

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.1827 OF 2005**

SARASWATIBAI BHATU CHOUDHARI
VERSUS
NAGU LAKHA CHOUDHARI AND ORS.

...

Mr. R. R. Sancheti, Advocate for the Petitioner.

Mr. A. B. Girase h/f Mr. P. D. Bachate, Advocate for Respondent
Nos.1 to 3.

...

**CORAM : SHARMILA U. DESHMUKH, J.
DATED : 13th FEBRUARY, 2023.**

PER COURT:-

1. Heard.

2. By this petition, the challenge is to order dated 08.02.2005, whereby the petitioner was directed to pay the necessary Court fees in the appeal as well as the original suit within a period of 15 days from the date of this order.

3. Petitioner had instituted Regular Civil Suit No.95/2004 seeking relief of partition and separate possession. In the said proceeding, by order dated 19.01.2005 the Trial Court rejected the plaint and dismissed the suit, as the petitioner had not joined her son as party to the proceeding. Appeal came to be filed bearing Regular Civil Appeal No.06/2005, wherein petitioner was directed to pay the necessary Court fees and carry out the necessary amendment in the pleadings within a period of 15 days.

4. Aggrieved by the said order the present petition came to be filed and by order dated 22.03.2005 this Court granted order of *status quo*.

5. Learned counsel for the petitioner submits that the petitioner is willing to pay the deficit court fees as well as add her son as party to the proceeding. Learned counsel for the respondent does not oppose the request of the Petitioner. Learned counsel further submit that original plaintiff has expired and the legal heirs are already on record and as such, the amendment which was directed to be carried out by the Trial Court now no longer survives for consideration.

6. In view of Section 149 of the Code of Civil Procedure the Court has discretion to allow the person by whom the Court fees is payable, to pay the whole or part as the case may be, at any stage. The order of *status quo* was passed by this Court in the year of 2005. Considering the order of *status quo* and now the willingness of the petitioner to pay the Court fees, for the purpose of compliance with the order of the Appellate Court, in my opinion, the interest of justice will be served, if the petitioner is permitted to pay the necessary Court fees by exercising the discretion under Section 149 of the Code of Civil Procedure.

7. In light of the above, Petitioner is directed to pay the Court fees within a period of two weeks from today.

8. Writ Petition stands disposed of in view of the above.

(SHARMILA U. DESHMUKH)
JUDGE