

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

9 WRIT PETITION NO.13440 OF 2021

**MOHAN PATILBA BHORE
VERSUS
SUNIL DATTATRAYA BHORE AND OTHERS**

...
Advocate for Petitioner : Mr. Santosh S. Dambe

...
CORAM : SHARMILA U. DESHMUKH, J.

DATE : 08-02-2023

PER COURT :

. By this petition, the petitioner challenges the order dated 01.10.2021 passed by the trial Court in Regular Civil Suit No.172 of 2012 rejecting the plaint under Order-VII, Rule 11 (b) of the Code of Civil Procedure (in short, 'C.P.C.').

2. The learned counsel for the petitioner submits that all the respondents are served. As regards service on respondent no.6-C, the office noting shows that respondent no. 6-C refused to accept and did not permit affixation of the summons of the notice on the door. However as panchanama was not made, the office treated the service as improper service of notice. In the present case, the issue is as regards payment of deficit court fees and the consequent rejection of plaint under Order-VII, Rule-11 (b) of the CPC and hence this Court has taken up the petition for hearing.

3. The petitioner is the plaintiff in R.C.S. No.172 of 2012 seeking partition and separate possession of the suit properties. The respondents herein are the family members of the petitioner. During the evidence before the trial Court, respondent no.7 and respondent no.12 herein raised an objection on the ground of deficit court fees and by order dated 01.02.2020 the trial Court allowed the objection of respondent nos.7 and 12 and directed the petitioner to pay the court fees for the house property bearing Grampanchayat No.317 and 18 as per valuation certificate (Exh.395 and 397) and also directed the petitioner to produce the valuation certificate of the year - 2009 for showing the market value of the house bearing Grampanchayat no.24 and to pay the court fees thereon accordingly. The petitioner was directed to pay the court fees till 20.02.2020.

4. The learned counsel for the petitioner submits that the deficit court fees in this case amounts to Rs.3,800/- and the same was duly purchased and the challan in that respect is annexed at page 88 of the petition. He further submits that although the direction was to pay court fees on or before 20.02.2020, the petitioner could not pay the same within the prescribed time as during that period pandemic had started and even thereafter due to pandemic he was unable to

attend the court proceedings and comply with the order of 01.02.2020. He further submits that considering that the suit is filed for partition, a sympathetic view is required to be taken.

5. Considered the submissions of the learned counsel for the petitioner.

6. Under the provisions of proviso to Order-VII, Rule-11 whether the time fixed by the Court for correction of valuation or supplying of the requisite stamp paper is not to be extended, unless the Court for the reasons to be recorded is satisfied that the plaintiff was prevented by any cause of any exceptional nature from correcting the valuation or supplying the requisite stamp paper as the case may be within the time fixed by the Court and that refusal to extend such time would cause great injustice to the plaintiff. In the present case, time fixed for paying the court fees was till 20.02.2020 i.e. within a period of 20 days from the date of the order. Admittedly, the same has not been paid and at that time the pandemic had commenced and there was a total lock down imposed in March-2020. The trial Court has rejected the plaint for the reasons that more than 1½ years time is granted to pay the court fees, however the court fees has not been paid.

7. The application for permission to pay the court fees was filed on 01.10.2021 on the ground that the court fees was obtained, however inadvertently the same could not be paid.

8. The reasons which have been given by the petitioner coupled with the fact that during the relevant period the pandemic had commenced and there was a complete lockdown in the country which had made various High Courts as well as the Apex Court to pass the order for extension of the limitation under the various Acts as well as directions that no prejudice should be caused to the parties during that period, in my opinion, the impugned order dated 01.10.2021 is unduly harsh and is required to be quashed and set aside.

9. The learned counsel for the petitioner submits that the deficit court fees amounts to Rs.3,830/-, however the trial Court is directed to conduct an enquiry into the valuation as per the provisions of Section 8 and 9 of the Maharashtra Court Fees Act and to ascertain the correct valuation. In case, if it is found that the deficit court fees exceeds the amount calculated by the petitioner, the trial Court to pass the appropriate order.

10. For the reasons above, the impugned order dated 01.10.2021 is hereby quashed and set aside.

11. The deficit court fees to be paid within a period of one week from today. Upon the court fees being paid, the plaint be restored and notice be issued to the parties by the trial Court.

12. Writ Petition is allowed in the above terms.

(SHARMILA U. DESHMUKH, J.)

GGP