

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 11381 OF 2015

Bhatu Rajdhar Borse
Age 44 years, Occu. Service,
R/o Kotir Naka, Taluka and
District Nandurbar

...Petitioner

versus

Prashant Jaywantrao Shirsath
Age 35 years, Occu. Agri.,
R/o New Patwari Colony,
Amalner, Taluka Amalner,
District Jalgaon and anr.

...Respondents

.....
Mr. A.B. Kale, Advocate for petitioner
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CORAM : N.W. SAMBRE, J.

DATE : 24th NOVEMBER, 2015

ORAL ORDER :

In a suit for specific performance bearing Special Civil Suit No.19 of 2014, an application Exhibit-29 came to be filed by the plaintiff for impounding of the alleged agreement and for determination of stamp duty payable. The Court below allowed the said application by an order dated 14/09/2015, as such, present writ petition by the defendant.

2. Learned Counsel for the petitioner-defendant would urge that once the document itself was under cloud, as defendant has disputed the execution of such agreement, the Court below ought not

to have ordered impounding of document, as same caused serious prejudice to the defendant. He would then urge that the document itself claimed to be sham and bogus. As such, the order of impounding thereof would frustrate the defence, as is raised by the petitioner.

3. Upon considering submissions of the petitioner, it is required to be noted that it is the plaintiff, who has filed an application based on alleged unstamped agreement volunteered impounding of said document for payment of stamp duty.

4. Primarily, it is the burden on the plaintiff to prove that the said document was executed for lawful object and consideration.

5. The defence, if any, as is raised by the petitioner in written statement will hardly have any impact over impounding and payment of stamp duty for document in question. In my opinion, no illegality could be noticed so as to cause interference in extraordinary writ jurisdiction. The writ petition fails, stands dismissed.

[N.W. SAMBRE, J.]