

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.5039/2018

Pundlik s/o Ukanda Wakudkar and others

...Versus...

Dagadu s/o Ukanda Wakudkar (Dead) through his legal heirs
Ashok Dagadu Wakudkar and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri S.D. Chande, Counsel for petitioners

CORAM : AVINASH G. GHAROTE, J.

DATE : 03/03/2020

1. Heard Shri Chande, learned Counsel for the petitioner. None for the respondents, though served.
2. In a suit for partition, separate possession and declaration, on application filed under Order 7 Rule 11 of the Code of Civil Procedure for rejection of the plaint on payment of deficit court-fees, by an order dated 17/8/2017, the Trial Court directed the payment of court-fees on the relief for declaration claimed in respect of the sale-deed and possession of the suit property, which was agricultural land, within a period of seven days from the date of the order.
3. The plaintiff, on 29/8/2017, filed an application at Exh.29 for payment of court-fees, which came to be allowed on the same day. Thereafter, on 29/8/2017 the defendant filed an application for return of plaint on the

ground that the court-fee was not paid, within time, which came to be rejected by the order dated 10/10/2017. Another application dated 19/8/2017 for rejection of the plaint for having paid the court-fee albeit belatedly was also rejected by an order dated 29/8/2017 on the ground that the court-fees have been paid on that date itself.

4. The present petition takes exception to all these orders, contending that it was not permissible for the Trial Court to have allowed the payment of court-fees belatedly.

5. It is trite that the matters always need to be decided on merits, and payment of court-fees, is an issue, which does not touch the merits of the matter. In the instant case, the court-fees have been paid belatedly, that alone cannot be reason to unsuit the plaintiff for establishing the claim as raised in the plaint.

6. In that light of the matter, the present writ petition does not have any merit and the same is accordingly dismissed. In case any grievance for payment of deficit court-fees remains the same can be raised by the defendants in their written statement and the issue as and when called upon can be decided by the Trial Court appropriately.

No order as to costs.

JUDGE