

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7738 OF 2022

Ahuja Property Developers Pvt Ltd

.. Petitioner

Versus

Naseeb Finance and Leasing Pvt Ltd & Ors.

.. Respondents

-
• Mr. R.R. Salvi i/by Ms. Suvarna B. Telgote for Petitioner
.....

CORAM : MILIND N. JADHAV, J.

DATE : MARCH 01, 2023

P.C.:

- 1.** Heard Mr. Salvi, learned Advocate for Petitioner.
- 2.** The present Writ Petition takes exception to the order dated 20.04.2022 passed in Application filed below Exh. 1 in Civil Misc. Application No. 55 of 2022 in Special Civil Suit No. 659 of 2007.
- 3.** Application was filed by the Petitioner (original Plaintiff) for depositing deficit court fees and seeking amendment of the decree passed in Special Civil Suit No. 659 of 2007 in view of the Appeal filed by the Petitioner before the Appellate Court. The necessity for filing the Application below Exh. 1 arose in view of the fact that the suit came to be decreed against the Petitioner. It needs to be noted that during the course of the proceedings before the learned Trial Court, Application for amendment below Exh. 64 was filed by the Plaintiff for revising the suit claim from Rs. 60,00,000/- to Rs. 4,06,88,000/-. The said amendment Application was allowed by the learned Trial Court as

far back as on 24.01.2011. The learned Trial Court has perused the Application as also the suit record for the purpose of passing the impugned order below Exh.1. The learned Trial Court has noted that non-payment of the deficit court fee was an inadvertent error on the part of the Applicant as none of the parties noticed this issue nor raised any objection whatsoever throughout the length of the trial.

4. On perusal of the Application filed below Exh. 1, it is seen that the probable reason for either parties not to have raised any objection therefor was in view of the fact that the suit was filed for specific performance of agreement between the parties and the alternate claim was for the purpose of refund of money in the event if the principal relief would fail. That alternate relief was enhanced from Rs. 60,00,000/- to Rs. 4,06,88,000/- which was allowed by the learned Trial Court on 24.01.2011. It is seen that Petitioner filed Application below Exh. 1 with the following two prayers :-

- (1) That the Hon'ble Court be pleased to grant permission to the applicant / plaintiff to pay the deficit Court Fee of Rs. 2,14,770/-.*
- (2) That the Hon'ble Court be pleased to amend the Decree to include suit claim of Rs. 4,06,88,000/-.*

4.1. Learned Trial Court, however, held that though it was not necessary to value the suit for alternate relief of refund of money as prayed for by the Plaintiff in the absence of averments regarding valuation of the suit property and the court fees in the plaint as well as cause of action in the plaint, the Petitioner Plaintiff now cannot be

permitted to deposit the deficit court fees. The reason given for the same is that it would be an exercise in futility. However, I am not inclined to accept the finding returned by the learned Trial Court in paragraph No. 4 of the impugned order for the simple reason that the amendment application filed by the Petitioner for enhancing the alternate claim / relief of refund of money was allowed as far back as on 24.01.2011 and in that view of the matter, the Application below Exh. 1 seeking to amend the decree and substituting the claim of refund of money from Rs. 60,00,000/- to Rs. 4,06,88,000/- ought to have been allowed considering that the Petitioner has filed a substantive First Appeal against the decree of the learned Trial Court.

5. That apart, the provisions of Section 144 of the CPC come to the aid of the Petitioner. Section 149 reads thus:-

“149. Power to make up deficiency of Court-fees. - where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court-fees has not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case maybe, of such court-fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance.”

5.1. Thus, it is seen that it is at the discretion of the Court which may at any stage allow payment of deficit court fee.

6. In the facts of the present case, the impugned order therefore deserves interference and it cannot be sustained. The impugned order dated 20.04.2022 is quashed and set aside. Hence

Application below Exh. 1 stands allowed. Petitioner to deposit the deficit court fees with the learned Trial Court within a period of three weeks from today. Subject to payment of deficit court fees, the Application below Exh. 1 stands allowed in terms of prayer clause (1) and (2) of the Application.

7. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

RAVINDRA
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AMBERKAR

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signed by
RAVINDRA
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