

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12219 OF 2022

BABASAHEB GANPAT PALANDE
VERSUS
CHIEF OFFICER AND OTHER

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Advocate for Petitioners :

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Mr. Manoj A. Dond, Advocate for the Petitioner.

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CORAM : SHARMILA U. DESHMUKH, J.
DATED : JANUARY 12, 2023.

PER COURT :

1. Heard learned counsel appearing for the Petitioner.
2. The Petitioner challenges the order dated 15.02.2022 passed below Exh.53, and the order dated 08.09.2022 passed below Exh.57 in Regular Civil Suit No. 145 of 2021.
3. By the impugned order dated 15.02.2022, the Court on an application made by the Respondent No.5 as against the deficit Court Fees, and on perusal of plaint in which the possession of the shop was sought by the Petitioner, directed the Petitioner to pay the Court Fees in accordance with the market value under Section 6 (v) of the Maharashtra Court Fees Act, 1959 (for short, "Court Fees Act").

4. The learned counsel for the Petitioner submits that the Petitioner had submitted a valuation report of Valuer, which was not accepted by the Court, and by the order dated 08.09.2022 has directed an inquiry under the provisions of Section 8 of the Courts Fees Act. He would further urge that the valuation has to be determined by taking into consideration the valuation report of the private valuer, and no inquiry was required to be conducted by the Court.

5. Learned counsel for the Petitioner has relied upon the decisions of the Apex Court in the following cases:

- (i) *Raosaheb s/o. Ramrao Shinde and Another vs. Sahebrao s/o. Ramrao Shinde and Another*, reported in *2010 (2) Mh.L.J.*;
- (ii) *Ishwardas Asaram Deosinghani vs. Kamalkishor Biharilal Kuswahe*, reported in *2015 GoJuris (BOM) 386*;
- (iii) *Smt. Manda Vishwanath Tangade vs. Sau. Vaishali Sunil Barate, Mr. Magan Kisan Tangade, Mr. Ankush Kisan Tangade and Mr. Balasaheb Kisan Tangade*, reported in *2013 GoJuris (BOM) 2703*.

6. I have considered the submissions. It is not disputed by the learned counsel for the Petitioner that the suit was for possession of the shop and as such, the provisions of Section 6 (v) of the Court Fees Act is attracted. The suit has been valued by paying the court fees applicable under Section 6 (iv) of the Court Fees Act, on the ground that only an injunction has been claimed. The Trial Court on the perusal of the plaint has come to a *prima*

facie finding that the suit is for possession of shop and hence court fees is required to be paid under section 6 (v) of the Court fees Act, and by order dated 08.09.2022, directed an inquiry valuation, which cannot be faulted with.

7. The decisions relied upon by the Petitioner does not assist his case. As far as the decision in the case of ***Ishwardas Asaram Deosinghani (supra)***, that the Court is entitled to construe the plaint and if on a fair construction the Court can arrive at the conclusion that what is really intended is a claim for possession, the plaintiff to pay the deficit court fees for the relief of possession on the basis of value of the property as fixed by it. Considering the decision relied upon by the learned counsel for the Petitioner, it cannot be said that there is an infirmity in the order directing the Petitioner to pay the deficit court fees and for an inquiry into the valuation of the subject property valuation.

8. Considering the above, there is no merits in the writ petition and is accordingly dismissed.

(SHARMILA U. DESHMUKH, J.)