

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

WRIT PETITION NO. 7218 OF 2019

Dr. Akshay s/o Navalkishor Lakhotiya and Ors.

Vs.

Dr. Arti w/o Akshay Lakhotiya

WITH

WRIT PETITION NO. 7597 OF 2019

Dr. Akshay s/o Navalkishor Lakhotia and Ors.

Vs.

Dr. Arti d/o Subhash Heda

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

Court's or Judge's Orders.

Mr. V.S. Kukday, Advocate for petitioners in both
petitions.

Mr. M.G. Sarda, Advocate for respondent.

CORAM : MANISH PITALE J.

DATE : 13.07.2022.

In both these petitions, essentially the same contentions are sought to be raised by the petitioners. These petitions arise out of two suits filed by the sole respondent in both the petitions. The respondent has approached the Court below seeking damages in these two suits against the original defendants.

2. The respondent claims that she is entitled to relief in the said suits and for direction to the

defendants therein for payment of specific sums of money for the alienation of love and affection and breach of marriage, in the facts and circumstances of the present case.

3. The backdrop of the said suits is that the marriage between the respondent and petitioner No.1 in both the petitions ended in a divorce. It is claimed that the respondent was harassed in the process during her matrimonial life and during the period of litigation leading to divorce, giving rise to cause of action to file the said suits.

4. In the said suits, the respondent prayed for exemption from filing Court fees and insofar as the Writ Petition No.7597/2019 is concerned, an application was filed on her behalf seeking registration of the suit, wherein objection was raised by the Office of the Court regarding registration of the suit without payment of Court fees. The said objection was overruled by the order dated 19.01.2019 and direction was given for registration of the suit in the absence of payment of Court fees.

5. Insofar as the Writ Petition No.7218/2019 is concerned, the petitioners are aggrieved by an order dated 18.12.2018, passed by the Court below

whereby an application for rejection of plaint under Order 7 Rule 11 of the Code of Civil Procedure, on the ground of non-payment of Court fees, was rejected.

6. In this backdrop, it is clear that in both the petitions, the only issue for consideration is, as to whether the respondent No.1 was required to pay Court fees and in absence thereof, the plaint deserves to be rejected or that the suit ought not to have been registered.

7. The learned counsel appearing for the parties, raised contentions in support of their respective stands and attention of this Court was sought to be invited to certain precedents.

8. But, a perusal of the order dated 18.12.2018 passed by the Court below, which is subject matter of challenge in Writ Petition No.7218/2019, shows that in the said order itself, it has been observed as follows:

“If the Court at the time of final hearing comes to the conclusion that, the plaintiff is not entitled for exemption from paying the court fees then the direction can be issued to the plaintiff to pay the requisite court fees, which is obligatory on the part of plaintiff.”

9. Thus, it is clear that the question as to the liability of the respondent to pay Court fees has not been finally decided by the Court below. This would also apply to the order impugned in Writ Petition No.7597/2019, as registration of the suit was directed, without insisting upon payment of Court fees.

10. This Court is of the opinion that if an issue is framed in both the suits on the aforesaid aspect of liability, if any, of the respondent to pay Court fees and the same is considered and decided with other issues, the ends of justice would be met.

11. In view of the above, the writ petitions are disposed of without interfering with the impugned orders.

12. It is made clear that the Court below shall frame issue on the aforesaid aspect of the matter in both the suits along with other issues and that the same shall be decided on merits without being influenced by the impugned orders.

JUDGE