



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.3228 OF 2021

PETITIONER :- Rafik Khan Hafiz Khan Pathan, aged about
(Ori. Plaintiff) 51 years, Occ. Business, resident of Sister Colony, Naginabagh, Chandrapur.

..VERSUS..

RESPONDENTS :- 1) Smt. Seema Kunal Gudpalle, aged 32
(Ori. Defendants) years, occ. Household.

2) Kunal Prakash Gudpalle, aged about 38 years, Occ. Service,
Both residents of Post Kharalpeth, Tahsil Gondpipri, District Chandrapur.

Mr. Arhan Shareef, Adv. a/w Mr. Aadil Mirza, Adv. for Petitioner.
Mr. Nitin Bhishikar, Advocate for Respondents.

CORAM : **ROHIT W. JOSHI, J.**

DATE : **08/12/2025**

ORAL JUDGMENT :

1. Heard finally with consent of learned counsel for the respective parties.
2. The present petition is filed challenging the order dated 06.08.2019, passed by the learned Jt. Civil Judge Junior Division, Chandrapur, on application at Exh.40 in Regular Civil Suit No.17

of 2016. The said application was filed by the present petitioner, who is the original plaintiff in the said suit, *inter alia* seeking directions against the respondents/defendants to pay Court fees on the counter claim preferred by them. The learned trial Court has rejected the said application by the impugned order, placing reliance on the notification dated 23.03.2000 issued by the Government of Maharashtra in exercise of powers under Section 46 of the Maharashtra Court Fees Act, 1959. The learned trial Court has observed that the allegations in the counter claim indicate some act of violence on the part of the plaintiff and therefore, it will be appropriate to record evidence and determine as to whether case of violence is made out by the respondents/defendants in order to claim exemption from payment of Court fees.

3. The respondent No.1 is wife of respondent No.2. They have filed a counter claim against the present petitioner seeking prayer for delivery of possession of the suit property. Although the prayer in the suit for possession of immovable property, some allegations of physical and sexual harassment are made in the counter claim. It is well settled that payment of court fees is required to be made having regard to the prayers made in the plaint or as in the present case, the counter claim. The Prayer in the counter claim

is for delivery of possession of immovable property. The counter claim is not filed for seeking compensation or any other relief in relation to alleged acts of physical or sexual assault.

4. In that view of the matter, the case of respondents is not covered by the Government notification dated 23.03.2000, even if the allegations with respect to the alleged acts of violence are assumed to be true. Having regard to the aforesaid, in the considered opinion of this Court, writ petition deserves to be allowed in the following terms :-

- i) Order dated 06.08.2019, passed by the learned Civil Judge Junior Division, Chandrapur, on application at Exh.40 in Regular Civil Suit No.17 of 2016, re-registered as Special Civil Suit No.60 of 2020 is quashed and set aside. Application at Exh.40 is **allowed**.
- iii) Respondent Nos.1 and 2 / counter claimants are directed to pay appropriate Court fees on or before **15.01.2026**.
- v) No order as to costs.

(ROHIT W. JOSHI, J.)