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

WRIT PETITION NO. 13241 OF 2022

Shivkumar Ramkishan Malu .. Petitioner

Versus

Bharat Rama Katwate Bhoi
and others .. Respondents

Shri Aditya N. Sikchi, Advocate for the Petitioner.
The Respondent Nos. 1 to 5 are served.

CORAM : SHARMILA U. DESHMUKH, J.
DATE : 10TH FEBRUARY, 2023.

FINAL ORDER :

. The challenge in the petition is to the order dated 29th November, 2022 passed by the Trial Court below Exhibit 35 in R.C.S. No. 716 of 2021, whereby the petitioner's application under Order VII Rule 11(b) of the Code of Civil Procedure (for short "Code") to return the plaint to the plaintiffs for correct valuation of the suit and for deposit of deficit court fees came to be rejected.

2. At the outset this Court is to be mindful of the fact that application of the petitioner/defendant was in respect of deposit of court fees. The Apex Court in the case of **A. Nawab John and others Vs. V. N. Subramaniyam** reported in ***2013(1) Mh. L. J. 01*** has categorically observed that the purpose of enacting the Court Fees Act is collection of revenue for the State and is not to arm a contesting party/defendant with the weapon of the technicality and object to the proceeding. Another aspect which is required to be considered is that under Section 12 of the Maharashtra Court

Fees Act, there is finality which is attached to the valuation by the Trial Court. Keeping these facts in mind present issue is required to be considered.

3. R.C.S. No. 716 of 2021 was filed by the plaintiff/respondent Nos. 1 to 5 seeking a decree of possession in respect of suit plot bearing CTS No. 4076/4 admeasuring 5376 Sq. Ft. out of land bearing Sy. No. 72/B/1 situated at Kanheri. The plaintiffs valued the subject matter for the purpose of the court fees in paragraph No. 26 of the plaint, which reads as under :

> "26. That, the plaintiff has valued the subject matter for the purpose of court fees and jurisdiction as per the revenue assessment of the land Sy. No. 27/B/1 adm. 1H 1628R land its revenue assessment come of Rs. 2.31 paisa and actual land revenue of the suit plot come of Rs. 0.077 ps. X 800 times = Rs. 61.6 ps. And the plaintiff has filed suit for possession of the suit property. Therefore, plaintiff has valued his claim for possession at Rs. 0.077 ps. X 80 times = 6.16 Paise. Therefore plaintiff has paid fixed court fees of Rs. 200/- Court fees of Rs. 200/- for the purpose of Mandatory injunction. So, total court fees come of Rs. 400/- which is sufficient as per Bombay Court Fees Act."

4. An application came to be filed by the defendant No. 1/petitioner under the provisions of Order VII Rule 11(b) of the Code claiming that the plaint has not been valued properly in as much as the suit plot is already converted into non agricultural use and, therefore, the Court Fees will have to be paid as per the market value. In support of his contention the defendant No. 1 claims to have filed the valuation certificate of the Sub Registrar, Latur.

5. The Trial Court after taking into consideration the

averments in the plaint held that plaintiffs had not claimed any declaration and they had filed the suit only for possession. It was further observed that there was order placed on record to substantiate that the land was converted to Non Agricultural use and the valuation arrived at by the plaintiffs under the provisions of Sec. 6 of the Maharashtra Court Fees Act is correct and that the suit has been correctly valued and was within the jurisdiction.

6. Learned counsel has assailed the findings and has submitted that considering the valuation which has been produced on record, it is clear that market value of the property is Rs. 85,09,500/-. He would further submit that in the plaint itself there is an averment that there is tin shed which has been constructed on the property for business purpose and as such it is clear that the suit property has been converted to non agricultural use. He would further submit that the sale deed is of the year 1982, in which it has been specifically mentioned that the property is converted into non agricultural land. In support of his contention he relies upon the decisions of this Court in the case of **Pushparaj Surajprasad Modh Vs. Sayyad Altaf Sayyad Wazir and others** reported in ***MANU/MH/0450/2000*** and in the case of **Sardar Gurpreetsingh Gurnamsingh Pander Vs. Sangeeta Bhagchand Bhavle and others** reported in ***MANU/MH/0052/2022***.

7. The averments in the plaint are required to be considered to ascertain as to whether proper court fees has been paid by the plaintiffs. The Trial Court has rightly observed that the suit has been filed for decree of possession of the suit plot bearing CTS

No. 4076/4 admeasuring 5376 Sq. Ft. out of land bearing Sy. No. 72/B/1 situated at Kanheri and as such provisions of Section 6(v) of the Maharashtra Court Fees Act deals with the possession of land, house, garden and the valuation under the said provision is equal to 200 times of the assessment payable in respect of the land. The Trial Court has also accepted the averments in the plaint that the suit plot was in agricultural land and has not been converted to non agricultural land by observing that there is no order placed on record. Learned counsel for the petitioner submits that non agricultural order in respect of the property was placed on record, however, the application which has been filed by the petitioner does not reflect that such an order was annexed to the application. As such it is observed by the Trial Court that, on perusal of the plaint, it cannot be said that the property was converted to Non agricultural use.

8. As far as the submissions in respect of decision in the case of **Sardar Gurpreetsingh Gurnamsingh Pander Vs. Sangeeta Bhagchand Bhavle and others** (supra) is concerned, in the facts of that case on the suit plot there was a bungalow which was constructed and brick kiln started on the suit property and considering the use thereof this Court in the facts of that case considered the suit plot was to be considered to have been converted to non agricultural use and valued the suit U/Sec. 6(4)(d) of the Maharashtra Court Fees Act. In the present case in paragraph No. 14 of the plaint an averment has been made that a tin shed has been constructed. There is no record to show that said tin shed was a structure of a permanent nature and constructed after obtaining proper sanction from the municipal authority. As such it is difficult to accept submission of the

learned counsel for the petitioner that the suit property was put to non agricultural use. A copy of permission to convert the property to non agricultural land has been annexed to the petition, however, it is clear from the order of the Trial Court that the same was not placed before the Trial Court.

9. This Court is required to be mindful of the fact that there is finality which is attached to the valuation under the provisions of Section 12 of the Maharashtra Court Fees Act and further the decision of the Apex Court which strikes of note of caution that the provision of the Maharashtra Court Fees Act is not incorporated for arming the defendants with the weapon of technicality.

10. Considering the above, I am of the opinion that there is no cause for interfering with the impugned order. Needless to state that the petitioner/defendant No. 1 is at liberty to raise all objections as to the pecuniary jurisdiction at the appropriate time. Writ petition is devoid of merits and same is accordingly dismissed. No costs.

[SHARMILA U. DESHMUKH, J.]

bsb/Feb. 23