

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

942 CRA NO.181 OF 2010

Sainath s/o Dagadu Jadhav,
Age 43 years, Occupation Agriculture,
R/o Shankarpurwadi, Tal. Khultabad,
District Aurangabad.

...Applicant

VERSUS

Shri Shankar s/o Anna Jadhav,
Age 45 years, Occupation Agriculture,
R/o Ghodegaon, Tal. Khultabad,
District Aurangabad.

...Respondent

...

Advocate for applicant : Mr. Sapkal V. D.

Advocate for Respondent: Lex Aquila (Ms.M.D.Thube-Mhase)

...

CORAM : ARUN R. PEDNEKER, J.

DATE : 14th October, 2022

JUDGMENT :

1. The applicant is challenging the order passed by the Joint Civil Judge Senior Division, Aurangabad, in Special Civil Suit No.142 of 2009, whereby the learned Court was pleased to dismiss the application under Order VII Rule 11 of the Code of Civil Procedure filed by the applicant herein.

2. Heard learned Advocate Mr. V. D. Sapkal for applicant and learned Advocate Ms. M. D. Thube-Mhase for respondent.

3. The brief facts which lead to the filing of the application under Order VII Rule 11 of the Code of Civil Procedure can be summarized as under :-

The applicant filed a Regular civil Suit No.731 of 2007 for injunction restraining the respondent herein from interfering with the suit property which is an agricultural land in Gut No.92 admeasuring 5 H 75 R to the extent of 3 H 38 R situated at village Shankarpurwadi, Taluka Khultabad, District Aurangabad. The respondent filed a counterclaim in the said suit seeking a relief of specific performance of an agreement to sell the part of suit land to the extent of 3 Acres on the basis of an agreement to sell dated 06/09/2003, executed between the parties. The applicant took objection to the counter claim as being beyond the pecuniary jurisdiction of the Trial Court and the competence of the Court to hear the counterclaim. On account of the objection raised by the plaintiff, the said counter claim was excluded and the Trial Court was pleased to pass following order :-

- "1. Application is allowed.*
- 2. The counter claim along with application of temporary injunction of the defendant, is excluded.*
- 3. The defendant is directed to take proper steps in respect of filing suit before proper Court.*
- 4. Both the parties shall bear their own cost."*

4. The respondent thereafter applied for withdrawal of the counter claim and return of court fees. The Trial Court passed following order on the said application for withdrawal of counter claim :-

"As counter claim excluded vide order Exh.25, whole court fee of counter claim be refunded as per rules."

5. The respondent, thereafter, took back the entire file containing the counter claim along with the cancelled stamps and presented the same before the Senior Division Court and the same was registered as Special Civil Suit No.142 of 2009.

6. When the Special Civil suit proceeded for evidence, an application was filed by the present applicant for rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure. It was the contention of the applicant herein before the Civil Judge Senior

Division, Aurangabad that the stamp once purchased has to be used within six months and also the stamp having been used in filing the counter claim, the same could have not been utilized in filing the Special Civil Suit No.142 of 2009.

7. The learned Civil Court rejected the application of the applicant by holding as under :-

"On going through the provisions of the Stamp Act it says that, stamps are to be used within six months from the date of its purchase. In the instant case, the stamps were purchased on 29.09.2007 and the counter claim was presented in R.C.S.No. 731/09. Thereafter the court fees stamps were returned to the present plaintiff Shankar and he has filed this suit. There is no averments in the written statement regarding re-use of the court fees stamp beyond period of limitation. In my view, the use and reuse in the present case will have to be interpreted. Because, the court fee stamps were already used by the present plaintiff Shankar within six months from the date of its purchase. As soon as the court fee stamps were returned to the present plaintiff Shankar, present suit has been filed. In my view, the court fee stamps are reused and not used. On going through the provisions of Bombay Stamp Act and Bombay Court Fees Act I do not find any provision regarding reusing of the stamps. As stated above it is

well settled principle that a person cannot take advantage of his own wrong. When Sainath has took objection to the counter claim of Shankar in R.C.S.No. 731/07 the Court has ordered the defendant Shankar to file a fresh suit by excluding counter claim. In my view, it is not necessary in the instant case that the present plaintiff should purchase another fresh stamps. Just like return of the plaint it is presented to the proper court in the case of lack of jurisdiction. The same thing has been repeated in the case. The plaintiff has received court fee stamps back from the counter claim and filed this fresh suit."

8. Aggrieved by the order of the Trial Court, the applicant has filed the present revision application. The applicant is relying upon Section 15 of the Maharashtra Court Fees Act, which runs as under :-

"15. Refund of fee paid on memorandum of appeal

If an appeal or plaint, which has been rejected by the lower Court on any of the grounds mentioned in the Code of Civil Procedure, 1908, is ordered to be received, or if a suit is remanded in appeal, on any of the grounds mentioned in rule 23 of Order XLI in the first schedule to the same Code for a second decision by the lower Court, the Appellate Court shall grant to the appellant a certificate, authorising him to receive back [from the Collector or by way of e-payment, in the manner as prescribed by rules] the full amount of fee paid on

the memorandum of appeal :

Provided that if, in the case of remand in appeal, the order of remand shall not cover the whole of the subject-matter of the suit, the certificate so granted shall not authorise the appellant to receive back more than so much fee as would have been originally payable on the part or parts of such subject-matter in respect whereof the suit has been remanded."

9. The learned Advocate Mr. V. D. Sapkal for applicant submits, in the event of a suit counter-claim being returned, then the only option available with the party is to get the certificate authorizing him to receive refund of the amount of Court fees. The party has to take a refund in monetary terms, and thereafter, file fresh stamps on the appeal memo or on the proceedings. The learned Advocate for the applicant further submits that the stamps have to be used in any event within six months and in the instant case the period of utilization is beyond six months, and the stamps were not valid and cannot be utilized. The learned Advocate further submits that return of the Court fees has to be in monetary terms and the cancelled stamps are not to be returned back.

10. The learned Advocate Ms. M. D. Thube-Mhase for the respondent submits that Section 15 of the Maharashtra Court Fees

Act deals only with a case where the plaint has been rejected by the Lower Court on any of the grounds mentioned in the Code of Civil Procedure or a suit is remanded in appeal under any of the grounds mentioned in Rule 23 of Order XLI. But in the instant case, the counterclaim has been returned to be filed before the Court of competent jurisdiction along with the stamps. The learned Advocate further submits that the Civil Manual i.e. the rules formulated by the High Court for guidance of the lower Courts to deal with the procedure on the aspect of the Court fees at paragraphs 497 and 498 of Chapter XXIV, specifically provides as under :-

497. *Any copy, which on its first presentation has been duly stamped, and of which the stamps has been cancelled, may, if otherwise admissible, be used in the same or any other preceding without a fresh stamp.*

498. *The following is a summary of the existing law and rules as to the cancellation and use of Court-fee labels and impressed stamps :*

(i) Section 42 of the Bombay Court-fees Act, 1959 is as follows :-

" No document requiring a stamp under this Act shall be filed or acted upon in any proceeding in any Court or office until the stamp has been cancelled.

Such officer as the Court or head of the office may from time to time appoint shall, on receiving any such documents forthwith effect such cancellation by punching out the figure-

head so as to have the amount designated on the stamp untouched, and the part removed by punching shall be burnt or otherwise destroyed.”

Chapter XXIV of the said Manual specifically provides for the usage of the stamp and the return of the plaint. Paragraph 497 of the Civil Manual provides for a situation where any copy which is first presented as duly stamped and the stamps have been cancelled if otherwise admissible be used in the same or any other proceedings without a fresh stamp. On the basis of Paragraph 497 (Supra) the learned Advocate for the respondent submits that she is entitled to reuse the stamps returned with the counter claim for filing a fresh suit before the Court of competent jurisdiction as Paragraph 497 of the Civil Manual specifically permits the same. She further submits that Paragraph 498 of the Civil Manual mandates that any document filed in Court with stamps, the same have to be immediately cancelled before that document is taken up for a consideration. Although the stamps were cancelled in terms of Paragraph 498 of the Civil Manual, she was permitted to use the same before the Court of competent jurisdiction, as the same suit/ copy is presented before the Court of competent jurisdiction.

11. The learned Advocate also further submits that in any event if

the Court comes to the conclusion that the plaint is insufficiently stamped or not correctly stamped then under order VII Rule 11(c) of the Code of Civil Procedure, the Court has to give opportunity to the plaintiffs to make the payment of deficit Court fees. If the Court comes to the finding that the plaint is insufficiently stamped or not stamped at all the Court has to grant an opportunity to the plaintiff to pay the stamp duty within some time before rejecting the plaint.

12. Having considered the rival submissions, it appears that Section 15 of the Court Fees Act relates to refund of Court fees on rejection of a plaint on any of the grounds mentioned in the Code of Civil Procedure and on remand of appeal on grounds mentioned in Rule 23 Order XLI. Section 15 provides, where the Court fees are to be refunded, that the same has to be in a form of a certificate so as to receive the refunded Court fees in monetary terms. However, in the instant case the counter claim is returned along with the stamps as the Court did not have the pecuniary jurisdiction to deal with the counter claim and the applicant has received the counter claim along with the stamps and the counter claim was filed as a Special Civil Suit before the appropriate Court. The stamps used for filing of the counter-claim which was not accepted in the first instance for want

of pecuniary jurisdiction has been used to file special civil suit before the Court of competent jurisdiction.

13. It is to be noted that there is a difference between rejection of a plaint under Order VII Rule 11 and return of the plaint under Order VII Rule 10 of the Code of Civil procedure.

14. Under Order VII Rule 10, if the Court finds that it does not have jurisdiction to try the suit at any stage of the suit, the suit shall be returned to be presented to the Court in which it should have been instituted.

15. Whereas under Order VII Rule 11 of the Code of Civil Procedure the plaint is rejected on the grounds viz.

- a) where it does not disclose a cause of action;
- b) where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;
- c) Where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- d) where the suit appears from the statement in the

plaint to be barred by any law;

e) where it is not filed in duplicate;

f) where the plaintiff fails to comply with the provisions of rule 9.

16. Under Order VIII Rule 6-A of the Code of Civil Procedure, the Counter-claim shall not exceed the pecuniary jurisdiction of the Court and the counter-claim has the same effect as a cross-suit. In the instant case the counter-claim was excluded under Order VIII Rule 6-C and it has a similar effect of Order VII Rule 10 of return of plaint.

17. Ordinarily Section 15 comes into play on rejection of plaint on grounds mentioned in the Code of Civil Procedure and not on return of plaint under Order VII Rule 10 or exclusion of counter claim on the ground of pecuniary jurisdiction under order VIII Rule 6-C.

18. However, in the case of ***Pratap Singh vs the Bank of America, (1976) 78 BOM LR 549***, this Court has given wide meaning to the word 'rejected' to include return of the plaint under Order VII Rule 10, since the plaint is dismissed on preliminary ground of jurisdiction to entertain the suit. The Court felt that it would unfair to the plaintiff if his refund is not considered under

Section 15 since the suit was dismissed on the preliminary ground of jurisdiction.

19. In ***Pratap Singh vs The Bank Of America, (1976) 78 BOM LR 549***, it has been observed that :-

"44. The appellant has submitted that by reason of the provisions contained in Section 15 of the Bombay Court-fees Act, 1959 (Act 36 of 1959), the appellant is entitled to an appropriate order authorising him to receive back the full amount of fees paid on the memorandum of appeal. Section 15 of the said Act talks of rejection of the plaint. Rejection of plaints is dealt with in Order VII, Rule 11 of the Code of Civil Procedure, whereas Order VII, Rule 10 of the said Code talks of return of plaints. It is pertinent, however, to note that Section 15 of the Bombay Court-fees Act does not restrict the cases of rejection of plaints only to cases falling within the provisions of Order VII, Rule 11 of the Code. It has been held even under Order VII, Rule 11 that the grounds of rejection given in Rule 11 are not exhaustive. It would appear to us that the word 'rejected' in Section 15 of the Bombay Court-fees Act must be given a natural and wide meaning and not an artificial meaning as may lie indicated by the provisions contained in Order VII, Rule 11. This is particularly because the suit in the appeal before us was dismissed on the preliminary ground viz.

one of jurisdiction from which the plaintiff had to file this appeal on payment of full Court-fees which are over Rs. 7,000. It would not be fair to the appellant or to the respondent, who otherwise may have to reimburse the amount of Court-fees to the successful appellant, not to make an order for refund of this Court-fee if justified by the words of Section 15 of the Bombay Court-fees Act. Accordingly we think this is a fit case falling within Section 15 of the said Act. Mr. Andhyarujina points out that this would also be covered by Order XLI, Rule 23 of the Code of Civil Procedure, as our order for continuation of trial of the suit would amount to a remand within the meaning of that provision and that provision of the Code is referred to in the second part of Section 15 of the Bombay Court-fees Act. Bearing all these considerations in mind, we think that the proper order to be made would be to direct the full Court-fees to be refunded to the appellant. There will be an order accordingly.”

20. It is to be noted that there is no provision for return of Court fees on return of a plaint under the Court Fees Act but the practice has been to return the plaint along with the cancelled Court fees to be presented before the Court of competent jurisdiction. Paragraph 497 of Chapter XXIV of the Civil Manual provides for same.

21. Thus I hold that,

(a) when the counter-claim is excluded for want of pecuniary jurisdiction and returned along with cancelled stamps and the same is filed as special civil suit before the Court of competent jurisdiction then the party need not pray for refund of Court fees in term of certificate under Section 15 of the Maharashtra Court Fees Act and can reuse the cancelled stamps in filing the suit before the Court of competent jurisdiction as provided in paragraph 497 of the Civil Manual.

(b) However, if the excluded counter-claim is not to be presented as a suit before the Court of competent jurisdiction or that an entirely new suit with the different prayers is to be filed or the party does not wish to file any proceedings, the party can apply for certificate under Section 15 of the Court Fees Act for refund of Court fees.

22. As regards the contention of the applicant that the stamps have to be used within six months, there is no provision pointed out in the Court Fees Act that the stamps have to be used in six months although such a provision exists in the Maharashtra Stamp Act i.e. under Section 52 B, which deals with non-judicial stamps.

23. The suit filed by respondent in 2009 has remained stayed for a

long period of time. In the circumstances this Court direct that the Special Civil Suit No.142 of 2009 be decided within a period of six months from the date of receipt of this order.

24. Present Civil Revision Application is dismissed with above direction.

(ARUN R. PEDNEKER, J.)

vj gawade/-.