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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8260 OF 2017

Dattatray Laxmanseth Dahiwal @ Dahiwad PETITIONER
Age - 60 years, Occupation - Business
R/o Kokamthan, Taluka - Kopargaon
District - Ahmednagar

VERSUS

Ramesh Chandrakant Dahiwal @ Dahiwad RESPONDENT
Age - 52 years, Occupation - Labour
R/o Panmala, Nagrewasti, Shirdi
Taluka - Rahata, District - Ahmednagar

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Mr. Milind Patil, Advocate for the petitioner
Mr. Pratap P. Mandlik h/f Mr. A.S.Gandhi, Advocate for respondent

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 25th SEPTEMBER, 2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

2. The petitioner challenges validity of orders passed on Exhibits - 95, 99, 101 and 103 in the proceedings bearing Regular Civil Suit No. 50 of 2005 pending before third joint civil judge, junior division, Kopargaon.

3. After hearing learned advocates for the parties, it appears that the petitioner-plaintiff has instituted the suit for specific

performance and possession of a property admeasuring about 40 *Are* from land survey No. 379/46 (3-B-1) situated at Kokamthan. It is the case of the petitioner that respondent - defendant has received money from the petitioner from time to time in installments to the extent of Rs.45,000/-. On all occasions of receipt of amounts, the same have been duly acknowledged in writing. The acknowledgment receipts specifically refer to that in case of failure to repay the amounts, it would be deemed that there is concluded contract in respect of sale of the property in favour of petitioner. Since the respondent defaulted repayment, the suit ensued for specific performance. The petitioner relied on various documents, *inter alia* acknowledgment receipts.

4. During the course of trial of the suit, under an application Exhibit-95, which according to learned advocate for the petitioner is of cursory nature, acknowledgment receipts at Exhibits - 71, 72, 73 and 74 were sought to be impounded, pursuant to provisions of the Maharashtra Stamp Act, particularly section 34 thereof. Under order dated 2nd May, 2017, trial court had allowed said application at Exhibit-95 directing to impound documents at Exhibits-71, 72, 73 and 74 and further directing that these documents be admitted in evidence in case petitioner complies with section 34 (a) (i) and (ii) of the

Maharashtra Stamp Act. The petitioner had been directed to calculate penalty and stamp duty and deposit the same pursuant to section 37 (1) of the Maharashtra Stamp Act. Thereupon, under Exhibit-99, petitioner had applied for sending the documents for calculating stamp duty to collector. On said application Exhibit-99, trial court had directed the petitioner to deposit amounts calculated under paragraphs No. 2 to 4 of said order dated 5th May, 2017 and onward communication in respect of the same pursuant to section 37 (1) of the Maharashtra Stamp Act to the collector was also directed and the amounts were to be transferred to him accordingly.

5. Application Exhibit-101 had been moved by the petitioner contending that the acknowledgment receipts are not receipts of separate amounts as considered while imposing stamp duty to be paid under order dated 5th May, 2017 and those are cumulative amounts accumulated as would appear from the receipts and request was made to modify order dated 5th May, 2017. Trial court has dismissed application at Exhibit – 101 on 12th June, 2017 for the reasons as would be appearing in paragraphs No. 5 and 6 of said order.

6. Learned advocate for the petitioner purports to advert to

section 4 of the Maharashtra Stamp Act and contends that the documents would depict that those are merely acknowledgment receipts and not independent receipts of separate amounts and having regard to Article 1 under Schedule 1 of the Maharashtra Stamp Act and pursuant to section 4 of the Act, acknowledgment receipts would have to bear a stamp duty of only Rs. 1 or Rs. 2 since there being as yet no principal agreement as referred to in the same, each of the document Exhibits-71, 72, 73 and 74 will bear stamp duty of only Rs.100/-. According to learned advocate in the circumstances, imposition of payment of stamp duty to the tune of Rs.20,000/- is on far higher side, which under law is not payable by the petitioner. He submits that these vital aspects have been skipped attention of learned judge while impugned orders came to be passed. He submits that paragraphs No. 5 and 6 of the impugned order dated 12th June, 2017 depict cursory consideration and appear to be result of lack of clarity and is confusing.

7. On the other hand Mr. Mandlik, learned advocate appearing on behalf of respondent - defendant submits that while order came to be passed on 2nd May, 2017 on Exhibit-95, directing the petitioner to calculate stamp duty, instead of doing the same, he had tried to obfuscate issue by trying to have matter sent to

collector for said purpose. Upon such an attempt, trial court itself had undertaken exercise of calculating stamp duty and had accordingly passed order on 5th May, 2017. Trial court had considered all the relevant *prima facie* aspects involved and had passed the orders, those would not have been amenable to be reopened under application Exhibit-101 and thus the considerations which weighed with the trial court while passing impugned order on Exhibit-101 would not be re-amenable for reconsideration under discretionary powers of this court. He submits that Article 1 contained in Schedule 1 to Maharashtra Stamp Act or for that matter section 4 had never been pressed into service before the trial court while the applications were decided.

8. Having heard learned advocates as aforesaid, it appears that the petitioner purports to question validity of impugned orders in view of provisions of the Maharashtra Stamp Act, which had not fallen for consideration before the trial court. While the trial court considered that the documents do not contain clearcut recitals, it appears to be expedient that the question of determination of stamp duty may have to be reconsidered by trial court upon evidence in the suit being led and appreciated. Trial court under impugned order dated 12th June, 2017 had

directed the petitioner - plaintiff to pay or deposit the amount as referred to under order at Exhibit-99, since the petitioner had been directed to deposit a sum of Rs.10,000/- by this court to show *bona fides*, he as well should show further *bona fides* by depositing the amount as directed under order on Exhibit-99 in the trial court. Amount of Rs.10,000/- deposited in this court be transmitted to trial court. As such, petitioner shall deposit a sum as would be emerging upon the order on Exhibit-99 before trial court, including the amount deposited in this court which is directed to be transmitted to trial court. It is open for the parties to adduce evidence in this respect before the trial court.

9. As such, question of payment of proper stamp duty is kept open to be reconsidered by trial court upon evidence in the suit. Till such time, the amount shall remain deposited in the trial court and upon determination of the question by the trial court after evidence, so much of the amount required towards payment of stamp duty be transmitted to collector. Amount required to be deposited pursuant to this order be deposited in the trial court within a period of six weeks from the date of receipt of this order to the trial court. Writ petition is accordingly disposed of. It would be further expedient to dispose of the suit, which is stated to be pending since 2005 expeditiously,

preferably within a period of six months from the date of receipt of writ of this order. Parties to co-operate. Rule is made absolute in aforesaid terms.

[SUNIL P. DESHMUKH, J.]

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