



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

WRIT PETITION NO. 2028 OF 2016

SHRI. SACHIN PANDURANG MARATHE
VERSUS
SHRI. AJITKUMAR VASANTRAO PATIL

...

Mr. Siddharha B. Yawalkar, Advocate for the Petitioner
Mr. B.R. Waramaa, Advocate for Respondents

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CORAM : MANJUSHA DESHPANDE, J.

DATE : 27th JANUARY, 2025

PER COURT :

1. Petitioner is challenging order dated 09/12/2015, passed by the 3rd Joint Civil Judge, Senior Division, Jalgaon, below Exhibit-51 in Special Civil Suit No.121/2011, thereby rejecting the application filed by petitioner/plaintiff seeking payment of requisite Court fees by respondent/defendant.

2. Petitioner has filed the suit for specific performance in respect of suit property Plot No.19, situated in Survey No.294, Jalgaon City. It is the contention of petitioner that he had entered into agreement of sale with respondent on 03/02/2011 with respect to suit property. In spite of receiving earnest money of Rs.4,00,000/- from petitioner, respondent has failed to execute the sale deed on one or other count. Therefore, petitioner has filed suit for specific performance. Respondent filed written statement in the suit, denying all the contentions of petitioner. He denied execution of

agreement of sale and acceptance of Rs.4,00,000/- as earnest money. He pleaded that he has never executed agreement of sale. According to petitioner, respondent sought dismissal of the suit stating that terms and conditions of the agreement of sale are not binding on him, as it is a forged document. In view of the pleadings in the written statement seeking declaration that agreement of sale is bogus and not binding on him, petitioner has filed application Exhibit-51 for directions to the respondent to pay Court fees as per the Maharashtra Court Fees Act.

3. It is submitted by the respondent/defendant that no counter claim is filed, so also, no valuation is made as is required for the counter claim. Therefore, relying on the judgment of the Supreme Court in **Ramesh Chand Ardawatiya Vs. Anil Panjwani**, reported in **AIR 2003 SC 2508**, wherein various modes of filing counter claim have been framed, the Trial Court has rejected the application Exhibit-51. Trial Court has observed that defendant is contending that he is not seeking any declaration by way of counter claim. Only on the basis of the averments in the written statement, it cannot be said that defendant has filed counter claim, particularly when defendant is denying that he has filed counterclaim.

4. During the hearing of writ petition learned advocate for respondent has submitted that, in fact, even at the time of final

hearing of the suit, the issue about payment of Court fees can be decided by the Trial Court. In response to the submission of respondents the learned advocate for petitioner submits that in order to keep the contentions of the party open, to be decided by the Trial Court at the time of final hearing of the suit, the impugned order passed below Exhibit-51 needs to be quashed and set aside, if the order remains it will cause hurdle in considering the issue at the later stage.

5. Considering the fact that the issue regarding Court fees can be considered at the later stage, the impugned order dated 09/12/2015, passed below Exhibit-51 in Special Civil Suit No.121/2011, is quashed and set aside. The issue regarding payment of Court fees by defendant for declaration sought in written statement is kept open, to be agitated at the time of final hearing of the suit. Writ petition is accordingly disposed of.

(MANJUSHA DESHPANDE, J.)