

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO.167 OF 2023

Pawankumar S/o Nandkishor Jaiswal,
Age : 57 Years, Occ. Agri.& Business,
R/o. Nathbaba Galli, Sadar Bazar, Jalna ..Applicant
(Orig. Def. No2)

Versus

1. Swapnil Chandrakishor Jaiswal,
Age : 28 Years, Occ. Agri. & Business,
R/o. Nathbaba Galli, Sadar Bazar,
Jalna Respondent No.1
(Orig. Plaintiff)
2. Nandkishor S/o Sitaram Jaiswal
(Since deceased) Respondent No.2
(Orig.Deft. No.2)
3. Chandrakishor S/o Sitaram Jaiswal
Age : 67 Years, Occ. Service,
R/o. Dhangarpura, Jalna
4. Rahul S/o Chandrakishor Jaiswal,
Age : 30 Years, Occ. Labour & Business
R/o. Dhangarpura Jalna,
5. Manoj S/o Nandkishor Jaiswal,
Age : 55 Years, Occ. Agri & Business
R/o. Murari Nagar College Road,

Jalna.

6. Pratibha W/o Naresh Jaiswal,
Age : 58 Years, Occ. Household,
R/o. House No.35, Ambedkar Chwok,
Hinganghat Tq. Hinganghat
Dist. Wardha
7. Sharmila W/o Vilas Jaiswal,
Age : 55 Years, Occ. Household,
R/o. Guruji Ward Arvi,
Tq. & District Wardha
8. Namrata W/o Pravin Jaiswal,
Age : 33 Years, Occ. Household,
R/o. Behind Chikalthana Police Station,
Chikalthana Aurangabad.
9. Rajesh S/o Vitthalrao Khandare,
Age : 34 Years, Occ. Agriculture,
R/o. Mantha, Tq. Mantha Dist. Jalna
10. Shital Sunil Shethiya
Age : 31 Years, Occ. Agri & Business,
R/o. Sarafa Peth Nehru Road,
Jalna.

.. Respondents

(Orig. Deft Nos. 3 to 10)

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Mr. Milind K. Deshpande, Advocate for Applicant

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CORAM : S. G. MEHARE, J.

DATE : 12.09.2023

PER COURT :

1. Heard the learned counsel for the applicant.
2. After enquiring about the court fee, the Court directed the plaintiff to pay the deficit Court fee within sixty days. However, the plaintiff could not deposit it. Therefore, he moved an application for furnishing the deficit court fees. He candidly stated that he was under the impression that it was a time of two months, and he had confusion about the words 'two months' or 'one month'. He had moved an application for permission to deposit the deficit Court fees as per order of the Court.
3. Surprisingly, the defendants have strongly objected to the application and submitted that since the plaintiff did not comply with the order of the Court, the suit is liable to be dismissed under Order VII, Rule 11(c) of the Code of Civil Procedure. However, the Court permitted him to deposit the court fee. Against the said order, the present appeal has been preferred.

4. The learned counsel for the defendants vehemently argued that the Court has no power to extend the period and Section 146 of the Code of Civil Procedure had not been properly understood. In any way, the suit was liable to be dismissed for non-payment of the court fee in time. He has argued that unless there was an application of condonation of delay under Section 5 of the Limitation Act, the Court could not allow the plaintiff to pay the court fee after the time fixed for paying the court fee by the Court itself. For want of any such application, it would be difficult to ascertain whether the delay was bona fide or whether there was sufficient cause restraining him from complying with the order of the Court to deposit the court fee. Therefore, the impugned order is illegal and bad in law. Hence, it is liable to be set aside.

5. Perused the impugned order. The Court, exercising its discretion under Section 149 of the Code of Civil Procedure, allowed the application to pay the court fee after the time given by the Court.

6. Order VII, Rule 11(c) of C.P.C. empowers the Court to reject the plaint where the plaintiff fails to deposit the court fee determined by the Court in a time granted to him. However, its proviso clause provides that the Court has no powers to extend the time granted to

deposit court fees unless the Court is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the court fee. Order VII Rule 11 of the Code of Civil Procedure has taken care of the plaintiff if he fails to deposit the court fee in a given time. While exercising the discretion, the Court has to record its reasons therefor. Therefore, a separate application under Section 5 of the Limitation Act was not required in such circumstances. If there was some day delay in paying the court fee, definitely it was not causing any harm to the defendants. But the serious objection on such technical grounds shows the conduct of the defendant, that he does not want to have the disposal of the dispute on merit. The trial Court was satisfied with the reasons for not complying with the order to pay the deficit Court fee in time. There was nothing wrong in exercising discretion in such a case. No harm was caused to the present appellant by the impugned order. However, it reflects his tendency and ill intention to keep the plaintiff away from exercising his right to seek relief for violating his right. While permitting the plaintiff to pay the court fee, the Court has imposed a cost of Rs. 1000/-.

7. After having gone through the impugned order, the Court is not satisfied that there is scope to consider this application under Section

115 of the Code of Civil Procedure. On the contrary, it appears that it is an attempt to protract the trial and keep the plaintiff away from getting his right decided quickly. There is no substance in the application; hence, it is dismissed at the admission stage with a cost of Rs.5,000/-(Rs.Five thousand) to be paid to the Library of Advocates Association of Bombay High Court, Bench at Aurangabad, within four weeks from today.

(S. G. MEHARE)
JUDGE

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