IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.14450 OF 2019
(Bhausaheb s/o Bhagaji Phule Vs. Tehare Builders and Developers and another)

Mr.P.P.Shahane, Advocate for the petitioner.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 02/12/2019

PER COURT :

1. The petitioner / original plaintiff in Spl.C.S.No.218/2012 is aggrieved by the order dated 08/04/2019 passed by the Trial Court by which it has directed the Collector, Stamps, Aurangabad to calculate the stamp duty with penalty on the amount of Rs.12,00,000/- with regard to shop No.4. Application Exh.121 filed by defendant No.1 is therefore allowed.

2. The learned Advocate for the petitioner has drawn my attention to the 12 grounds formulated in the memo of the petition as well as the earlier order passed by the Trial Court dated 03/04/2018 below Exh.118 and the order of this Court dated 28/11/2018 passed in WP No.9590/2018. It is contended that the impugned order would amount to reviewing the earlier order dated 03/04/2018.

3. I find from the record that the issue raised in Exh.118 by defendant No.1 was as to who should pay the stamp duty. The Trial Court came to a conclusion in the light of Section 30 of the Maharashtra Stamps Act that the grantee i.e. the vendee is liable to pay the stamp duty in case of a conveyance. The *Essar Pawati* Exh.104 contains a condition as to who should pay the registration charges and the plaintiff purchaser was mentioned as being the party who would bear the charges of registration. However, the plaintiff denied the execution of the *Essar Pawati* Exh.104 and therefore the Trial Court concluded that until Exh.104 is proved, the plaintiff cannot be compelled to pay the deficit stamp duty. It was also ordered that defendant No.1 should take steps in that regard. Exh.118 was disposed off.

4. Defendant No.1 approached this Court in WP No.9590/2018 and this Court delivered an order on 28/11/2018. The relevant portion in paragraph Nos.3 and 4, reads thus :-

> "*3. The learned Civil Judge has directed the defendant who relies upon the agreement to pay the stamp duty. The respondent/plaintiff has denied the execution of this document.*
> *4. In view of the consensus, the writ petition is disposed of by observing that, if the petitioner pays the deficit stamp duty pursuant to the impugned order and at the time of conclusion of*

the trial, if the learned Judge comes to the conclusion that the agreement in question was executed and was genuine, then the learned Civil Judge will pass an appropriate order regarding the stamp duty that is paid by the petitioner to be reimbursed, repaid by the respondent/plaintiff. With these observations and keeping all contentions of the parties open, the writ petition is disposed of."

5. Defendant No.1 has then filed Exh.121 contending that the *Essar Pawati* Exh.104 would indicate that the plaintiff has cancelled the agreement for purchasing the flat and has continued with the transaction with regard to the shop. In this backdrop, the Trial Court has delivered the impugned order directing the Collector (Stamps), Aurangabad to determine the stamp duty and penalty with regard to the consideration amount of shop No.4 set out in Exh.104. I do not find that this order would run counter to the order dated 03/04/2018 as, in the said order, the Trial court only concluded as to who would be liable to pay the stamp duty and penalty and a further clarification is found in the order of this Court dated 28/11/2018.

6. It requires no debate that if Exh.104 *Essar Pawati* is established, defendant No.1 would have to pay the stamp duty and penalty with regard to the shop alone. If Exh.104 is found to have

not been executed by the plaintiff and if the said document is disproved, the Trial Court can always direct the 1st defendant to pay the whole deficit stamp duty and penalty while deciding the suit.

7. This petition, being devoid of merit, is therefore, dismissed.

(Ravindra V.Ghuge, J.)