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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6847 OF 2016

Ashok Rajaram Payshetti & ors. ..Petitioners
vs.
Kum. Mithali Swapnil Payshetti & anr. ..Respondents
....
Shri A.M. Adagule for petitioners.
Shri Pandit Kasar i/b. Shri Rohit Mangsule for respondents.

....
CORAM : M.S.KARNIK, J.

DATE : 25th SEPTEMBER, 2019

P.C. :

Not on Board. Taken on Board.

2. The respondents are the original plaintiffs. The plaintiffs had filed the suit for partition and separate possession. The defendants filed an application at Exhibit 12 contending that the plaintiffs have not paid court fee stamp. It is the contention that the plaintiffs are not exempted from paying the court fee stamp.

3. Learned counsel for the respondents supported the order passed by the trial Court and submitted that as the respondent No.1 is a minor who has filed a suit through her mother and natural guardian she need not pay court fee stamp. He further submitted that the parents have mutually separated and it is very difficult for mother to maintain the minor daughter. Learned counsel for respondents would therefore submit that even otherwise in view of the Order 33 Rule 1 of the Code of Civil Procedure respondent No.1 – plaintiff No.1 can always apply to the Court to prosecute the suit in the capacity of an indigent person.

4. The trial Court for the reasons mentioned in the impugned order dated 5th March, 2016 rejected the application. The issue is no more *res-integra*. The same is squarely covered by the decision of this Court in the case of **Arti wd/o. Deepak Kamlakar vs. Vijay s/o Deorao Kamlakar and others** reported in **2019(1) Mh.L.J. 650**. In this view of the matter the impugned order is set aside.

5. The application below Exhibit 12 is allowed.
6. It is further clarified that respondent No.1 – original plaintiff No.1 is permitted to make an application under Order 33 Rule 1 of the Code of Civil Procedure to prosecute the suit in her capacity as an indigent person. The application to be filed within a period of 2 weeks from today. If such an application is filed, the trial Court to first decide the application expeditiously, preferably within a period of 3 months from today.
7. Needless to mention that the application to be made by respondent No.1 – original plaintiff No.1 under Order 33 Rule 1 be decided on its own merits without being influenced by any of the observations made by this Court. The trial Court after deciding the application to then proceed with the suit on merits.
8. Subject to what is observed, the Petition is disposed of.

(M.S.KARNIK, J.)