

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1381 OF 2025
WITH
CIVIL REVISION APPLICATION NO.73 OF 2025

Ramesh Hiranand KundanmalPetitioner/Applicant

Versus

Vimal Sagarmal Jain & Anr.Respondents

Mr. Rohit Joshi, *Advocate for Petitioner/Applicant.*

Mr. Harsh Hoorjani a/w. *Sneha J., Advocates for Respondents.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : JULY 22, 2025

ORDER :

1. This Writ Petition is filed in connection with the non-suiting of the Petitioner with a review also being rejected by the Civil Court, Junior Division, Alibaug.

2. The crux of the matter is that the Petitioner, who was the Plaintiff and was seeking to enforce his easement rights, cited the wrong provision of the Maharashtra Court Fees Act, 1959 ("***Court Fees Act***"). An objection was taken by the Respondents about the court fees being

inappropriately computed, relying upon the provision cited by the Petitioner, namely, Section 6(iv)(j) of the Court Fees Act.

3. On the face of it, the prayer being for declaration of easement rights, it was to be valued under Section 6(iv)(e)(c) of the Court Fees Act, taking into account that the area in question is outside the limits of Municipal Councils, Nagar Panchayats and Industrial Townships.

4. In these circumstances, the submission of the Petitioner is that he has, in any case, valued the suit on the higher side and therefore he ought not to have been non-suited. It is equally true that a plain perusal of the record would show that even when the correction was sought to be made, the Petitioner left the reference to the Section number blank. On this ground, the Court was pleased to dismiss the amendment and a review of the same has also been dismissed.

5. Purely in the interest of justice, taking into account the peculiar situation in which the Petitioner has been placed, it is directed that the Learned Civil Judge, Junior Division, Alibaug may either permit the Petitioner to rectify the Complaint or to refile a fresh Complaint without holding what has transpired so far against the Petitioner. Thereafter, the Learned Civil Judge, Junior Division, Alibaug shall consider the corrected Complaint afresh uninfluenced by what has transpired so far.

6. This direction is being issued in exercise of the extraordinary jurisdiction in terms of Article 227 of the Constitution of India in order to ensure substantive justice and fairness. The Petitioner deserves to be protected from being non-suited for such an error.

7. Nothing contained in this Order is an expression of any opinion that the Learned Judge was wrong in the view that he took. This direction is being issued to remedy the situation that the Petitioner has placed himself in, solely with a view to ensure that the ends of justice are served and the Petitioner is not totally non-suited because of the technical errors made by him.

8. The Writ Petition is ***finally disposed of*** in the aforesaid terms. Consequently, nothing survives in the Civil Revision Application and the same is also disposed of accordingly.

9. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]