IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2511 OF 2014

Aditya Garg **.. Petitioner**

Versus

State of Maharashtra and others **.. Respondents**

Mr. M. V. Kini i/by Mr. Suresh Dubey, for the Petitioner.
Ms. P. S. Cardozo, AGP for the Respondent Nos.1 to 3.
Mr. R. S. Desai, i/by Thodur Law Associates, for the Respondent No.4.

CORAM : R.M. SAVANT, J.
DATE : 15th JUNE, 2015

P.C.

1. The Writ Jurisdiction of this Court is invoked against the order dated 23.03.2012 passed by the Appellate Authority i.e. Chief Controlling Revenue Authority, Maharashtra State, Pune by which order the Appeal filed by the Petitioner against the communication dated 16.12.2010 issued by the Collector of Stamps, Pune Rural in Evasion Case No.87/10-11 came to be rejected. The Petitioner has filed a suit being Civil Suit No.369 of 2007 in the Court of the Civil Judge, Senior Division, Pune. The said suit has been filed for specific performance of the agreement to

sale of plot admeasuring 1083.5 sq. mtrs. with a bungalow thereon in village Tungarli within the limits of Lonavala Municipal Council, District Pune. In the said suit, the Petitioner in his evidence produced a confirmation letter dated 12.02.2007. In the context of the challenge raised in the present Petition, clause 1 and 2 of the said letter are material and are reproduced herein under-

> "1) The said property will be sold with all the furnitures, fixtures, Air Conditioners and all other amenities lying at and/or annexed to the bungalow and the land.
>
> 2) The total consideration/sale value agreed between the seller and the buyer is Rs.65,00,000/- (Rupees Sixty Five Lakhs only) out of which Rs.5,00,000/- (Rupees Five Lakhs only) has been already paid by Pay Order no.001423 dated 12.02.2007 in favour of Mrs. Shirin S. Rangwala drawn on Yes Bank Ltd. The balance Rs.60,00,000/- (Rupees Sixty Lakhs Only) will be paid on or before 15th March 2007 against the seller transferring / registering the documents of title at the registration office in favour of the buyer or his nominee and against the seller handing over the peaceful and vacant possession of the said property with all the furnitures/fixtures and fittings lying and being thereat to the buyer Mr. Aditya Garg or his nominee."

The said clause 2 therefore discloses that the possession was to be handed over to the Petitioner with the original Plaintiff, if the requisites in the said letter were complied with. On the said letter being produced by the Petitioner in his evidence before the Trial Court, an objection came to be raised regarding the admissibility of the said letter on the ground that the said letter has not been duly stamped under the Bombay Stamp Act. Upon this, the Petitioner filed a pursis in the Court stating that he has no objection to the said letter being referred to the Collector of Stamps for adjudication. In the said pursis the Petitioner mentioned that Article 25 of the Stamp Act is not applicable and it is Article 5(h) that would be applicable and on the said basis the Petitioner is liable to pay Rs.100/- as stamp duty. It seems that the Respondent No.4 i.e. the Defendant to the suit submitted an application to the Court to which was annexed a confirmation letter dated 12.02.2007, wherein the consideration mentioned was Rs.1,45,00,000/-. In view of the pursis filed by the Petitioner, both the said letters were referred to the Collector of Stamps, Pune Rural for adjudication. The Collector of Stamps, Pune, adjudicated upon the said letters and having regard to the content of the confirmation letter produced by the Plaintiff i.e. Petitioner herein held that the said confirmation letter would attract Article 25 of the Bombay Stamp Act and the Petitioner would be liable to pay the stamp duty on the said basis. The Petitioner carried the matter in Appeal against the order dated 16.12.2010 passed by the Collector. The Appellate Authority i.e. the Chief Controlling Revenue Authority after adverting to the relevant provisions of the Bombay Stamp Act in matter of the definition of the word “instrument” posited in Section 2(l) and “conveyance” in Section 2(g) and thereafter having regard to Article 25 of the Bombay Stamp Act came to a conclusion that the order passed by the Collector, Pune Rural did not merit any interference in the Appellate Jurisdiction.

2. In so far as the consideration is concerned i.e. one mentioned in the confirmation letter produced by the plaintiff i.e. Petitioner herein and the one produced by the Respondent No.1, the Appellate Authority held that the Petitioner would have to pay stamp duty of Rs.1,45,00,000/- and in the event the Trial Court allows the Petitioner's suit for specific performance or hold that the consideration which was agreed is Rs.65,00,000/-, then the Petitioner is entitled to the refund of the stamp duty paid for the amount in excess of Rs.65,00,000/-. The Appellate Authority as indicated above accordingly has by the impugned order dismissed the Appeal.

3. The Learned Counsel appearing for the Petitioner Mr. M. V. Kini would seek to reiterate the case of the Petitioner/Plaintiff before the Appellate Authority to contend that the said document does not attract Article 25 of the said Act. In my view, having regard to the purport of clause 2 of the said confirmation letter the order passed by the Collector and confirmed by the Appellate Authority holding that the said document i.e. confirmation letter would amount to a conveyance cannot be faulted with. No case for interference in the Writ Jurisdiction of this Court is therefore made out. The Writ Petition is accordingly dismissed. However,

as observed by the Appellate Authority the Petitioner would be entitled to refund of the stamp duty paid in excess of the consideration of Rs.65,00,000/- if the Civil Court records a finding in favour of the Petitioner that the consideration for the property was Rs.65,00,000/-.

[R.M. SAVANT, J]