

## IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## CIVIL APPELLATE JURISDICTION

## WRIT PETITION NO.10951 OF 2015

Samata Industrial Developers  
and ors

.. Petitioners

*Versus*

Ratnakar R. Shetty

.. Respondent

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Mr.Roshan D'Souza with Rahul Tambe I/b Flavia Legal for the  
petitioner.

Mr.S.R.Srivastava for respondent no.1.

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**CORAM : K.K. TATED, J**

**DATED : 1<sup>st</sup> JULY 2016**

**P.C. :**

1 Heard learned counsel for the parties.

2 By this petition under Article 227 of the Constitution of India, petitioner defendant challenges the order dated 2<sup>nd</sup> September 2015 passed by Bombay City Civil Court at Bombay below Exhibit 13 in S.C. Suit No.713/13 rejecting petitioner defendant's application under Order 13 Rule 8 of Code of Civil Procedure for impounding two documents.

3 Learned counsel for the petitioner submits that the respondent plaintiff in their plaint, preferred agreements for sale dated 11<sup>th</sup> May 1992 and 12<sup>th</sup> October 1994. The same were produced by them in their evidence.

4           At that time, petitioner defendant preferred application under Order 13 Rule 8 of the Code of Civil Procedure for impounding those documents. That application was decided by the trial Court by common order dated 2<sup>nd</sup> September 2015 without giving any reason. Not only that the trial Court recorded that the issue about the effect of the documents on insufficient stand can be considered at the time of final hearing. He submits that the Full Bench of our High Court in the matter of ***Hemendra Rasiklal Ghia Vs. Subodh Mody***, 2008(6) ALL M.R 352, held that if the application for impounding of the documents is made during the pendency of the trial, that should be decided first. He relies on paragraph nos.71 and 72 of the said judgment which reads thus :

“71. The admissibility of the document in evidence may be broadly classified into three classes (i)that objection to the document which is sought to be proved is itself insufficiently stamped and the objection relates to deficiency of stamp duty of the document; (ii)where the objection does not dispute admissibility of document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient; and (iii)the objection that the document which is sought to be proved is *ab intitio* inadmissible in evidence.

72. In the **first case**, the Court, before which the objection is taken about admissibility of document on the ground that it is not duly stamped, has to judicially determine the matter as soon as the document is tendered in evidence and before it is marked as an exhibit in the case as held by the Constitution Bench in **Zaver Chand Vs. Pukhraj Surana**. Once a document has been marked as an exhibit in the case and has been marked as an exhibit in the case and has been used by the parties in examination and cross-examination of their witnesses, section 36 comes into operation. Once a document has been admitted in evidence, as aforesaid, it is not open either to the trial Court itself or to a Court of Appeal or Revision to go behind that order, such an order is not one of those judicial orders which are liable to be reviewed or revised by the same Court or a Court of superior jurisdiction. Similar view is expressed by the Superior Court in the case of **Bipin Shantilal Panchal (2001 All MR (Cri) 452 (S.C))**, wherein it is made clear that if the objection relates to deficiency of stamp duty of a document, the Court has to decide the objection before proceeding further.”

5           On the basis of these submissions, learned counsel for the petitioner submits that the impugned order passed by the trial Court to the extent of Exhibit-13 dated 2<sup>nd</sup> September 2015 is required to be set aside, and trial Court be directed to decide their application below Exhibit-13 on its own merits.

6           On the other hand, learned counsel appearing for the respondent plaintiff vehemently opposed the present Writ Petition. He submits that those two sale deeds were not pertaining to the suit property. Plaintiff was relied on those two documents to justify his claim in suit. Therefore, there is no question of impounding those two documents. Hence, there is no substance in the Writ Petition, and the same is required to be dismissed.

6           I have heard the parties at length.

7           It is to be noted that bare reading of the impugned order dated 2<sup>nd</sup> September 2015 passed by the trial Court below Exhibit-13 shows that the trial Court has not decided the application filed by the defendant for impounding two documents. The trial Court has given liberty to the defendant to raise the issue about insufficiently stamped documents at the time of final hearing. That is contrary to the law declared by this Court in the matter of **Hemendra Rasiklal Ghia** (supra).

8           Considering the submission made by learned counsel for the petitioner, and the law declared by this Court, as stated herein-above, I am satisfied that petitioner made out a case for the following order.

a) The impugned order dated 2<sup>nd</sup> September 2015 passed by Bombay City Civil Court at Bombay to the extent of Exhibit-13, is set aside.

b) Application filed by defendant under Order 13 Rule 8 of Code of Civil Procedure being Exhibit-13 for impounding the agreements for sale dated 11<sup>th</sup> May 1992 and dated 12<sup>th</sup> October 1994 is remanded for fresh hearing after giving opportunity to both the parties.

9 Writ Petition stands disposed of accordingly.

**(K.K. TATED, J)**