

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

WRIT PETITION NO.10535 OF 2018

ABDUL GAFFURKHAN NAYYARKHAN
VERSUS
MOHAMMAD EKBAL SHAIKH ABDULLA

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Advocate for the Petitioner : Shri Wani Girish V..

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 28th January, 2019

Per Court:

1 Despite service of court notice, none appears for the sole Respondent. I had adjourned the matter earlier so as to enable the Respondent to participate in the proceedings. However, though adjournments were granted in December, 2018 and on 21.01.2019, no appearance has been entered.

2 The Petitioner/ original Plaintiff is aggrieved by the impugned order dated 31.10.2017 passed by the Trial Court by which, his application Exhibit 29 seeking directions for payment of stamp duty on the agreement of sale, has been rejected.

3 This Court (Coram : S.V.Gangapurwala, J.) has observed in paragraph 3 of the order dated 21.09.2018 as under :-

"3. *It is true that the document cannot be read in evidence unless*

and until proper stamp duty is paid. Even if document is impounded, stamp duty is paid, it will be for the plaintiff to prove the said document."

4 The above stated observations of this Court would practically decide this petition. In view of the same, this Writ Petition is allowed. The impugned order dated 31.10.2017 is quashed and set aside and the application Exhibit 29 is allowed. The Trial Court would, therefore, pass appropriate consequential orders on application Exhibit 29.

kps

(RAVINDRA V. GHUGE, J.)