

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11836 OF 2013**

Nebhandas Tekachand Narsingani

..Petitioner.

Vs

Sanaula Mehbook Sayad

.. Respondent

Mr. Amit B. Borkar, Advocate for Petitioner.

Mr. Sagar Joshi, Advocate for Respondent.

CORAM : R.G.KETKAR,J.

DATE : 14/09/2016

PC:

1. Heard Mr. Amit Borkar, learned counsel for the petitioner and Mr. Sagar Joshi, learned counsel for the respondent at length.

2. In view of short controversy between the parties, Rule. Mr. Joshi waives service for the respondent. At the request and by consent of the parties, Rule is made returnable forthwith and petition is taken up for final hearing.

3. By this petition under Article 227 of the Constitution of India, the original defendant had challenged the judgment and order dated 26th November, 2013 passed by the 8th Jt. Civil Judge, J.D., Kolhapur below Exh.81 in Regular Civil Suit No.986 of 2006. By that order, the learned Trial Judge rejected the application made by the petitioner for impounding lease deed.

4. Mr. Borkar invited my attention to the document dated 12th June, 1998 styled as 'Kararpatra' (agreement) and in particular

clause 3 thereof. In clause 3, it is recorded that the monthly rent of the shop premises is Rs.1,125/-. Mr. Borkar submitted that earlier petitioner had filed application at Exh.77 for impounding the said document. The respondent filed pursis at Exh.80 and submitted that he does not want to rely upon the said agreement dated 12th June, 1998 and the same need not be read in evidence. The learned Trial Judge passed order dated 11th November, 2013 below Exh.77. Mr. Borkar relied upon decision of this Court in the case of M/s. Deepak Corporation Vs. Pushpa Prahlad Nanderjog, 1995(1) Bom. C.R. 452 and submitted that once the document is produced, duty is cast on the Court to impound it and duty does not come to an end with withdrawal of the application. In the present case respondent filed pursis at Exh.80 contending that he does not want to rely upon said document. However, the Court has to impound the said document once it is produced.

5. Mr. Borkar also relied upon judgment of the Division Bench of this Court in the case of the Collector and Superintendent of Stamps, Bombay Vs. Shreemati Saubhagyavati Laxmibai Saheb Angre, 1948 Indian Law Reports, 342 to contend that a lease from month to month within the meaning of Section 106 of the Transfer of Property Act, 1882, being the lease for indefinite period is chargeable to duty and the agreement of lease is

inadequately stamped. He also invited my attention to Article 36 (a) of the Bombay Stamp Act, 1958 as it stood as on 12th June, 1998, i.e. the date of the agreement.

6. He submitted that basically the learned trial Judge did not consider whether the document dated 12.6.1998 is a lease deed or agreement of lease. He submitted that the learned trial Judge has also not properly considered the ratio laid down by this Court in Deepak Corporation (supra).

7. On the other hand, Mr. Joshi supported the impugned order. He submitted that the petitioner herein has filed similar application at Exh.77. By order dated 11.11.2013, the learned trial Judge disposed of that application on the ground that the plaintiffs filed purshis vide Exh.80 to the effect that he does not want to rely upon the document dated 12.6.1998. He submitted that the application Exh.81 for impounding the document is not maintainable.

8. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. The dispute between the parties is about impounding the document dated 12.6.1998. The moot question is whether the document is a lease deed or agreement to lease. Perusal of the impugned order does not indicate that the learned trial Judge has adverted to this aspect. Apart form that, the

learned trial Judge was impressed by the fact that the plaintiff filed purshis at Exh.80 to the effect that he does not want to rely upon the document dated 12.6.1998. Prima facie, the Court has not properly considered the decision in M/s Deepak Corporation (supra). In view thereof, the impugned order is liable to be set aside, thereby, restoring application Exh.81 for deciding it afresh. The learned trial Judge will also consider whether the document in question is lease deed or agreement to lease as also the decision of this Court in M/s Deepak Corporation. Hence the following order.

9. Impugned order is set aside and Application Exh.81 is restored to the file of the learned trial Judge. All contentions between the parties on merits including those herein are kept open.

10. Rule is made absolute in the aforesaid terms, with no order as to costs. Order accordingly.

(R.G.KETKAR, J.)