IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1368 OF 2016

M/s Shree Ashapua Associates ..Petitioners.

Vs

M/s Ganaraj Group and Ors .. Respondents

Mr. Pradip R. Kadam, Advocate for Petitioners.
Mr. M.N.Joshi i/b Rajesh Mudholkar, Advocate for Respondent no.4.

CORAM : R.G.KETKAR,J.
RESERVED ON : 23/02/2017.
PRONOUNCED ON: 07/03/2017.

PC:

1. Heard Mr.P.R.Kadam, learned counsel for the petitioners and Mr.M.N.Joshi, learned counsel for the respondents at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as 'plaintiffs', have challenged the Judgment and order dated 17/11/2015 passed by the learned 3rd Jt. Civil Judge, Senior Division, Thane below Exhibit-24 in S.C.S.No 387 of 2014. By that order, the learned trial Judge allowed the application made by defendants no. 1 to 3 for impounding five agreements of sale produced by the plaintiffs as per Section 33 of the Bombay Stamp Act, 1958 (for short, 'Act').

3. Plaintiffs have instituted suit, inter-alia, praying for declaration that the plaintiffs are purchasers of the area admeasuring 3460 sq. feet carpet including flat no. 704 in the

building known as 'Ganraj Heights', B Building, being constructed on Survey No. 16(P), Plot nos 1 and 2, situate, lying and being at village Panchpakhadi, Thane, Taluka and District Thane; for direction and decree against defendants no. 1 to 3 to execute and register agreements of sale or sale deed for flats of area admeasuring about 3460 sq.ft carpet, including flat no.704; and in the alternative for declaration against the defendants to pay an amount of Rs. 3,78,67,500/-, i.e. Rs. 2,70,00,000/ as principle amount and Rs. 1,08,67,500/- being the interest from July 2012 till filing of the suit, and further order to pay interest at the rate of 21 % from the date of filing of the suit till realization on the said amount of Rs. 2,70,00000/-.

4. It is the case of the plaintiffs that defendants no. 1 to 3 agreed to sell four flats, namely, flats no. 303, 503,603 and 704 by executing four agreements of sale at Exhibits A-1 to A-4. Defendants no. 1 to 3 also agreed to repurchase these flats from plaintiffs by executing another agreement of sale dated 27.6.2011 at Exhibit-B. The defendants, therefore, filed application for impounding these documents on the ground that they are adequately stamped. By the impugned order, the learned trial Judge has allowed that application. It is against this order, the plaintiffs have instituted the present petition.

5. In support of this petition, Mr. Kadam reiterated the submissions that were advanced before the trial court. He

submitted that from perusal of the prayers made in the plaint as also having regard to nature of the agreements, these agreements were executed as a security for money lending transaction between plaintiffs and defendants no.1 to 3. Section 33 of the Act is not applicable as the documents are executed under the provisions of the Maharashtra Ownership Flats (Regulations of the Promotion of Construction, Sale, Management and Transfer) Act, 1963, (for short, 'MOFA'). He further submitted that even otherwise the application made by defendants no. 1 to 3 is premature. The application can be made at the time of admitting the documents in evidence by the Court. In support of his submissions, he relied upon the decision in the case of Sanjay Shrikishanji Somani Vs. Vishnupant Shankarrao Shahane, 2007(6) ALL MR 863.

6. On the other hand, Mr. Joshi relied upon the following decisions:

1. Jayraj Devidas Vs Nilesh Shantilal Tank, 2016(2) ALL MR 650;

2. SMS Tea estates Pvt Ltd V.Chandmari Tea Co.Pvt Ltd, 2011 ALL SCR 1722;

3. Munnalal Vs. Prem Bai of Rajasthan High Court in Civil Writ Petition No. 8970 of 2008 decided on 6.1.2017.

4. Omprakash Vs Laxminarayan, 2014 (1) SCC 618.

7. I have considered the rival submissions advanced by the

learned counsel appearing for the parties. I have also perused the material on record. It is not in dispute that the plaintiffs have instituted the suit against defendants no.1 to 3 for executing the sale deeds in their favour on the basis of four agreements. In paragraph 6, the learned trial Judge has observed that the agreements at Exhibits A-1 to A-4 and B come within the definition of 'instrument' under section 2(L) of the Act. These agreements are chargeable with stamp duty as provided under Schedule -I. As per Article 5(g-a)(ii) of Schedule I, agreement if relating to purchase of one or more units in any scheme or project by a person from developers then it shall be charged with stamp duty as is leviable on conveyance under clause (a), (b),(c) or (d), as the case may be, of Article 26 on the market value of the said unit. In paragraph 9, the learned trial Judge observed that the agreements at Exhibits A-1 to A-4 and B are not affixed with stamp duty as per Article 5(g-a) read with Article 25(d) and, therefore, are required to be impounded under section 33.

8. Mr. Kadam relied upon the decision of this Court in the case of Sanjay Shrikishanji Somani (supra) and in particular paragraph 8 thereof, to contend that the scope of consideration of prayer for injunction is, being governed by proof of facts by affidavit or otherwise It is not obligatory on the party of the party at this stage, to prove the documents in accordance with rules of Indian Evidence Act, 1872. In other words, it is a stage of admitting

documents in evidence by Court, the Court has to consider whether a particular document is adequately stamped or not.

9. In the case of Avinash Kumar Chauhan Vs. Vijay Krishna Mishra, AIR 2009 S.C. 1489, the Apex Court considered the provisions of Sections 33 and 35 of the Indian Stamp Act,1899. Section 35 thereof lays down that no instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped. In paragraph 17, the Apex Court observed that Section 33 of the Act casts a statutory obligation on all the authorities to impound a document. The Court being an authority to receive a document in evidence is bound to give effect thereto. In paragraph 21, it was observed that Section 35 provided that the documents shall not be admitted for any purpose whatsoever. It cannot be admitted even for collateral purposes. The Apex Court also considered sections 17 and 49 of the Indian Registration Act, 1908.

10. In view thereof, I do not find that the learned trial Judge has committed any error in allowing the application. Hence, Petition fails and the same is dismissed.

11. At this stage, Mr. Kadam orally applies for stay of the trial Court's order for a period of 8 weeks.

12. In view thereof, notwithstanding dismissal of the Petition, order of the trial Court shall remain stayed for a period of 8 weeks from today with express understanding that no further extension shall be sought. Order accordingly.

(R.G.KETKAR, J.)