IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 10834 OF 2014

SAMATA INDUSTRIAL DEVELOPERS ...Petitioner
Versus
SMT. STELLA ANTHONY MACHADO
AND ORS ...Respondents

.....

Mr. Umesh Shetty a/w. Roshan D'Souza a/w. Ms. Naziya Khan i/b. Flavia Legal, for the Petitioner.
Mr. R.A. Thorat, Senior Counsel a/w. Mr. P.J. Thorat, for Respondent Nos.3 & 5.

.....

CORAM : R. G. KETKAR, J.

DATE : 22nd JANUARY, 2016

P.C.

1. Heard Mr. Umesh Shetty, learned Counsel for the petitioner and Mr. R.A. Thorat, learned Senior Counsel for respondent Nos.3 and 5, at length

2. By this Petition, under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 12.11.2013 passed by the learned Judge presiding over Court No.2 of City Civil Court, Dindoshi, Mumbai in Notice of Motion No.1034 of 2013 in Suit No.3499 of 2005. By that

order, learned trial Judge referred authenticated copy of the General Power of Attorney dated 5.3.1996 to Collector of Stamps calling upon his opinion as to whether said document is properly stamped or not and whether any deficit stamp is required to be recovered about this document.

3. The petitioner, hereinafter referred to as 'plaintiff', took out Notice of Motion for impounding the General Power of Attorney dated 5.3.1996 on the ground that it is not properly stamped. Plaintiff further prayed that deficit stamp duty and penalty be recovered from the defendants.

4. In support of this Petition, Mr. Shetty vehemently contended that l earned trial Judge having held that the document is not sufficiently stamped, ought to have impounded said document. He invited my attention to paragraph-3 of the impugned order as also provisions of Sections 31, 32A, 33 and 34 of the Maharashtra Stamp Act (for short, 'said Act'). He also relied upon the decision of this Court in the case of ***Santosh Anant Raut v. Pukharaj Chogmal Rathod & Anr., 2010 ALL MR (Supp.) 529,*** and in particular paragraphs-3, 5 and 6 thereof. He also relied upon

the decision of this Court in the case of ***M/s. Deepak Corporation v. Pushpa Prahlad Nanderjog, 1995(1) Bom.C.R. 452,*** and in particular paragraph-7 thereof. Mr. Shetty further relied upon a Division Bench judgment of this Court (Coram: Dr.D.Y. Chandrachud & S.C. Gupte,JJ.) dated 25th June, 2013 in (OS) Appeal (L) No.272/2013 [***Lakdawala Developers Pvt. Ltd. v. Badal Mittal and Ors.],*** and in particular paragraph-5 thereof. He submitted that once the objection in regard to the document being insufficiently stamped is raised, learned trial Judge ought to have decided that objection.

5. On the other hand, Mr. Thorat supported the impugned order. He submitted that learned Judge has not recorded the finding to the effect that the General Power of Attorney dated 5.3.1996 is inadequately stamped. It is only when the Court records a positive finding that the instrument is insufficiently stamped, in that event alone the document can be impounded by the Court.

6. I have considered the submissions advanced by

learned Counsel for the parties. I have perused the material on record. In paragraph-3 of the impugned order, learned Judge has observed thus :

> "3. Upon considering submission of both parties, I found that document is required to be sufficiently stamped. As per defendants, the stamp used for preparing this document is sufficient as at the relevant time that much stamp was required. Whereas, plaintiff is submitting that document is insufficiently stamped. When such contrary allegations are made, the authority i.e. Collector of Stamps can ascertain real controversy as to whether this document is duly stamped or not and hence, before passing any final order in this motion, I hereby pass following order.
>
> .... "

7. Perusal of paragraph-3, extracted herein above, shows that whereas the defendants contended that the General Power of Attorney is sufficiently stamped, as against this the plaintiff contended that it is insufficiently stamped. When such contrary allegations are made, the authority i.e. the Collector of Stamps can ascertain the real controversy as to whether said document is duly stamped or not. In other words, the trial Court did not record the positive finding that the document is insufficiently stamped.

8. In the case of Santosh Raut (supra), learned Single Judge of this Court in paragraph-5 has observed thus :

> "5. When a document is sought to be tendered in evidence before the Court, if it is found that the document/instrument is not sufficiently stamped, it is the duty of the Court to impound the said document in accordance with section 33 of the said Act. In view of section 34 of the said Act, the said document cannot be admitted in evidence. Proviso makes it clear that if the deficit stamp duty is paid and if penalty as provided therein is paid, the document can be admitted in evidence. Under the said Act, no power is conferred on the Court to determine the stamp duty chargeable in respect of any instrument. In view of sections 31 and 32 of the said Act, the said power is vested in the Collector. Jurisdiction of the Civil Court is confined to recording a finding on the question whether an instrument is duly stamped. The Civil Court cannot determine the stamp duty payable on a particular instrument."

9. Perusal of paragraph-5, extracted herein above, clearly shows that under said Act, no power is conferred on the Court to determine the stamp duty chargeable in respect of any instrument. In view of Sections 31 & 32 of said Act, said power is vested in the Collector. The jurisdiction of the Civil Court is confined to recording a finding on the question whether an instrument is duly stamped. The Civil Court cannot determine

the stamp duty payable on a particular instrument.

10. In the present case, learned trial Judge did not record any finding as to whether said document is sufficiently stamped or not and forwarded it to the Collector of Stamps for determining the stamp duty.

11. In the case of M/s. Deepak Corporation (supra), the question that fell for consideration before learned Single Judge was whether the Court before whom an inadequately stamped document had been produced for modification of the decree passed by it earlier, can be restrained from impounding the same under Section 33 of said Act by the concerned party by withdrawing the application itself with which the said document had been produced. In that situation, the question was whether the Court becomes *functus officio* for the purpose of Section 33 of said Act. In that case, the dispute was not about the adequate or inadequate stamping of the document, however, the question was whether the Court is restrained from impounding an inadequately stamped document. In that context, Section 33 of said Act empowers the Court to impound inadequately stamped document.

12. In the case of Lakdawala Developers (supra), the Division Bench of this Court in paragraph-5 observed that the objection in regard to the document being insufficiently stamped ought to have been considered by learned Single Judge when the document came before the Court in the course of the proceedings under Section 9 of the Arbitration and Conciliation Act, 1996. In my opinion, this decision is not applicable to the present matter as learned trial Judge has considered the objection and after considering the same, referred the document to the Collector of Stamps.

13. In the light of the above observations, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed.

14. It is made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contended by section 105(1) of Civil Procedure Code.

15. It appears that after passing of the impugned order dated 12.11.2013, the General Power of Attorney is referred to the Collector of Stamps and till date the issue is not adjudicated by the Collector. Hence, the Collector of Stamps is directed to adjudicate said issue as expeditiously as possible, preferably within four weeks from production of an authenticated copy of this order. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)