 9 and 10 are served but are absent. The Trial Court shall issue fresh notice to those Respondents. The Trial Court shall decide the said application after giving an opportunity to the parties."

4. It is thus settled that the Court fees as are mandated by the Maharashtra Court Fees Act, 1959 will have to be paid after the probate is granted and the same are not required to be deposited on the application seeking a probate.

5. In view of the above, this petition is allowed. The impugned order dated 19.10.2018 is quashed and set aside.

6. The learned Advocates for the respective sides submit that the Probate Application No.4 of 2016, was lodged on 30.9.2016, as it pertains to the Will of the deceased person, the proceedings be

expedited. As such, the trial Court would decide RCS No.186 of 2018, on/or before 30.6.2020.

(RAVINDRA V. GHUGE, J.)

...

akl/d