

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9586 OF 2018

Maharashtra Minerals Corporation Ltd. & Ors. .. Petitioners
Vs.
Shree Satya Silica Private Limited .. Respondent

Mr.Pradeep J. Thorat for the petitioners.
Mr.Chetan G. Patil for the respondent no.1.

CORAM : R.D. DHANUKA, J.
DATE : 9th October 2018

P.C.:

. By this petition filed under Article 227 of the Constitution of India, the petitioners (original defendant nos.1 to 3) have impugned the order dated 8th June 2018 below Exhibit-232 in Regular Civil Suit No.15 of 2007 rejecting the application inter alia praying for impounding the Memorandum of Undertaking (MOU) dated 19th May 2003 and also the de-exhibit the said MOU.

2. Learned trial Judge has prima facie observed that the suit was for specific performance of MOU dated 19th May 2003, mandatory injunction and other reliefs. MOU was tendered by the original plaintiff. The original defendant nos.1 to 3 raised an objection that the said alleged MOU was not duly stamped. An application was filed by the original defendant nos.1 to 3 on the ground that the said MOU was in the nature of Deed of Conveyance and thus the provisions of Article 25 of Schedule I of the Maharashtra Stamps Act (for short "the said Act") were applicable.

3. It was also urged by the original defendant nos.1 to 3 that possession of the property was already handed over as per MOU dated 19th May 2003 and thus the stamp duty not having been paid under Article 25 to Schedule I of the said Act, the document was liable to be impounded.

4. With the assistance of the learned counsel for the parties, I have perused the prayers of the plaint and the prayers in the statement of defence and the application made by the petitioners inter alia praying for impounding the documents and de-exhibiting the MOU.

5. A perusal of the written statement filed by the petitioners (original defendant nos.1 to 3) clearly indicates that it was the case of the petitioners that the so called MOU was not an Agreement for Sale and no rights were created in favour of the original plaintiff under the said MOU.

6. A perusal of the application however filed by the petitioners clearly indicates that contrary to the stand taken by the petitioners in the written statement, it was urged in the said application (exhibit-232) that the said MOU was in the nature of the Deed of Conveyance and has attracted payment of stamp duty under Article 25 to Schedule I of the said Act. The learned trial Judge has considered all these issues at great length in the impugned order and has recorded that after completion of these activities agreement to sale is to be signed by both the parties and last step is transferring Title Deeds of property in question. In paragraph 15 of the impugned order, the learned trial Judge has recorded a finding

that the parties had thereafter done proper registration of documents on which the stamp duty was already paid under Article 25 of the said Act. In my view, the stand taken by the petitioners in the application filed before the learned trial Judge (exhibit-232) is contrary to the stand taken in the written statement and thus the learned trial Judge has rightly rejected the application. I do not find any infirmity in the impugned order dated 8th June 2018 below Exhibit-232 in Regular Civil Suit No.15 of 2007. Writ petition is devoid of merit and is accordingly dismissed. No order as to costs.

R.D. DHANUKA, J.