IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

918 WRIT PETITION NO.2810 OF 2019

. Priya D/o. Narayan Puthan
Age:54 years, Occu.: Service,
R/o. Plot No.424, N-3, CIDCO,
Aurangabad. ..Petitioner

VERSUS

1. Parushuram Printers,
A-17, Aurangabad Co-operative Industrial
Estate, MIDC, Railway Station, Aurangabad
Through its Proprietor,
Mrs. Anuradha W/o. Anant Barve,
Age: 60 years, Occu.: Business
R/o. B-7, Amrut Residency, Vedant Nagar,
Oppo. Tiwari Mangal Karyalaya,
Station Road, Aurangabad ..(Orig. Plaintiff)

2. Atul S/o Narayan Puthan
Age: 56 years, Occu.: Business,
R/o. Plot No.424, N-3, CIDCO, Aurangabad.

3. Ajay S/o. Narayan Puthan
Age: 58 years, Occu.: Business,
R/o. Plot No.424, N-3, CIDCO, Aurangabad.

4. Sharda Wd/o Narayan Puthan
Age: 73 years, Occu.: Housewife,
R/o. Plot No.424, N-3, CIDCO, Aurangabad.

5. Mrs.Pankaj Suraj
Age: 60 years, Occu.: Housewife,
R/o. Erencholi, Tellicherry, Kerala State.

6. Smita W/o. Pralhad Giri
Age: 59 years, Occu.: Housewife,
R/o. Plot No.395, Sector E, N-1,
CIDCO, Aurangabad. (Orig. Deft.No.1 to 3,
5 and 6)
..Respondents

...
Advocate for Petitioner : Shri Nikhil S. Tekale
Advocate for Respondent No.1 : Shri Ajit D. Kasliwal
...

CORAM : P.R.BORA, J.

Reserved On : 19th March, 2019
Pronounced On : 29th April, 2019

JUDGMENT:-

1. Rule. Rule made returnable forthwith.

2. With consent of learned Counsel for the parties heard finally.

3. Aggrieved by the order dated 24.01.2019 passed by the 8th Joint Civil Judge, Senior Division, Aurangabad below application Exh.88 in Special Civil Suit No.167 of 2012, defendant No.4 in the said Civil Suit, who had filed the said application, has filed the present writ petition.

4. The petitioner had filed the aforesaid application for impounding of the document tendered by the plaintiff in the said Civil Suit, who is Respondent No.1 in the present petition. It was the document of agreement of sale dated 04.05.2009, allegedly executed between the plaintiff and defendant Nos.1 to 6 in

respect of property bearing Plot No.A-17. The Suit has been filed by the plaintiff for specific performance of the said agreement of sale. It is not in dispute that the plaintiff tendered the alleged agreement of sale during the course of her examination-in-chief in the aforesaid Suit. It is further not in dispute that the said document has been exhibited by the Trial Court and no objection was raised by any of the parties to the said Suit when the Court exhibited the said document at Exh.82. Admittedly, the Application at Exh.88 was filed by the petitioner after the examination-in-chief of PW-1 and her cross-examination by defendant Nos.2 and 3 was completed.

5. It was the contention of the petitioner that the document marked as Exh.82 comes within the ambit of 'Conveyance' and as such was liable to be endorsed on full stamp duty as payable for 'Conveyance' as per the provisions under the Maharashtra Stamp Act, 1958 (hereinafter referred to as the Stamp Act). I deem it appropriate to reproduce the prayer Clause-'B' and 'C' of the application Exh.88, which read thus:-

> “B] The Agreement of sale dated 04^{th} May 2009 be ordered to be impounded in accordance with Sec.33 & 34 of The Maharashtra Stamp Act, 1958.
>
> C] Any other relief and reliefs which are found to be just and

equitable in favour of the Defendant, may also be awarded and obliged.”

6. The plaintiff has filed say on the said application and has strongly opposed the request made in the said application. The learned Trial Court, after having considered the submissions advanced by defendant No.4 and the plaintiff, rejected the said application vide the impugned order. As noted herein above, aggrieved by the said order, the petitioner has filed the present petition.

7. Shri N.S.Tekale, learned Counsel appearing for the petitioner has assailed the impugned order on various grounds. The learned Counsel submitted that the document i.e. agreement of sale dated 04.05.2009, tendered by plaintiff during the course of her evidence before the Court, could not have been admitted by the Court since it was insufficiently stamped. The learned Counsel further submitted that the Trial Court has failed in appreciating that mere exhibition of the document does not mean that the document is admitted in the evidence. The learned Counsel further submitted that without complying the provisions of Order XIII Rule 4 of the Code of Civil Procedure (hereinafter referred as the CPC), the document cannot be said to be properly admitted in evidence. The learned Counsel further

submitted that the record of the case undoubtedly shows that the procedure as aforesaid has not been followed and as such though the alleged document has been exhibited by the Court, it possess no value in the eyes of law and consequently the said document cannot be read in the evidence. The learned Counsel submitted that since the alleged document is not properly admitted in the evidence for lack of proper endorsement in accordance with provisions of law, the bar under Section 35 of the Stamp Act would not apply in the present case. The learned Counsel relied upon the Full Bench Judgment of this Court in the case of ***Mr.Hemendra Rasiklal Ghia Vs. Subodh Mody [2008 (6) ALL MR 352]*** and the Judgment of the learned Single Judge of this Court in the case of ***Rekha Vs. Subhadrabai [2012 (3) Mh.L.J. 249]*** in order to support his contention.

8. Shri A.D.Kasliwal, learned Counsel appearing for respondent No.1 opposed the submissions advanced on behalf of the petitioner. Referring to the provisions under Sections 35 and 36 of the Stamp Act, the learned Counsel submitted that the Trial Court has rightly rejected the application filed by the present petitioner (original defendant No.4). The learned Counsel submitted that once the document has been exhibited, admissibility of the said document for insufficiency of stamp

cannot be questioned. The learned Counsel placed reliance on the following Judgments:-

a) Javer Chand and Ors. Vs. Pukhraj Surana [AIR 1961 SC 1655]

b) Suresh Nanda Vs. C.B.I. [AIR 2008 SC 1414]

c) Shyamal Kumar Roy Vs. Sushil Kumar Agarwal [AIR 2007 SC 637]

d) Bhagwandas Totaram Agarval Vs. Chhaganlal Raichand [The Bombay Law Reporter Vol.XLVI 411]

e) Mahendra s/o Mahadeo Deshbratar and others Vs. Kailash s/o Bhauraoji Chandankhede [2014 (5) Mh.L.J. 807]

9. I have given due consideration to the submissions made on behalf of the learned Counsel appearing for the parties. I have perused the impugned order and the other material placed on record. As I have noted herein above, it is not in dispute that the document of agreement of sale dated 04.05.2009, was referred to by PW-1 in her examination-in-chief and in examination-in-chief itself the same has been exhibited and has been marked at Exh.82. Further there appears no dispute that objection was not raised by any of the defendants when the Trial Court exhibited the aforesaid agreement and marked the same at Exh.82. It is further not in dispute that in the cross-examination of PW-1 by defendant Nos.2 and 3, they have also referred to the said

document. Admittedly, PW-1 is yet to be cross-examined by defendant No.4, who has filed concerned application at Exh.88 for impounding of the said document. In the application at Exh.88 filed by the petitioner before the Trial Court, in the prayer clause of the said application, an order is sought from the Trial Court that the agreement of sale dated 04.05.2009, be impounded in accordance with Sections 33 and 34 of the Stamp Act. I deem it appropriate to reproduce herein below both the aforesaid Sections, which read thus:-

*"**33. Examination and impounding of instruments***

(1) [Subject to the provisions of section 32-A, every person] having by law or consent of parties authority to receive evidence and every person in charge of a public office, except an officer of police [or any other officer, empowered by law to investigate offences under any law for the time being in force,] before whom any instrument chargeable, in his opinion, with duty, is produced or comes in the performance of his functions shall, if it appears to him that such instrument is not duly stamped, impound the same [irrespective whether the instrument is or is not valid in law.]

(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him in order to ascertain whether it is stamped with a stamp of the value and description required by the law for the time being in force in the State when such instrument was executed or first executed:

Provided that,-

(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do any instrument coming before him in the course of any proceeding other than a proceeding under [Chapter IX or Part D of Chapter X of the code of Criminal Procedure, 1973];

(b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court may appoint in this behalf.

(3) For the purpose of this section, in cases of doubt,-

(a) the State Government may determine what offices shall be deemed to be public offices; and

(b) the state Government may determine who shall be deemed to be persons in charge of public offices.

34. Instruments not duly stamped inadmissible in evidence, etc.

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 [or if the instrument is written on sheet of paper with impressed stamp [such stamp paper is purchased in the name of one of the parties to the instrument]

Provided that,

[(a) any such instrument shall, subject to all just exceptions, be admitted in evidence on payment of, -

(i) the duty with which the same is chargeable, or in the case of an instrument insufficiently stamped, the amount required to make up such duty, and

(ii) a penalty at the rate of 2 per cent of the deficient portion of the stamp duty for every month or part thereof, from the date of execution of such instrument:

Provided that, in no case, the amount of the penalty shall exceed [four times] the deficient portion of the stamp duty.]

(b) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp; the contract or agreement shall be deemed to be duly stamped;

(c) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding [under Chapter IX or Part D of Chapter X of the Code of Criminal Procedure 1973;]

(d) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act;

[(e) nothing herein contained shall prevent the admission of a copy of any instrument or of an oral admission of the contents of any instrument, if the stamp duty or a deficient portion of the stamp duty and penalty as specified in clause (a) is paid.]"

10. As against the contentions raised by the petitioner, respondent No.1 i.e. original plaintiff has referred to and relied upon Sections 35 and 36 of the Act. Sections 35 and 36 read thus:-

> *“**35. Admission of instrument where not to be questioned***
>
> *Where an instrument has been admitted in evidence, such admission shall not, except as provided in section 58, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.*
>
> ***36**. **Admission of improperly stamped instruments***
>
> *The State Government may make rules providing that, where an instrument bears a stamp of sufficient amount but of improper description, it may, on payment of the duty with which the same is chargeable, be certified to be duly stamped, and any instrument so certified shall then be deemed to have been duly stamped as from the date of its execution”*

11. As has been argued on behalf of the petitioner, although the alleged agreement of sale has been marked at Exh.82 by the Trial Court, in absence of the compliance under Order XIII Rule 4 of the CPC, it cannot be said that the said document has been admitted in the evidence. In order to buttress his contention, the learned Counsel for the petitioner relied upon the Full Bench

Judgment of this Court in the case of ***Mr.Hemendra Rasiklal Ghia*** (supra) and the Judgment of learned Single Judge in the case of ***Rekha*** (supra). The learned Counsel for the petitioner brought to my notice that though the agreement of sale has been marked at Exh.82 by the Court, it does not bear any endorsement as envisaged under Order XIII Rule 4 of the CPC. Order XIII Rule 4 reads thus:-

> ***"Order XIII Rule 4. Endorsements on documents admitted in evidence. -***
> *(1) Subject to the provisions of the next following sub- rule, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely:-*
>
> *(a) the number and title of the suit,*
> *(b) the name of the person producing the document,*
> *(c) the date on which it was produced, and*
> *(d) a statement of its having been so admitted;*
>
> *and the endorsement shall be signed or initialled by the Judge.*
>
> *(2) Where a document so admitted is an entry in a book, account or record, and a copy thereof has been substituted for the original under the next following rule, the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed or initialled by the Judge."*

12. As has been observed by the learned Single Judge of this

Court in the case of ***Rekha*** (supra), Order XIII Rule 4 mandates that if the document has to be admitted in the evidence in the Suit, requirements as are enlisted under Order XIII Rule 4 of the CPC, are to be complied with. It was therefore the contention of the learned Counsel appearing for the petitioner that for non-compliance of order XIII Rule 4, the document at Exh.82 cannot be said to have admitted in the evidence. It was therefore the further contention of the learned Counsel that the issue raised about insufficiency of the stamp and the further request made by the petitioner for impounding the said document was liable to be favourably considered by the Trial Court and the bar under Sections 35 and 36 of the Stamp Act, would not operate in the present case.

13. I am, however, not convinced with the submission so made. There cannot be a dispute about the compliance of Order XIII Rule 4 of the CPC as has been held by the learned Single Judge of this Court in the case of ***Rekha*** (supra), however, the facts involved in the case of ***Rekha*** (supra) are distinguishable with the facts involved in the present case. In the case of ***Rekha*** (supra), defendant No.1 therein had filed an application stating that the plaintiff has executed '*Hakksod Affidavit*' and had relinquished her share in the ancestral property. In the said

application itself it was prayed to impound the document and the said application was pending for consideration. In the meanwhile, the plaintiff led her evidence, the defendants also led their evidence and DW-5 in his testimony before the Court referred the 'Hakksod Patra' in his examination-in-chief and in the said examination-in-chief referred it as Exh.80. The said document was never exhibited by the Court prior to examination-in-chief. The said examination-in-chief of DW-5 was filed on affidavit and in the said affidavit he referred to the said document as Exh.80. The said witness was also cross-examined. The plaintiff, on the day DW-5 deposed before the Court, filed an application for de-exhibiting the document. The Trial Court, however, rejected the request and in such circumstances this Court had held that an error was committed by the Trial Court by rejecting the application and held that endorsement of the exhibit on the document was not as per Rule 4 of Order XIII of the CPC.

14. In the present matter, as has been observed by the Trial Court, the plaintiff in her examination-in-chief referred to the document of agreement of sale and then it was marked at Exh.82. The Trial Court has further observed that at the relevant time, no objection was raised by the defendants for exhibiting

the said document. It is further observed by the Trial Court that the plaintiff was thereafter, cross-examined by the learned Counsel for defendant Nos.2 and 3 and the plaintiff was cross-examined on the said document also. In the circumstances, merely because there is some non-compliance as envisaged under Order XIII Rule 4 of the CPC, it is difficult to accept the contention of learned Counsel for the petitioner that the said document of agreement of sale cannot be said to have admitted in the evidence by the Trial Court. It has to be stated that making an endorsement as envisaged under Order XIII Rule 4 is in a way a ministerial act. It has to be further stated that ordinarily such endorsements are made after the evidence of the particular witness is concluded. Evidence of PW-1 is not yet concluded. Defendant No.4 has yet to cross-examine the said witness. As such, merely because no such endorsement is appearing on the subject document, it cannot be held on the said ground that the said document cannot be admitted in the evidence.

15. Now, the question arises whether an objection can now be raised about admissibility of the said document in the evidence on the ground that the said instrument has not been duly stamped. In fact, if the prayers in the application filed by the

present petitioner at Exh.88 are perused, the only prayer made by original defendant No.4 is that the said document of agreement of sale dated 04.05.2009, be ordered to be impounded. In the said application, it is no where prayed that the said document be de-exhibited or that it should not be held admissible in the evidence. It, however, appears that before the Trial Court, the arguments were made on behalf of defendant No.4 in that regard also and that appears to be the reason that the Trial Court has recorded a finding that once the document was exhibited, admissibility of the said document for insufficient stamp was not liable to be questioned by defendant No.4 i.e. present petitioner.

16. On perusal of the Judgments relied upon by learned Counsel for respondent No.1, it is revealed that a consistent view is taken by the Hon'ble Apex Court that once a document is admitted, rightly or wrongly, in the evidence, it is not permissible under Section 36 of the Stamp Act, at any subsequent stage of the Suit or proceeding whether it is the Court of Appeal or Revision or the Trial Court, to reject the said document and it has to be acted upon as a document duly stamped, even though it forms foundation of the Suit.

17. There cannot be a dispute about the law laid down in the aforesaid Judgments by the Hon'ble Apex Court. According to me, the issue involved in the present matter is bit different. I have reproduced herein above the prayers made in the application Exh.88 filed by the present petitioner. I reiterate that the request in the said application is that the agreement of sale dated 04.05.2009, be ordered to be impounded in accordance with Sections 33 and 34 of the Stamp Act. In view of the fact that the aforesaid document was exhibited by the Trial Court during the oral evidence of PW-1 and no objection was raised by any of the defendants for exhibiting the said document, on the contrary, the said document was referred by defendant Nos.2 and 3 while cross-examining PW-1, the prayer made in the application under Section 34 of the Stamp Act, was certainly not liable to be considered by the Court in view the provisions under Section 35 of the Stamp Act, and to that extent no fault can be found with the order impugned in the present petition.

18. The question still remains why the Trial Court did not accept the request of defendant No.4 for impounding of the said document. As I noted herein above, it is not in dispute that the document marked at Exh.82 is the document of agreement of sale executed between the plaintiff and defendant Nos.1 to 6 in

Special Suit No.167 of 2012. The alleged agreement is admittedly on the Stamp Paper of Rs.100/-. As has been admitted by PW-1 in her cross-examination, the plaintiff is in possession of the suit property as a prospective purchaser. PW-1 in her cross-examination by the Advocate of defendant Nos.2 and 3 has deposed as under:-

> *"My possession over the suit property is continued in other capacity and not as a tenant. I am in possession of the suit property as prospective purchaser. After agreement of year 2009 I am in possession of suit property as a prospective purchaser. There is agreement to show that I am in possession of the suit property as prospective purchaser. The said agreement is of dated 04.05.2009. On 04.05.2009 there was only agreement pertaining to suit property. <u>On the basis of suit agreement dated 04.05.2009 I am in possession of the suit property.</u>"*

Considering the admissions as aforesaid, there appears substance in the contentions raised on behalf of the petitioner that the agreement of sale dated 04.05.2009, shall be deemed to be 'Conveyance' under Article 25 of the Stamp Act, and the stamp duty shall be leviable accordingly on the said document. The Explanation to Article 25 reads thus:-

> *[Explanation I.]- For the purposes of this article, where in the*

case of agreement to sell an immovable property, the possession of any immovable property is transferred [or agreed to be transferred] to the purchaser before the execution, or at the time of execution, or after the execution of, such agreement [***] then such agreement to sell shall be deemed to be a conveyance and stamp duty thereon shall be leviable accordingly.

19. In the aforesaid circumstances, it appears to me that though the Trial Court was fully justified in rejecting the request of the petitioner to the effect that the said document shall not be held admissible in the evidence, there was no reason to reject the another request made by the petitioner to impound the said document.

20. Section 33 of the Stamp Act, provides for examining and impounding of the instruments not duly stamped. I have already reproduced aforesaid Section herein above. In the instant case, there is no dispute that the Trial Court falls in the category of person specified in Sub-section 1 of Section 33. It has by law authorized to receive evidence, so the first condition of Section 33 is fulfilled. As the document in question was produced before the Court by the plaintiff for being acted upon, the second condition is also fulfilled. The document was sought to be admitted in the evidence. The signatures of the respective parties as well as the contents of the instrument were duly

proved by PW-1.

21. In above circumstances, in my opinion, the Trial Court must have accepted the request of the present petitioner i.e. original defendant No.4 to the extent of impounding of the said document. As I noted earlier, though the admissibility of the said document in evidence cannot be questioned in view of the provisions under Section 35 of the Stamp Act, the same would not operate as a bar for impounding of the document in question.

22. In the case of ***Deepak Corporation Bombay Vs. Pushpa Prahlad Nanderjog [1995 (1) Mh.L.J. 489]***, the respondent therein had filed a Suit against the petitioners therein for permanent injunction restraining them from interfering with her peaceful use and enjoyment of Suit premises and from taking any steps to dispossess her therefrom except by due process of law. The said Suit was settled between the parties and consent terms were filed. By the said consent terms, the petitioners (original defendants) agreed and undertook to offer to the respondent (original plaintiff) a self contained Flat of 600 sq.ft. in the new building to be constructed by the petitioners to the Suit property at the rate of Rs.225/- per sq.ft. and to deliver possession of the said Flat within two years from the date of

commencement of the construction. The above Suit was decreed by the Court on 20.12.1984 in accordance with said consent terms. Thereafter, on 21.02.1989, the parties signed fresh consent terms in modification and part adjustment of the above decree. An application was filed on 21.02.1989 before the Bombay City Civil Court under Order 21 Rule 2 of the Civil Procedure Code for recording the fresh consent terms and relieving the petitioners from the undertaking given by them to the Court under Clause 5 of the original consent terms and the decree passed in terms thereof. Fresh consent terms dated 21.02.1989 were tendered to the Court along with the above application for the purpose of recording the part adjustment of decree to the satisfaction of the plaintiff. The Court took cognizance of the said document. The plaintiff as well as partner of the defendants who had put their signatures on the said document admitted their respective signatures and contents of the document. However, before acting upon the said document, the Court made a query to counsel for the petitioners (original defendants) whether the document was sufficiently stamped and whether it attracted the provisions of the Indian Registration Act. Counsel for the petitioners instead of answering query, informed the Court on 24.02.1989 that the petitioners wanted to withdraw their application dated 22.02.1989 itself and do not wish to press for order thereon. On the above prayer, the Trial Court passed the following order on 24.02.1989:-

> "Advocate for the defendant states that he wants to withdraw the application i.e. 22.2.1989 and therefore he does not press for orders.
>
> *With the above, I am not passing any orders but it will be considered whether it is necessary to impound the document by sending it to the Collector of Stamps as the parties have used it as evidence and tendered the consent terms as their agreement before this Court. In this respect separate orders will be passed. Mr.Rambhia wants to argue on this point. Adjourned to 10.3.1989 for orders at 2:45 p.m. (Emphasis supplied)"*

23. The order so passed by the City Civil Court was challenged before the High Court alleging the same to be illegal and without jurisdiction. The High Court, however, upheld the order passed by the City Civil Court by observing that:-

> *"that a duty has been cast on the authority or Court to impound a document under section 33 if any such document which is inadequately stamped is produced before it to be acted upon and that duty does not come to an end on withdrawal of the document by the party liable to pay additional duty and penalty. The powers, duties and jurisdiction of the Court to pass orders on the application of the party for modification of the decree on the basis of such application and the document produced therewith and the powers, functions and jurisdiction of the Court under section 33 of the Stamp Act to impound the inadequately stamped*

document produced or coming before it are two distinct and different powers and jurisdictions. For the purpose of modification of the decree the Court might become functus officio on withdrawal of the application but for the purpose of taking action under section 33, it cannot become functus officio. A reference to sections 35 and 58 of the Stamp Act shows that section 35 only gives finality to the decision in regard to the admissibility of the document in evidence. It does not operate as a bar to impounding of the same. Order impounding document confirmed."

24. It appears to me that the same course was liable to be adopted in the present matter also. It appears that the Trial Court failed in appreciating and understanding the object of Section 33 of the Stamp Act. The object of this Section is to safeguard the revenue. As has been held by this Court in the aforesaid Judgment, Section 35 of the Stamp Act only gives finality to the decision in regard to the admissibility of the said document in evidence, it however does not operate as a bar for impounding of the said document. The Trial Court in the impugned order has observed that filing of an application by the present petitioner for impounding of document in question was only with the intention to protract the trial. If that be so, the Trial Court could have taken appropriate care in that regard also. There was no impediment to forward the original document to the Collector to impound the same by keeping on record the attested or certified copy of the document in question. It need

not be stated that the Trial Court may not be required to wait for the decision of the Collector on the issue of impounding and can very well proceed further with the trial of the Suit. Since the agreement of sale dated 04.05.2009 has been admitted in the evidence, it would not be open for the present petitioner to call in question such admission at any stage of the Suit or proceeding on the ground that it has not been duly stamped.

25. For the reasons stated above, the following order is passed:-

<u>ORDER</u>

I) Writ Petition No.2810 of 2019, is allowed.

II) The order dated 24.01.2019, passed by the 8th Joint Civil Judge, Senior Division, Aurangabad, below Application Exh.88 in Special Civil Suit No.167 of 2012, is set aside.

III) The agreement of sale dated 04.05.2009, be forwarded to the Collector of Stamps for impounding the same by keeping on record the attested xerox copy of the said document and the same shall be acted upon in deciding Special Civil Suit No.167 of 2012.

IV) It is clarified that since the agreement of sale dated 04.05.2009 has been admitted in the evidence, it would not be open for the present petitioner to call in question such admission at any stage of the Suit or proceeding on the ground that it has not been duly stamped.

V) Rule is made absolute in the above terms.

(**P.R.BORA**)
JUDGE

26. Later on, Shri A.D.Kasliwal, learned Counsel for respondent No.1 requested for staying the effect of the order passed by this Court for next eight weeks so as to facilitate the respondents to approach the Hon'ble Apex Court.

27. Request accepted.

(**P.R.BORA**)
JUDGE

SPT