

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1279 OF 2014

Mr. Munish Pravinbhai Doshi and Ors.] ... Petitioners

Versus

Mr. Bhavin Chandrakant Mehta,]
Through its Constituted Attorney]
Mr. Chandrakant Dhirajlal Mehta and Anr.] ... Respondents

Mr. Pravin Samdani, Senior Advocate, with Ms. Rati Patni & Mr. Arnav Nagalia i/b Wadia Ghandy & Co. for Petitioners.
Mr. Umesh Mankapure for Respondent No.1.

CORAM :- M. S. SONAK, J.
DATE :- MARCH 17, 2015

P. C. :-

1. Mr. Pravin Samdani, learned Senior Advocate for Petitioners, seeks leave to delete the Respondent No.2, since the presence of the said Respondent is not necessary at this stage. Leave granted. Amendment to be carried out forthwith.

2. Rule. With the consent of the learned Advocates for parties, Rule is made returnable forthwith.

3. This petition is directed against Order dated 07/01/2014 made by 4th Joint Civil Judge, Senior Division, Kolhapur, rejecting Petitioner's application dated 02/12/2013 seeking impounding of Agreement dated 11/03/2000 (Ex.69/1 in the records of the trial Court) on the ground that the same was neither appropriately stamped nor registered. The impugned order has taken the view that such a document can be considered for collateral purpose.

4. In making the impugned order, it appears that the learned trial Judge has not taken into consideration the decision of the Hon'ble Apex Court in case of ***SMS Tea Estates Private Limited Vs. Chandmari Tea Company Private Limited***¹. At para 19 of the said decision, the Hon'ble Apex Court, in the context of unstamped instrument, has made the following observation -

“19. Having regard to Section 35 of the Stamp Act, unless the stamp duty and penalty due in respect of the instrument is paid, the court cannot act upon the instrument, which means that it cannot act upon the arbitration agreement also which is part of the instrument. Section 35 of the Stamp Act is distinct and different from Section 49 of the Registration Act in regard to an unregistered document. Section 35 of the Stamp Act, does not contain a proviso like Section 49 of the Registration Act enabling the instrument to be used to establish a collateral transaction.”

¹ (2011) 14 Supreme Court Cases 66

5. Mr. Umesh Mankapure, learned Advocate for Respondent No.1 i.e. the original Plaintiff, submitted that he has several other contentions in opposition to the prayers made by the Petitioners in their application dated 02/12/2013.

6. In view of the aforesaid, it would be appropriate that impugned order dated 07/01/2014 be set aside and the learned Judge is directed to hear and decide the Petitioners' application dated 02/12/2013 (Ex.70) afresh and in accordance with law. It is ordered accordingly.

7. All contentions of all parties are left open for consideration by the learned trial Judge.

8. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

9. All parties to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)