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

WRIT PETITION NO. 960 OF 2015

Ambadas s/o Manikrao Kalyankar,
Age: 50 years, Occ: Agril, & Business,
R/o. Sambhaji Nagar, Latur. ...Petitioner

versus

Deepali w/o Sanjay Mhetre,
Age: 44 years, Occ: Household,
R/o. Jawahar Colony,
Near Onkareshwar Mandir,
Aurangabad. ...Respondent

.....
Mr. Milind M. Patil (Beedkar), Advocate for petitioner
Mr. H.V. Patil, Advocate for respondent
.....

CORAM : N.W. SAMBRE, J.

DATE : 3rd DECEMBER, 2015

ORAL ORDER :

This writ petition is by the plaintiff to Regular Civil Suit No. 101 of 2012 for specific performance of contract based on agreement of sale dated 20^{th} November, 1997 in relation to agricultural land and for perpetual injunction and possession, questioning the legality and validity of order dated 25^{th} September, 2014 (impugned) passed below Exhibit-78, an application moved by the plaintiff for ordering impounding of the agreement dated 20^{th} November, 1997 and for payment of adequate stamp duty upon adjudication thereof. Learned trial Court, by an order, dated 25^{th}

September, 2014 rejected the same, as such, present writ petition.

2. It is claim of the petitioner-plaintiff in the suit that he being resident of Latur and plaintiff-defendant having cordial relations being friends, defendant No. 2, the wife of defendant No. 1 has decided to sell the suit property-agricultural land to the plaintiff for valuable consideration of Rs. 1,05,000/-. Pursuant thereto, an agreement of sale was executed on 20th November, 1997 on non judicial stamp paper of Rs.20/- after accepting earnest amount of Rs.11,000/- by defendant Nos. 1 and 2. The possession is claimed to have been passed to present petitioner-plaintiff.

3. As the defendants failed to execute sale deed, pursuant to the terms of agreement dated 20th November, 1997, the suit was brought into action on or about 25th April, 2005 with following prayers:

> That, the suit of the plaintiff be kindly decreed as under:-
>
> (A) A decree for Specific Performance of agreement to sell dated 20/11/97 be kindly passed against the defendant and the defendants be kindly directed to executed registered sale deed of the suit land, which is more fully described in para No. 2 of the plaint.

(B) If the defendants fail to execute registered sale deed even after directions of this Hon'ble Court, the sale deed be kindly executed in favour of plaintiff by appointing court commissioner.

(C) The defendants be kindly restrained by a decree for perpetual injunction from interfering of obstructing in peaceful possession of the plaintiff over suit land, described in para No. 2 above.

(D) The cost of the suit be kindly awarded to the plaintiff from the defendants.

(E) Any other relief to which the plaintiff is entitled to in law, justice, equity and procedure be kindly granted in his favour.

4. The claim was resisted by respondent-original defendant Nos. 1 and 2 by filing written statement at Exhibit-15 and in which, the defence was raised of denial of alleged negotiations, settlement of terms and conditions of sale and receipt of part consideration, so also denied possession of the plaintiff.

5. Subsequent thereto, an application-Exhibit 78 came to be moved by the plaintiff on 19th March, 2012 praying therein, ordering impounding of agreement dated 20th November, 1997 executed by defendants in favour of petitioner-plaintiff, as same was

not adequately stamped. The plaintiff also expressed his willingness to deposit necessary charges of impounding of the document and further prayed that it be sent to Stamp Collector for the purpose of processing.

6. The said application Exhibit-78 was objected by respondent-defendants on the ground that the application Exhibit-78 was moved at belated stage and as such, time barred. It is also claimed that criminal proceedings are going on between the parties in relation to the document in question and prayed for rejection of the application.

7. Learned Joint Civil Judge, Senior Division, Latur, by reasoned order, rejected the application Exhibit-78 on the ground that the agreement of sale (not properly stamped) is on stamp paper, which was brought on 4th January, 1997 and the date of execution of alleged agreement between the petitioner and respondent is 20th November, 1997. Learned trial Court then observed that as stamp paper in question is used almost after the time gap of ten months, in the light of Government Resolution dated 17th December,2013, the stamp paper become void and as a consequences thereof the agreement executed, as such, is void.

8. Mr. Milind Patil (Beedkar), learned Counsel for the petitioner, while questioning the legality and validity of the order impugned, would urge that learned trial Court, while passing order, has misconstrued the provisions of Section 52B of the Maharashtra Stamp Act. According to him, it is no doubt true that, validity of the stamp paper, which is used for non judicial purpose is six months and subsequent thereto consequences under Section 52B of the Maharashtra Stamp Act resulting into invalidation of stamp paper follows, however, according to him, it cannot be construed that the contents scribed on such stamp paper, which was used beyond period of six months from the date of its issuance also become void. With his assistance, he has taken me through the scheme of Chapter-V of the Maharashtra Stamp Act, which deals with the allowances for stamp in certain cases. He would then urge that the order of rejection of the application with prayer for impounding the document is liable to be set aside with observations that the application with prayer for impounding needs to be granted.

9. Mr. H.V. Patil, learned Counsel for the respondent would urge that invalidation of the stamp paper, pursuant to the provisions of Section 52B of the Maharashtra Stamp Act would also invalidates the contents scribed on such stamp paper as the stamp paper becomes worth waste paper without any evidentiary value. He would

then further added that the said issue need not be gone into at this stage, as learned trial Court has appreciated provisions of Section 52B of the Maharashtra Stamp Act in its true prospective and it will be open for the petitioner to raise said issue in an appeal in case, if the suit is decided against him. Mr. Patil, learned Counsel for the respondent then submits that the order is passed at the stage on which such application is moved, particularly after period of 12 years from the date of filing of the suit has also weighed before the learned trial Court. He would then urge that the fact about pending criminal proceedings against the parties *inter-se* based on the agreement dated 20th November, 1997 also cannot be overlooked, in view of criminal attribution against the petitioner. According to him, as such, the writ petition is liable to be rejected.

10. In view of the fact that issue revolts around interpretation of Section 52B of the Maharashtra Stamp Act, it is worth to mention, which reads thus :

"**52B. Invalidation of stamps and saving**

Notwithstanding anything contained in sections 47, 50, 51 and 52.-

(a) Any stamps which have been purchased but have not been used or in respect of which no allowance has been claimed on or before the day immediately preceding

> the date of commencement of the Bombay Stamp (Amendment) Act, 1989 (hereinafter referred to as the "the commencement date") and the period of six months from the date of purchase of such stamps has not elapsed before the commencement date, may be used before a period of six months from the date of purchase of such stamps is completed, or delivered for claiming the allowance under the relevant provision of this Act; and any stamps not so used or so delivered within the period aforesaid shall be rendered invalid.
>
> (b) Any stamps which have been purchased on or after the commencement date but have not been used, or no allowance has been claimed in respect thereof, within a period of six months from the date of purchase thereof, shall be rendered invalid."

11. Upon plain reading of the said Section, it is amply clear that the stamp paper purchased for non judicial purpose, for which no allowance has been claimed and which is not used within period of six months from the date of purchase, such stamp shall rendered invalid.

12. Sub-section (a) of Section 52B *prima facie* attracts and applies to a situation as is existing prior to date of commencement of the Amendment Act, 1989, whereas sub section (b) operates from the date of commencement of the said amended section. The section

require that stamp needs to be used for lawful purpose within period of six months from the date of its purchase. It also provides for eventuality in case if it is not used within six months from the date of its purchase, purchaser can apply for allowance and in case, if fails, the consequences are of rendering such stamp as invalid.

13. Invalid stamp document though is not admissible in evidence, however, if tendered in accordance with Section 33, is liable for impounding and on such penalty as will be imposed in accordance with the provisions of the Act. It is also required to be noted that the object with which the Stamp Act was enacted is to achieve the object of fiscal purpose by prescribing rates of stamp duty and levies on the documents as are set out in the Act. There are also provisions under the statute which specifically excludes the document and helpful reference could be made to Section 74 of the Maharashtra Stamp Act.

14. It is required to be noted here that even if the stamp paper is rendered invalid pursuant to sub-section (2) of Section 52B, the findings recorded by learned trial Court of declaring the agreement as void being scribed on invalid stamp paper, is sought to be covered under Section 52B of the Maharashtra Stamp Act. It is required to noted here that Section 52B is applied to the facts of

present case, in the background that stamp paper in question on which the agreement was executed on 20th November, 1997 was of 4th January, 1997 at the most could render stamp paper invalid and not agreement scribed thereon. The net effect of Section 52B of the Act in the above referred background will be, value of stamp paper will not be taken into account at the time of calculating appropriate stamp duty and penalty thereon in accordance with the provisions of the Act. Once the stamp paper used within period of six months by virtue of statutory provisions is declared invalid, the paper on which such agreement is scribed could be termed as agreement scribed on plain paper and even if it is considered that it is scribed on plain paper, it cannot be said that the provisions of impounding and adjudication for payment of stamp duty and penalty cannot be applied to.

14. I am fortified in my view in the light of law laid down by the Apex Court in the matter of **Thiruvengada Pillai vs Navneethamal and another** reported in **AIR 2008 SC 1541.** Paragraph Nos. 11 and 12 of the said judgment, which are required to refer to, reads thus :

> "11. The Trial Court and the High Court have doubted the genuineness of the agreement dated 5.1.1980 because it was written on two stamp papers purchased on 25.8.1973

and 7.8.1978. The learned counsel for first respondent submitted that apart from raising a doubt about the authenticity of the document, the use of such old stamp papers invalidated the agreement itself for two reasons. Firstly, it was illegal to use stamp papers purchased on different dates for execution of a document. Secondly, as the stamp papers used in the agreement of sale were more than six months old, they were not valid stamp papers and consequently, the agreement prepared on such 'expired' papers was also not valid. We will deal with the second contention first. The Indian Stamp Act, 1899 nowhere prescribes any expiry date for use of a stamp paper. Section 54 merely provides that a person possessing a stamp paper for which he has no immediate use (which is not spoiled or rendered unfit or useless), can seek refund of the value thereof by surrendering such stamp paper to the Collector provided it was purchased within the period of six months next preceding the date on which it was so surrendered. <u>The stipulation of the period of six months prescribed in section 54 is only for the purpose of seeking refund of the value of the unused stamp paper, and not for use of the stamp paper. Section 54 does not require the person who has purchased a stamp paper, to use it within six months. Therefore, there is no impediment for a stamp paper purchased more than six months prior to the proposed date of execution, being used for a document.</u>

12. The Stamp Rules in many States provide that when a person wants to purchase stamp papers of a specified value and a single stamp paper of such value is not

available, the stamp vendor can supply appropriate number of stamp papers required to make up the specified value; and that when more than one stamp paper is issued in regard to a single transaction, the stamp vendor is required to give consecutive numbers. In some States, the rules further require an endorsement by the stamp vendor on the stamp paper certifying that a single sheet of required value was not available and therefore more than one sheet (specifying the number of sheets) have been issued to make up the requisite stamp value. But the Indian Stamp Rules, 1925 applicable to Tamil Nadu, do not contain any provision that the stamp papers of required value should be purchased together from the same vendor with consecutive serial numbers. The Rules merely provide that where two or more sheets of paper on which stamps are engraved or embossed are used to make up the amount of duty chargeable in respect of any instrument, a portion of such instrument shall be written on each sheet so used. No other Rule was brought to our notice which required use of consecutively numbered stamp papers in the State of Tamil Nadu. The Stamp Act is a fiscal enactment intended to secure revenue for the State. In the absence of any Rule requiring consecutively numbered stamp papers purchased on the same day, being used for an instrument which is not intended to be registered, a document cannot be termed as invalid merely because it is written on two stamp papers purchased by the same person on different dates. Even assuming that use of such stamp papers is an irregularity, the court can only deem the document to be not properly stamped, but cannot, only on that ground,

> hold the document to be invalid. Even if an agreement is not executed on requisite stamp paper, it is admissible in evidence on payment of duty and penalty under section 35 or 37 of the Indian Stamp Act, 1899. If an agreement executed on a plain paper could be admitted in evidence by paying duty and penalty, there is no reason why an agreement executed on two stamp papers, even assuming that they were defective, cannot be accepted on payment of duty and penalty. But admissibility of a document into evidence and proof of genuineness of such document are different issues."

15. In view of above discussion and law laid down by the Apex Court, the provisions of Section 52B of the Act as is stated by learned trial Court to the extent of declaring agreement itself as void is not sustainable as same does not appears to the object of the said Section. The document, in my opinion, will not render invalid just because it is scribed on invalid stamp paper and irregularity of scribing the document on invalid stamp paper as is observed herein above upon impounding, after payment of requisite stamp duty and penalty is very much admissible in evidence.

16. As such, for the reasons stated herein above, in my opinion, the writ petition needs to be allowed.

17. As a consequences, the order passed below Exhibit-78

in Regular Civil Suit No. 101 of 2012 by learned Joint Civil Judge, Senior Division, Latur on 25th September, 2014 is hereby set aside and application Exhibit-78 stands granted.

18. The writ petition stands allowed in above terms.

[**N.W. SAMBRE, J.]**

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