

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 6962 OF 2017

Jagdish Vithaldas Thakkar	... Petitioner
Vs.	
M/s. Amarsons Enterprise & Anr.	... Respondents

Mr. H.T. Pawar, Advocate for the petitioner.
Mr. Karl K. Shroff a/w. Mr. Vipul Bilve i/b. M/s. Mulla & Mulla & CBC,
Advocate for respondent nos. 1 and 2.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **4th August, 2017.**

P.C.:

Pursuant to the order dated 25th July, 2017, a time was given to the learned counsel for the petitioner to verify whether the judgment of the Full Bench of Bombay High Court is stayed by the Supreme Court or not.

2. The learned counsel for the petitioner fairly submitted that he could not get any information about the stay of the order and judgment of the Full Bench in the case of **Jyotsna K. Valia vs. T.S. Parekh & Co., 2007(4) ALL MR 718.** In the case of **Jyotsna** (*supra*), the Full Bench of this Court has held that Summary Suit filed on the basis of Bills of Exchange and Promissory Note which is not

duly stamped, is not maintainable. The learned counsel for the petitioner, on the point of impounding of the documents, has submitted that Section 74 of the Bombay Stamp Act exempts the negotiable instrument from getting its stamp and as no stamp duty is required as per the said section, the order passed by the learned Judge of the trial Court is erroneous and is to be set aside.

3. The submissions of the learned counsel for the respondents though are recorded in the order dated 25th July, 2017, the submissions are reproduced for the purpose of continuity as follows:

“Per contra, the learned counsel for the respondents has submitted that the provisions of Section 74 of the Bombay Stamp Act cannot be attracted, as the suit is based on the promissory note, where the promissory note is required to be stamped. Section 74 of the said Act shall apply to the rates of stamp duty in respect of Bills of Exchange and the Promissory Notes, etc. and for the purpose of stamping of the rates of this negotiable instrument, one has to rely on Article 49 of the Indian Stamp Act.”

4. Under section 34 of the Maharashtra Stamp Act, the instrument

which is not duly stamped is not admissible in the evidence. The case is rightly covered under section 34 of the Maharashtra Stamp Act. Section 74 of the Act states that Maharashtra Stamp Act is not applicable to the rates of stamp duty on bills of exchange etc. because the rates of negotiable instrument especially promissory note are covered under Article 49 of the Indian Stamp Act. Thus, the submission of the learned counsel for the petitioner that promissory note does not require any stamp is not correct as Section 74 is not relevant but Section 34 is attracted. (emphasis placed)

5. In view of this submissions, the order dated 25th July, 2017 of the learned Judge of the City Civil Court rejecting the Notice of Motion of requesting to impound the unstamped promissory note is legal and need not be disturbed. Hence, Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)