



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

WRIT PETITION NO.3710 OF 2025

RAJENDRA S/O DAMODAR BHAT
VERSUS
SHABIR S/O HUSSAIN AJANI AND OTHERS

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
---	---------------------------

Mr. H.J. Khandwani, Advocate for Petitioner.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATED : 19th SEPTEMBER 2025

PER COURT :-

1. Heard learned Advocate for the petitioner. Nobody appears for the respondents although served.

2. By last order of this Court, passed on 11th September 2025, it was observed that since nobody appeared for the respondents, an opportunity was required to be afforded to the respondents.

3. The petitioner has challenged the order dated 24th June 2025, passed by learned 13th Joint Civil Judge Senior Division, Nagpur, in Spl.C.S. No.1000 of 2023, on an application at Exhibit 24, filed under Order VII Rule 11(b) of Code of Civil Procedure, 1908 (for

short, “CPC”), thereby directing the petitioner/plaintiff to pay requisite court fee stamp even on the claim of alternate relief.

4. The petitioner is the original plaintiff, who had filed a suit for specific performance of contract, possession, declaration and permanent injunction, with a prayer for alternative relief of refund of amount along with compensation. It is pointed out that the plaintiff has filed the suit, in which the total consideration of the suit property was Rs.88,00,000/- and court fees of Rs.1,20,030/- is already paid. The plaintiff has also prayed by way of alternative relief of refund of amount of Rs.25,76,000/- along with the compensation of Rs.25,00,000/- with interest.

5. The respondents/defendants had filed an application under Order VII Rule 11(b) of CPC, seeking rejection of plaint on account of failure to pay court fees by the plaintiff even on the claim of alternative relief. By the impugned order, learned Trial Court has allowed the application, directing the plaintiff to pay requisite court fees on the claim for alternate prayer.

6. Learned Advocate for the petitioner submits that the plaintiff has already paid the court fees on amount of consideration which is much higher than the claim of alternate relief and further the

question of alternate relief will arise in case the plaintiff fails to get the main relief and hence, there is no need to pay any additional court fees against alternative relief claimed. In support of his submissions, learned Advocate for the petitioner relies on the judgment of this Court in the case of ***Ansuya Jayendra Soni Vs. Santokben Nanji Gohil, [2017 SCC Online Bom 3604]***.

7. Perusal of the above cited judgment shows that the position of law is clarified in paragraph 12 of the judgment, which is reproduced as below.

“12. In view of the decision of this Court in the case of Dilip Bastimal Jai (supra), I find that the learned trial Judge was not justified in directing the plaintiffs to pay court fees on the basis of alternate relief of damages. The question of consideration of alternative relief will arise only if the Court comes to the conclusion that plaintiffs are not entitled to relief of specific performance. Apart from that, it is not disputed that the alternative relief does not exceed pecuniary jurisdiction of the Court. Hence, petition succeeds. Impugned order is set aside and the direction given by the learned trial Judge to the plaintiffs to pay additional court fees on the amount of compensation is set aside.”

8. The controversy involved in the instant petition can be decided in view of the above referred judgment in **Ansuya Jayendra Soni (Supra)**. In view of this, the Writ Petition needs to be allowed.

9. The impugned order dated 24th June 2025, passed by learned 13th Joint Civil Judge Senior Division and ACJM, Nagpur, in Spl.C.S. No.1000 of 2023, below Exhibit 24, stands quashed and set aside.

10. Accordingly, the Writ Petition is disposed of.

(PRAFULLA S. KHUBALKAR, J.)

asd