

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

939 WRIT PETITION NO. 12471 OF 2015

**WITH
CIVIL APPLICATION NO. 14351 OF 2017
IN
WRIT PETITION NO. 12471 OF 2015**

**WITH
CIVIL APPLICATION NO. 14352 OF 2017
IN
WRIT PETITION NO. 12471 OF 2015**

**GULABBAI W/O RAMRAO GAIKWAD
VERSUS
SANJAY S/O BALDEVDA SHAH AND OTHERS**

**WITH
CIVIL APPLICATION NO. 12481 OF 2016
IN
WRIT PETITION NO. 12471 OF 2015**

**M/S YASHODHAN PROPERTIES A REGISTERED PARTNERSHIP
FIRM AND OTHERS
VERSUS
GULABABAI W/O RAMRAO GAIKWAD AND OTHERS**

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**Advocate for Petitioner/Applicant : Mr. D. P. Palodkar with Mr.
Mr. S. S. Randive**

**Advocate for Respondent Nos. 15 to 17 : Mr. M. R. Sonawane
AGP for Respondent-State : Mr. S. N. Morampalle**

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**CORAM: V. K. JADHAV, J.
DATED: 23rd February, 2018.**

PER COURT :-

1. Being aggrieved by the order dated 20.11.2015 passed below Exhibit 122, the original plaintiff has preferred this Petition.

2. The petitioner has instituted the Suit for specific performance of contract of agreement of sale dated 11.09.1988 in respect of the suit property. During pendency of the Suit, the petitioner has filed an affidavit of examination-in-chief and also filed an application for impounding the documents. The same came to be rejected on 06.03.2013. The petitioner has challenged the said order passed below Exhibit 86 dated 06.03.2013 by filing Writ Petitioner No. 2340 of 2013 and this Court, in the aforesaid Writ Petition, has quashed and set aside the said order and further granted permission to the petitioner for impounding the documents. Accordingly, the learned Civil Judge Junior Division had issued a letter to respondent no.18 herein for calculating the stamp duty on the documents to be impounded. Accordingly, respondent no. 18 has calculated the

stamp duty and reported to the trial Court by letter dated 21.11.2014. It is the case of the petitioner that respondent no.18 has calculated the stamp duty on higher side and also imposed maximum penalty for impounding of those documents. The learned counsel for the petitioner submits that, to the extent of the stamp duty to be paid on General Power of Attorney, the petitioner has preferred an appeal which is pending before the IGR, Pune. Petitioner is an old aged lady and it was not possible for her to arrange for such a huge amount of stamp duty. Consequently, the petitioner has filed an application seeking time for depositing the stamp duty on the impounding documents. Though the trial Court has granted time to deposit the deficit stamp duty, the petitioner could not arranged for the same. The petitioner has filed application Exhibit 122 for compliance of the order of payment of stamp duty on the aforesaid documents. However, by the impugned order dated 20.11.2015, the trial Court has rejected the application. Aggrieved by the same, the petitioner has preferred this Writ Petition and at the request of the petitioner, this court has also stayed the further proceeding in the Suit.

3. The learned counsel for the petitioner submits that the petitioner is ready to pay the entire stamp duty on the agreement of sale and further, the stamp duty and penalty on General Power of Attorney subject to the outcome of the appeal pending before the IGR, Pune. The learned counsel submits that petitioner is an old aged lady and she is not in a position to proceed with her suit which has been filed for specific performance of contract due to the aforesaid contingencies.

4. The learned counsel for the respondents submits that the trial Court has granted sufficient opportunity to the petitioner to pay the deficit stamp duty. However, under one or another pretext, the petitioner has avoided to pay the same. The learned counsel submits that the trial Court has therefore rightly rejected the application Exhibit 122. No interference is required. In the alternate, learned counsel for the respondents submits that the petitioner may be permitted to pay the stamp duty within one week and for that purpose, the respondents have no objection.

5. In view of the above submissions and the fact that the petitioner's Suit is pending since long, which is instituted for the

relief of specific performance of contract, I permit the petitioner to pay the requisite stamp duty within two weeks from today as a last chance. With these directions, the Writ Petition is disposed of. No costs.

6. The parties are at liberty to file an application for expeditious hearing of the Suit before the trial Court.

7. In view of disposal of the Writ Petition, nothing survives in the pending Civil Applications and the same also stand disposed of.

(V. K. JADHAV, J.)

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