

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 17572 OF 2025

Minakshi Krishnaji Bhole And Ors ...Petitioners

Versus

Sushila Vishnupant Joshi Since Deceased

Through Legal Heirs And Ors. ...Respondents

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Mr. Narayan Bubna, i/b Sagar Ambedkar and Disha Nidve, for
the Petitioners.

Ms. Namrata Gawde, i/b Varsha Chavan, for Respondent Nos.1
and 3.

CORAM: N. J. JAMADAR, J.

DATED: 13th JANUARY, 2026

Oral Order:-

1. Heard the learned Counsel for the petitioners.
2. The challenge in this petition is to an order dated 7th December, 2023 passed by the learned Civil Judge, whereby the learned Civil Judge permitted the respondents – plaintiffs to pay the court-fees.
3. Initially the respondents – plaintiffs had sought permission to institute the suit as indigent persons. An application under Order XXXIII of the Code of Civil Procedure, 1973 (“the Code”) was filed. The said application remained pending for three decades. Thereafter, the plaintiffs filed an

application seeking permission to pay the court-fees and prosecute the suit.

4. By the impugned order, the learned Civil Judge was persuaded to allow the plaintiffs to pay the court-fees on the value of the suit property as it obtained on the date of the institution of the application to sue as indigent persons. In addition, the plaintiffs were directed to pay costs of Rs.5,000/- to the defendants.

5. Mr. Bubna, the learned Counsel for the petitioners, submitted that as the application preferred by the plaintiffs to sue as indigent persons was not *bona fide* and it was deliberately kept pending for over 30 years, the plaintiffs ought to have been directed to pay the court-fees on the market value of the suit property as it obtained on the date of the passing of the impugned order and not the date on which the application to sue as indigent persons was filed.

6. When the plaintiff seeks permission to sue as indigent person by filing an application, he has to satisfy the requirements stipulated in Rule 2 of Order XXXIII of the Code. The suit is deemed to have been instituted on the date the application to sue as indigent persons is filed. In the case at hand, the grievance of the defendants is that the plaintiffs who

had designedly kept the application to sue as indigent persons pending, sought permission to pay the court-fees, after thirty years. The said act of the plaintiffs was driven by the desire to reap benefits of the proposed redevelopment of the subject property. Therefore, the plaintiffs ought to have been directed to pay the court-fees on the market value of the property as it obtained on the date they offered to pay the court-fees and not the date of the institution of the application to sue an indigent persons.

7. Even if the submission made on behalf of the petitioners – defendants is taken at par, in the worst case scenario, the Court could have rejected the application filed by the plaintiffs to sue as indigent persons. In that case as well, the liability of the plaintiffs to pay the court-fees would be as that obtained on the date of the institution of the application to sue as indigent persons.

8. The provisions contained in Order XXIII Rule 11 of the Code make the position clear. The said rule reads as under:

“Order XXXIII Rule 11. Procedure where [indigent person] fails.—

Where the plaintiff fails in the suit or the permission granted to him to sue as an indigent person has been withdrawn, or where the suit is withdrawn or dismissed,—

(a) because the summons for the defendant to appear and answer has not been served upon him in consequence of the failure of the plaintiff to pay the Court-fee or postal charges (if

any) chargeable for such service [or to present copies of the plaint or concise statement], or

(b) because the plaintiff does not appear when the suit is called on for hearing, the Court shall order the plaintiff, or any person added as a co-plaintiff to the suit, to pay the Court-fees which would have been paid by the plaintiff if he had not been permitted to sue as [an indigent person].

9. Even when the Court rejects the application to sue as an indigent person or withdraws the permission granted to sue as an indigent person, the Court shall order the plaintiff to pay the court-fees which would have been paid by the plaintiff if he had not been permitted to sue as an indigent person.

10. In view of the aforesaid clear and explicit provision, the challenge to the impugned order does not merit countenance.

11. It is necessary to clarify that the trial Court ought to have due regard to the fact that more than 30 years time was consumed by the plaintiffs in seeking permission to sue as indigent persons and the delay thereby caused by the plaintiffs shall be taken into account while finally adjudicating the rights of the parties, balancing the equities, if the situation so warrants, and in the matter of payment of costs of the suit.

12. With the aforesaid clarification, the petition stands disposed.

[N. J. JAMADAR, J.]