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

WRIT PETITION NO. 9108 OF 2014

Pratik s/o Shashikant Gupta … Petitioner

versus

M/s ATS Casting and others … Respondents

Mr. Amit A. Yadkikar, Advocate for petitioner
Mr. S. S. Chapalgaonkar, Advocate for respondents

CORAM : SUNIL P. DESHMUKH, J.
DATE : 13th July, 2016

ORDER **:**

1. Heard learned counsel for parties extensively in respect of order dated 19-04-2014 passed by Civil Judge, Senior Division, Ahmednagar on Exhibit-61 in Special Civil suit No. 129 of 2009 which is impugned in present writ petition, whereunder application of present petitioner – original defendant, praying that agreement for sale dated 26-03-2008 on the basis of which respondents-original plaintiffs have filed suit may be impounded for want of payment of requisite stamp duty on the same, has been rejected.

2. According to Mr. Amit Yadkikar, learned counsel for petitioner, said document would fall in the category of documents/instruments referred to under article 25 of the

Maharashtra Stamp Act, 1958 for the purpose of payment of stamp duty.

3. During the course of submissions, learned counsel for petitioner vehemently submits that it is not only the issue of particular category of the document but also of that the exemption notification itself which has been brought before the trial court during hearing of Exhibit - 61 in the course of submissions, makes it incumbent, to claim exemption, certain conditions shall have to be complied with, which, according to learned counsel, may be found wanting in the present case. He submits that the notification stipulates that industrial activity should be started before expiry of period under the notification. According to learned counsel, this aspect is necessary to be considered in the matter since the notification appears to stipulate that unless the new unit starts functioning, exemption is not to be granted and in the present case, unit has yet not commenced functioning.

4. Mr. Yadkikar without prejudice to his aforesaid contentions, alternatively submits that it cannot be said that during said period from 30-03-2007 to 31-03-2011 (the period for which exemption from payment of stamp duty may be available), any conveyance has been executed. He submits that

agreement for sale with delivery of possession requires payment of stamp duty as conveyance is a matter for collection of stamp duty and beyond that it would have no efficacy any further and it would not tantamount to conveyance, in the sense legally acceptable. He thus submits that there is no conveyance, in fact, during the period during which exemption was available.

5. In any case, according to him, for the purpose under Maharashtra Stamp Act under article 25, the court ought to have considered that the document was liable to be impounded. Suit has been instituted on the basis of the agreement which cannot be considered for want of requisite compliance or statutory provisions.

6. Learned counsel Mr. Shailesh Chapalgaonkar, on behalf of respondents, submits that there is no dispute that the property belongs to Maharashtra Industrial Development Corporation and has been leased out/assigned to present petitioner, upon entering into legitimate agreement in respect of the same. He further submits that the respondents are in possession of certificate issued by the District Industries Centre, Ahmednagar, stating that pursuant to the concerned government orders, respondents' industrial unit has been ' new industrial unit ' to which exemption from payment of stamp duty is available. He

further submits that the relevant notification refers to a deed of conveyance under article 25 of the Maharashtra Stamp Act and exempts payment of stamp duty. He submits that an agreement for sale with delivery of possession of immovable property, for the purpose of levying stamp duty is a conveyance under article 25 of the Maharashtra Stamp Act and its payment has been exempted under the notification. He submits, the contention of the petitioner with regard to impounding of document as such is vacuous and is with a view to procrastinate the litigation.

7. He further submits that a ground which had not been taken in the application about non functioning / non starting of industrial activity by plaintiffs, is altogether a new ground being taken and the scope of writ petition cannot be extended beyond the grounds upon which application before the trial court had been moved.

8. He further submits that non commencement of industrial activity, which according to learned counsel for petitioner is a *sine-qua-non* and if respondents have not commenced such activities, will have to be proved by petitioner. He submits that ground of non commencement of industrial activity is not only a new ground but would be question of fact. For said purpose, order impugned cannot be faulted with.

9. Learned counsel for respondents Mr. Chapalgaonkar, aforesaid apart, also opposes the submissions on behalf of the petitioner, stating that the petitioner is protracting the litigation on the same ground for quite sometime. He submits, under earlier round of litigation before this court in writ petition no. 7214 of 2013 there had been express directions under order dated 19-10-2013 to the trial court to decide application (Exhibit 61) afresh considering the documents filed on record by respondent and contention about said document being meant for industry for which the exemption certificate is granted and accordingly, the application (Exhibit-61) has been decided rejecting the same under order dated 19-4-2014 impugned in present writ petition.

10. Perusal of the impugned order shows that the trial court has in paragraph no. 14 of the same reproduced part of exemption notification dated 12-06-2007 and has further referred to that the notification is valid during the period 30-03-2007 to 31-03-2011.

11. Learned judge in paragraph no. 16 of the impugned order has considered that the provisions of the notification are applicable to the plaintiffs' case and they may get the benefit of the incentive thereunder.

12. Having regard to aforesaid, this is not a case wherein this court should cause interlude in impugned order which has been passed during the course of suit proceedings, it being an interlocutory order. If the petitioner is not satisfied with the order, it is open for him to take recourse to section 105 of the Code of Civil Procedure, 1908. Additionally, if the petitioner is in a position to establish that exemption notification may not cover the case of the plaintiffs for the reason that the industrial activity had not been commenced before expiry of date of exemption notification, he may agitate the issue about applicability of exemption notification and its consequences upon bringing forth requisite circumstances.

13. With aforesaid, writ petition stands disposed of.

SUNIL P. DESHMUKH,
JUDGE

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