

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8458 OF 2015

Ansari Israr Ahemed Anis Ahemed

.. Petitioner

Versus

Mohd. Ibrahim Haji Abdul Latif

(Since deceased through his legal heirs)

Abdul Sattar Mohammed Ibrahim and others

.. Respondents

**Mr. A. G. Damle, Senior Advocate i/by Mr. R. R. Lanjekar, for the
Petitioner.**

Mr. N. R. Bubna, for the Respondent Nos.1(a) to 1(c), 2 & 3.

Mr. S. D. Rayrikar, AGP for the Respondent No.4.

CORAM : R.M. SAVANT, J.

DATE : 15th SEPTEMBER, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 30.07.2015 passed by the Learned Joint Civil Judge Senior Division, Malegaon, by which order the Application Exh.64 filed by the Petitioner/original Plaintiff for restoration of the suit in question came to be rejected. The suit in question has been filed by the Petitioner/Plaintiff for specific performance of the contract in respect of the sale of an immovable property. In the said suit, an application came to be filed on behalf of the original Defendant which was numbered as Exh.9 that the

agreements to sale were insufficiently stamped and therefore could not be read in evidence and required to be impounded. The said application came to be partly allowed by the Trial Court by order dated 20.03.2012 and the said document came to be impounded and the Learned Judge embarked upon the exercise of determining the stamp duty payable on the said document and accordingly adjudicated the same by the order dated 20.03.2012. The said order was taken exception to by way of Writ Petition No.6933 of 2012 before this Court. Suffice it to state that the said Writ Petition came to be allowed by order dated 30.10.2012 and the order impugned in the said Petition came to be set aside and the documents were directed to be sent to the Collector of Stamps, Nashik for adjudication and computation of the deficit stamp duty. It is an undisputed position that the documents have been received by the Collector of Stamps, Nashik. In view of the fact that there was non-compliance in the matter of getting the documents adjudicated as also on the day when the suit was placed before the Trial Court the Plaintiff and his advocate were absent, the suit came to be dismissed for want of evidence and counterclaim of the Defendant was directed to be continued.

2. The Petitioner/original Plaintiff immediately thereafter filed the instant Exh.64 for restoration of the suit. The reasons why the Plaintiff and his advocate could not remain present on 17.12.2014 were mentioned

in the application. The Trial Court considered the said application and has by the impugned order dated 30.07.2015 rejected the same. The rejection is on the ground that no plausible reason has been given by the Plaintiff for his absence on 17.12.2014 as also on the ground that for more than two years the Plaintiff has not made any efforts to seek adjudication of the documents on which he intends to place his reliance. Hence, the Trial Court has put the onus on the Plaintiff for getting the said documents adjudicated for payment of the stamp duty. The Trial Court has accordingly by the impugned order rejected the said application. During the course of one of the hearings of the above Petition, the Petitioner was directed to join the Collector of Stamps, Nashik as a party Respondent to the above Petition, in view of the fact that it is on account of the non-adjudication of the said two documents that the Plaintiff had to suffer the order of dismissal of the suit as also the order rejecting his application for restoration. On the Collector of Stamps, Nashik, being joined as party Respondent to the above Petition, the Learned AGP Mr. S. D. Rayrikar has been instructed by the office of the Collector of Stamps, Nashik. The Learned AGP points out that vide letter dated 31.12.2012 addressed to the Plaintiff i.e. Petitioner herein the Plaintiff was asked to comply with the requisitions made in the said letter in the form of producing the documents before the Adjudicatory Authority. The Learned AGP further

states that the said letter has been sent by ordinary post and the said letter has also been marked to the Trial Court. Upon this, the Learned Senior Counsel appearing on behalf of the Petitioner on instructions states that the said letter has not been received by the Petitioner/original Plaintiff. The Roznama of the suit also does not indicate that the said letter has been received by the Trial Court. The aforesaid difficulty has arisen in view of the fact that the said letter has been sent by ordinary post and hence, the case of the Plaintiff that he has not received the said letter would have to be accepted. Since the suit has been dismissed primarily on the ground that there is non-compliance by the Plaintiff in the matter of getting the two documents adjudicated, in my view, in the interest of justice, it would be necessary to pass directions in that regard as the same would result in an effectual and complete adjudication of the dispute between the parties. Hence, the following directions :-

I) The statement of the Learned Senior Counsel appearing on behalf of the Petitioner/Plaintiff that the requisitions vide said letter dated 31.12.2012 would be complied within a period of two weeks from date, is accepted. No further time would be granted for compliance of the said requisitions.

II) The Collector of Stamps, Nashik on the requisitions being complied with or if it is possible to adjudicate the stamp duty payable on the said two documents by reference to some other material, would adjudicate the same within a period of six weeks of the initial period coming to an end and submit his report to the Trial Court to be sent by a private messenger.

III) The impugned order dated 30.07.2015 would stand quashed and set aside and the application Exh.64 would stand allowed. Resultantly, the suit would stand restored to file.

IV) On the suit being restored to file, the same would not be proceeded with for a period of eight weeks from date. With the aforesaid directions, the Writ Petition is disposed of.

V) The Learned AGP to send a copy of this order to the Collector of Stamps, Nashik forthwith.

[R.M. SAVANT, J]

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment/Order.