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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision:* 19.08.2016

\+ CM(M) 793/2016

THE INSTALMENT SUPPLY LIMITED ..... Petitioner

Through Mr.Sudhanshu Batra, Sr.Adv. with Mr.Ravi Varma and Mr.Yash Srivastava, Advs.

versus

KHAITAN HOTELS PVT LTD & ANR ..... Respondent

Through Mr.Vikas Dhawan, Mr.S.P.Das and Mr.S.Panda, Advs. for R-1

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

CM No. 30083/2016*(exemption)*

Allowed subject to all just exceptions.

CM(M) 793/2016, CM Nos. 30082 & 30084/2016*(directions)*

1. By the present petition the petitioner seeks to impugn the order dated 29.7.2016 passed by the trial court impounding the tripartite agreement dated 11.12.2002 under section 33 of the Indian Stamp Act, 1899 and directing the petitioner to deposit Rs.14,75,800/- in terms of section 33 and 35 of the Indian Stamp Act.

2. The background facts are that a suit was filed by the petitioner for possession of plot No.46, Janpath, New Delhi. Prior to purchase of the suit property by the petitioner, the property was stated to be under tenancy of respondent No.1. On 11.12.2002 the parties entered into two agreements i.e. tripartite joint agreement between the petitioner, respondent No.1,

respondent No.2, a third party. A supplementary agreement was also executed. Respondent No.2 was allowed to run a restaurant for a period of nine years. The terms and conditions of the agreement were stated. Subsequently on expiry of nine years the tenure of the agreement i.e. the Joint Arrangement could not be continued further. The petitioner/landlord filed a suit for possession of the property. Respondent No.2 filed a cross suit seeking the same relief. The keys of the suit property were handed over by respondent No.2 to the High Court where the suit was then pending. Thereafter two separate applications were filed by petitioner and respondent No.1 in their cross-suits seeking that the keys/possession of the property be handed over to them. On 6.6.2016, the trial court treated the two applications as being under Order 12 Rule 6 CPC.

3. The impugned order noted the submissions of the petitioner/landlord that the Agreement dated 11.12.2002 is a lease deed for a period of nine years whereby the petitioners/landlord entered into a tripartite agreement with the old tenant and the new sub-tenant. The trial court concluded that based on the submissions of the petitioner the provisions of Section 33,35 and 38 of the Indian Stamp Act are attracted and that the court is bound to impound the document in question inasmuch as it is the claim of the petitioner that the document is a lease deed. The trial court also noted that the entire case of the petitioner rests on the fact that the joint venture agreement is a lease deed and compulsorily registrable under section 17 of the Registration Act and appropriate stamp duty is payable as per the Indian Stamp Act. The trial court relied upon ***Yellapu Uma Maheshwari and Ors. vs. Buddha Jagadheeswararao and Ors., AIR 2015 SC 6184***.

The trial court further noted that the defendant/respondent No.1

supported the counsel for the petitioner relying on ***Omprakash vs. Laxminarayan and Others, (2014) 1 SCC 618*** to contend that for the purpose of impounding only the recitals contained in the documents have to be looked into. This contention was rejected by the trial court.

Accordingly, the trial court computed the amount payable by the petitioner at Rs.14,75,800/-. The trial court also directed a copy of the plaint to be sent to Chairman, NDMC to look into the documents to see as to whether it was a mechanism to evade unpaid property tax. Liberty was also granted to NDMC to inspect the judicial file and collect additional documents. It also noted that the court has been apprised that such like cleverly worded agreements were in vogue in New Delhi area especially in Connaught Place for the purpose of evasion of property tax; and Chairman, NDMC was requested to look at every similar instances. The order was passed stating that it would have no bearing on the stand taken by respondent No.1.

4. I have heard learned senior counsel for the petitioner and learned counsel for respondent No.1. Both have submitted that under section 33 of the Stamp Act the trial court was first obliged to come to a conclusion as to whether the document in question was a lease deed or not. Merely, on the basis of submissions of the petitioner the documents could not have been impounded and the stamp duty with penalty imposed. Reliance was also placed on ***Omprakash vs. Laxminarayan and Others (supra)*** to contend that the recital of the documents was important for determining the nature of the document.

5. Section 33(1) of the Indian Stamp Act reads as follows:-

"33. Examination and impounding of instruments-

> (1) Every person having by law or consent of parties, authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same."

6. Hence, every person so stated before whom any instrument chargeable is produced, where in the opinion of the officer the document appears to him that such instrument is not duly stamped would impound the same. The officer/authority has to hence first form an opinion that the instrument is chargeable with duty and that such instrument has hence not been duly stamped.

7. Reference in this context may be had to the judgment of this Court in the case of ***M.Mohan vs. Maheshwar AIR 1987 DELHI 115***. The issue there also pertained to a lease deed which was deficient in duty and was unregistered. The High Court held as follows:-

> "5....Section 33 provides for the examination of instruments by judicial officers for the purpose of ascertaining whether the document is duly stamped, and in cases where such officer is satisfied that it is not, for the impounding of the same. The Section casts a duty on all judicial officers to examine and, if found to be inadequately stamped, to impound any such instrument. Where a judicial officer impounds an instrument under this Section he must, unless he has by law or consent of parties authority to receive evidence and admits the instrument on payment of a penalty, send the instrument to the Collector...."

8. Reference may also be had to the judgment of the Supreme Court in the case of ***Ram Rattan vs. Bajrang Lal, AIR 1978 SC 1393***. The Supreme

Court held as follows:-

> "6. When the document was tendered in evidence by the plaintiff while in witness box, objection having been raised by the defendants that the document was inadmissible in evidence as it was not duly stamped and for want of registration, it was obligatory upon the learned trial judge to apply his mind to the objection raised and decide the objection in accordance with law........"

9. Hence, it would be for the trial court to first determine the issue as to whether the document is insufficiently stamped. For that purpose the trial court would also have to determine whether the document fulfils the definition of lease as in the Indian Stamp Act. Based on the interpretation of the document and the conclusion arrived at, the trial court would then follow the procedure as prescribed under section 33 of the Indian Stamp Act.

10. The trial court has relied on the judgment of the Supreme Court in the case of ***Yellapu Uma Maheshwari and Ors. vs. Buddha Jagadheeswararao and Ors. (supra)*** to reach its conclusion. The Supreme Court in the said judgment held that an unstamped instrument is not admissible in evidence even for collateral purposes, until the same is impounded. Hence, if the party wants to mark these documents for collateral purpose it is open for them to pay the stamp duty together with penalty and get the document impounded and the trial court is at liberty to mark the documents as exhibits. In that case the issue related to marking of documents which according to the defendant was a deed of Memorandum witnessing an earlier partition and an agreement between the parties. The issue was as to whether the agreement and the memorandum can be construed as a relinquishment deed which requires compulsory registration. The Supreme Court after reading

the documents concluded that there is a relinquishment of rights in respect of immoveable property and that the two documents fell within the ambit of Section 17(i)(b) of The Registration Act, 1908 and are compulsorily registrable. The Supreme Court first arrived at a conclusion about the nature of the document and then passed appropriate orders for the purpose of imposition of stamp duty. On the issue of construction of the document, the Supreme Court held as follows:-

> "17. It is well settled that the nomenclature given to the document is not decisive factor but the nature and substance of the transaction has to be determined with reference to the terms of the documents and that the admissibility of a document is entirely dependent upon the recitals contained in that document but not on the basis of the pleadings set up by the party who seeks to introduce the document in question......"

11. To the same effect is the judgment of the Supreme Court in the case of ***Omprakash vs. Laxminarayan & Ors., (supra).*** The relevant part of the judgment reads as follows:-

> "11......Though the Defendants dispute that, but in our opinion, for determination of the question of admissibility of a document, it is the recital therein which shall be decisive. Whether the possession in fact was given or not in terms of the agreement to sell is a question of fact which requires adjudication. But, at the time of considering the question of admissibility of document, it is the recital therein which shall govern the issue. It does not mean that the recital in the document shall be conclusive but for the purpose of admissibility it is the terms and conditions incorporated therein which shall hold the field. Having said that, we proceed to consider as to whether the document in question is "conveyance" within the meaning of Section 2(10) of the Act."

12. In the present case the respondent does not admit the two documents dated 11.12.2002 to be a lease deed. It is a question which the trial court would have to consider as per law. The trial court has, however, gone solely on the basis of contentions made by the petitioner and directed impounding of the document. The trial court would have to first record a finding as per law that the document(s) is a lease deed. It is only then the provisions of sections 33 and 35 of the Indian Stamp Act would be attracted.

13. In view of the above, the impugned order dated 29.7.2016 is quashed. The matter is remanded back to the trial court for fresh consideration, as above.

14. I may mention that the direction of the trial court directing that a copy of the agreement be sent to Chairman, NDMC is a direction that does not flow from the *lis* between the a parties. Being a civil dispute between the plaintiff and defendants, the said direction is beyond the scope of the present proceedings. The directions were not necessary.

15. Petition stands disposed of. All the pending applications also stand disposed of.

JAYANT NATH, J

AUGUST 19, 2016/n/v