2025:BHC-AUG:2315

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 157 OF 2024

Kamalbai Bhanudas Barwad
age 71 years, Occ. Household,
R/o Nagzari, At Present Hipperga (Kajal),
Tq. Ahmedpur, District Latur. Applicant.

VERSUS

1. The State Government
Through
The Govt. Pleader,
High Court of Bombay
Bench At Aurangabad.

2. Taxing Officer,
High Court of Judicature of Bombay,
at Aurangabad. Respondents.

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Advocate for applicant : Mr. P P Deshmukh h/f Mr.M.M. Patil
AGP for Respondent 1: Mr. D.B. Bhange
Advocate for Respondent 2 : Mr. C. K. Shinde

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CORAM	**: S. G. CHAPALGAONKAR, J.**
Reserved on	**: January 23, 2025**
Decided on	**: January 28, 2025.**

ORDER :-

1. The applicant impugns the order dated 29.4.2024 passed by the Taxing Officer in Second Appeal (stamp) no.5583 of 2024, thereby directing the appellant to pay deficit court fees of Rs.1165/- and seeks further directions to waive

the office objection as to the deficit court fees and proceed to register the second appeal.

2. The appellant is original plaintiff in R.C.S. No.406 of 2024 by which she had claimed the relief of partition and separate possession of the suit lands with further declaration that the sale-deed dated 23.5.2006 executed in favour of the defendant no.9 is not binding on her. She had valued the suit as under :-

> “. That, plaintiff values the suit claim for purpose of jurisdiction at the rate of Rs.800 times of land revenue i.e. 18.86x800=15088, so also plaintiff values suit claim for purpose of court fees at rate of Rs.200 times of land revenue 18.80x200=3760/- and sale-deed day book no.1306/2006 null and void for purpose of court fee jurisdiction. So fixed court fee total values of 7230/- and plaintiff claim 1/7th share so 7230x1/7=1030+332 =1365/- Plaintiff pay the minimum court fee on her 1/7th share. Section 6(IV) (VII) of Bombay Court Fees Act, 1959 which is sufficient for the relief sought.”

3. It appears that plaintiff had valued the suit for Rs.1,365/- towards her claim for 1/7th share in the suit property as per section 6(iv)(vii) of the Bombay Court Fees Act, 1959. However, she paid court fees of Rs.1,365/-, which was in fact valuation of the suit. Even in appeal against decree of the Trial Court, defendants paid court fees of Rs.1,400/-. The

appeal filed by the defendants was partly allowed and decree passed in suit has been modified. Plaintiff's claim for grant of 1/7th share in land survey no.42 appears to have been rejected. Therefore, plaintiff filed the second appeal. Plaintiff put foot note as to the valuation and court fees in the second appeal as under :-

> "c) The suit is valued at Rs.1375/- so also the First Appeal. The same valuation is maintained for the purposes of SA. Wrongly court fees equivalent to valuation amount is paid in the suit as well as the First Appeal, which was excess. In fact, minimum court fees of Rs.200/- is payable. Hence, Court Fees of Rs.200/- is paid in the second appeal, which is sufficient."

4. The office raised objection as to the deficit court fees and directed appellant to pay court fees as paid in the suit. Appellant filed application to refer the matter to the Taxing Officer, who rejected the applicant's contention and directed her to deposit deficit court fees of Rs.1165/- as per office objection. Learned Taxing Officer referred to Schedule-I Article 4 of the Maharashtra Court Fees Act, which reads thus :-

4. Plaint, application or petition (including memorandum of appeal) which is capable of being treated as a suit, to set aside a decree or order having the force of a decree.	The same fee as is leviable on a plaint in a suit to obtain the relief granted in the decree or order, as the case may be

5. The order of the Taxing Officer is assailed before this Court in this revision application.

6. Learned advocate appearing for the applicant submit that the suit itself is valued for Rs.1,365/- on the basis of the claim for 1/7th share in the suit properties. Therefore, plaintiff was required to pay the court fees as per valuation of the suit. Second Appeal being continuation of the proceeding of the suit, minimum court fees of Rs.200/- was paid. The insistence of the office to pay the court fees as paid in the court below is wrong.

7. Mr C.K. Shinde, learned advocate appearing for respondent no.2/Taxing Officer justified the order stating that in view of specific clause under the Maharashtra Court Fees Act, appellant was required to pay the same fees as is levied on plaint on the suit to obtain relief granted in the decree. Admittedly, plaintiff has paid court fees of Rs.1,365/- at the time of institution of the suit and she is asked to pay the same in second appeal, which is justified.

8. Having considered the submissions advanced, it cannot be disputed that the court fees is required to be paid on

valuation of the suit. Plaintiff valued her suit to Rs.1,365/- and paid minimum Court fees chargeable as per valuation. Merely because excess court fees was paid in the suit or first appeal before District Court, plaintiff need not pay excess court fees in the second appeal, if it was wrongly paid. Article (IV) of schedule I requires payment of the court fees on memorandum of the appeal as leviable on plaint in the suit to obtain the relief granted in the decree and not as paid in the suit. It is, therefore, necessary to determine exact court fees leviable on the plaint in the suit on the basis of the reliefs claimed.

9. At this stage, Mr.Shinde, learned advocate appearing for respondent no.2 endeavors to point out that valuation of the suit itself was wrong. According to him, plaintiff seeks declaration against sale-deed dated 23.5.2006 being null and void. Therefore, Article 5 of Schedule I would apply. Pertinently, office objection do not depict that objection as to correctness of valuation of the suit was raised by the office. The only issue as to payment of correct court fees was subject matter of office objection. The minimum court fees as per the valuation of suit was paid. Insistence of the office that court fees ought to have been paid as paid in the

court below although it was inadvertent mistake of the plaintiff, cannot be countenanced. Payment of court fees as paid in the suit cannot be insisted when it was wrongly paid. Ultimately, court fees is leviable on the plaint for the reliefs claimed or granted in the decree or order. The valuation would govern quantification of the Court fees. Resultantly, Civil Revision Application is **allowed**. The impugned order dated 29.4.2024 passed by the Taxing Officer in Second Appeal (Stamp) No.5583 of 2024 is hereby quashed and set aside. Office objection as to the deficit court fees is hereby waived. The appeal be registered subject to removal office objections, if any.

(S. G. CHAPALGAONKAR)
JUDGE

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