


<p>MHKO050043612019</p> 	<p><u>Order below Exh.46 in RCS No.331/2019</u> <u>Sarada Export Coporation Prop.</u> <u>Badrinarayan Bankatlal Sarada Vs.</u> <u>Ramesh Rajaram Dhamne and 5 other</u> <u>CNR No.MHKO050043612019</u></p>
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The instant application is filed by the plaintiff praying for permission to accept Court Fees Stamp of Rs.38,830/- as additional Court Fees Stamp as directed by this Court in order below Exh.38.

2. Perused the application and reply filed by the defendants. Heard learned counsel Mr. Khanjire for the plaintiff as well as Mr. Jamadar for the defendants.

3. Learned counsel Mr. Khanjire submitted in consonance with his application. He submitted that in view of order passed below Exh.38, it has been directed that the plaintiff shall properly compute Court Fees in terms of section 6(iv)(ha) of Bombay Court Fees Act. He submits that accordingly the valuation of properties comes up to 21,00,000/- and 21,62,000/- respectively. He submits that, one half of the property if done as per section 6(iv)(ha) of Bombay Court Fees Act comes up to 38,830/-. He accordingly prays for permission to deposit additional Court Fees Stamp of Rs.38,830/- in view of compliance of order below Exh.38.

4. Per contra, learned counsel Mr. Jamadar has vehemently opposed the instant application on the ground that the calculation done by the plaintiff is wrong. He submits that as per section 6(iv)

(ha) of Bombay Court Fees Act, the plaintiff has to calculate half of ad valorem fee leviable on value of property. He accordingly submits that the Court Fees Stamp annexed is deficit. Accordingly, he prays for grant of direction to the plaintiff to annex appropriate Court Fees Stamp.

5. I have careful gone through the record. Section 6(iv)(ha) of Bombay Court Fees Act reads as follows :- *“(ha) In suits for declaration that any sale, or contract for sale or termination of contract for sale, of any moveable or immoveable property is void [one-half] of ad valorem fee leviable on the value of the property ;”*

5. Thus, bare perusal of the section 6(iv)(ha) of Bombay Court Fees Act shows that the Court Fees has to be calculated on value of the property by considering one half of the *ad valorem* fee. Perusal of the instant application show that the plaintiff has calculated the Court Fee by taking into consideration the entire value of the property and then dividing it by half. However, the same prima facie appears to be incorrect and against the interpretation of section 6(iv)(ha) of Bombay Court Fees Act. In my humble view the appropriate calculation would be one half of of *ad valorem* fee leviable on value of property. Thus, the calculation done by the plaintiff appears to be incorrect and approximately additional court fees is required to be paid. The court fee of 38830/- is incorrect and therefore the plaintiff is directed to annex appropriate court fees. Accordingly, I proceed to pass following order:-

ORDER

1. Court Fees Stamp of Rs.38,830/- is taken on record.
2. The plaintiff is directed to annex additional Court Fees as contemplated under section 6(iv)(ha) of Bombay Court Fees Act within a period of two months from today.
3. Needless to mention here that necessary order under Order VII Rule 11 will be passed by this Court upon failure of Plaintiff to supply requisite court fees within two months from today and upon failure of plaintiff to comply with the instant order.
4. Parties to take note.

Date- 04/05/2023
Ichalkaranji

(S. A. Ingley)
2nd Jt. Civil Judge Junior Division,
Ichalkaranji

-- C E R T I F I C A T E --

I affirm that the contents of this P.D.F. file Judgment/ Orders are same, word to word, as per the original Judgment / Order.

Name of stenographer	R. D. Jadhav
Name of Court	Shri. S. A. Ingley 2 nd Jt. Civil Judge Jr. Div., Ichalkaranji.
Date of Dictation	04/05/2023
Order signed by P.O. on	04/05/2023
Order uploaded on	04/05/2023