

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Writ Petition No.4922 of 2018
(Jain Supari Centre, A Partnership Firm and others. .vs. Rameshlal Motilal
Hasoriya and another)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders or directions Court's or Judge's orders.
 and Registrar's orders

Mr. S.V. Purohit, Advocate for Petitioners.
 Mr. S.S. Sitani, Advocate for Respondent Nos. 1 and 2.
 Mr. A.R. Chutke, AGP for Respondent No.3.

CORAM : Manish Pitale, J.
DATED : February 13, 2019.

By this writ petition, the petitioners/original defendants/tenants have challenged order dated 07.07.2018 passed by the Court of Additional Judge, Small Causes Act, Nagpur (trial Court) in Regular Civil Suit No.111 of 2016 below Exh.39, whereby an application filed by the petitioners has been rejected. The said application was moved by the petitioners seeking direction to the respondents/original plaintiffs/landlords to produce document which had been sent for impounding by earlier order passed by the trial Court.

2. The background facts giving rise to the present writ petition are that the respondents filed suit for eviction against the petitioners concerning house property located at Ward No.36, mouza Nagpur on 16.04.2016 on the ground of bona fide need. This suit for eviction was resisted by the petitioners by filing their written statement. Both the parties referred to an

agreement of tenancy dated 01.01.2013 whereby the petitioners had continued in the suit house property for an alleged agreed rent of Rs.12,000/- per month. The evidence on affidavit of the respondents herein was filed on 04.10.2017. Thereafter on 04.11.2017, an application was moved on behalf of the petitioners seeking a direction from the trial Court to refer the aforesaid agreement of tenancy to the Collector of Stamps for examination and impounding in accordance with law. The respondents resisted the said application and submitted before the trial Court that although the document was unregistered, it was admissible for collateral purpose and that the question of impounding did not arise because the respondents had not tendered the said document in evidence. On 06.02.2018, the trial court allowed the said application of the petitioners and sent the said agreement of tenancy to the Collector of Stamps, Nagpur and further directed the respondents to pay the deficit stamp duty and penalty before the Collector of Stamps. It was directed that after recovery of the deficit stamp duty with penalty, the Collector of Stamps would return the said agreement to the trial Court within a period of 30 days. On 17.03.2018, examination-in-chief on behalf of the respondents was recorded wherein documents were referred to which were marked as exhibits, wherein there was no mention of the aforesaid tenancy agreement as being exhibited document before the trial Court. The cross-examination of the witness on behalf of the respondents was deferred and it was at this stage that the petitioners on 25.06.2018 filed the aforesaid application seeking a

direction to the respondents to produce the said agreement of tenancy that had been sent to the Collector of Stamps as per the order dated 06.02.2018. As noted above, the said application was rejected by the impugned order of the trial court. The present writ petition challenges the said order wherein, while issuing notice on 08.08.2018, this Court granted stay of further proceedings in the suit before the trial Court.

3. Thereafter, on 26.11.2018, this Court passed the following order:-

"Heard.

The petitioners (original defendants) have challenged the order passed by the trial Court by which their application (Exh.39) praying that the proceedings of the civil suit be kept in abeyance till the document which is sent to the Collector of Stamps for impounding is received back, is rejected. The submission on behalf of the defendants is that the plaintiffs have not complied with the necessary formalities and the amount required for impounding of the document is not deposited by them.

The learned advocate for the respondents -plaintiffs has submitted that the plaintiffs have complied with all the necessary formalities.

By order dated 06/02/2018 passed by the trial Court on the application (Exh.26), it was directed that after recovery of the deficit stamp duty with penalty, the Collector shall return the said agreement to the Civil Court within 30 days.

In the circumstances, the following

order is passed:-

(a) The petitioners to implead the Collector of Stamps, Nagpur as the respondent no.3 in this writ petition.

Shri J.Y. Ghurde, learned AGP waives notice for the respondent no.3.

(b) The Collector of Stamps shall file an affidavit till 06/12/2018 pointing out the stage at which the matter is pending in his office.

List the petition for further consideration on 11.12.2018."

4. Pursuant to the directions given in the said order of this Court, an affidavit-in-reply was filed on behalf of respondent no.3 Collector of Stamps, Nagpur, who was added as party respondent. In the document annexed with the said reply, the respondent no.3 gave details of the amounts payable towards deficit stamp duty and penalty in the context of the said agreement of tenancy.

5. In this backdrop, when the writ petition was taken up for hearing on 23.01.2019, it was submitted on behalf of the respondents that as per Section 30 of the Maharashtra Stamps Act, 1958, it was a duty cast upon petitioners to pay stamp duty on the aforesaid document i.e. agreement of tenancy and that, therefore, the insistence on the part of the petitioners that the respondents were required to pay the amount of deficit stamp duty with penalty was baseless. Since the said question was raised for the first time before this Court,

the writ petition stood adjourned for submissions to be made in that regard.

6. Mr. S.V. Purohit, learned counsel for the petitioners submitted that the respondents had failed to challenge order dated 06.02.2018 passed by the trial Court directing them to pay the deficit stamp duty as would be determined by the Collector of Stamps and even before this Court when the order dated 26.11.2018 was passed, the respondents did not submit that they were not liable to pay amounts towards deficit stamp duty and/or penalty in respect of the said document. It was submitted that in this situation, it would not lie in the mouth of the respondents to rely upon Section 30 of the aforesaid Act to contend that even if deficit stamp duty and penalty had been determined by the Collector of Stamps, the respondents were not liable to pay the said amounts and it was, in fact, the petitioners who were required to deposit the said amount. It was further submitted that since the respondents were relying upon the said document in the suit for eviction filed against the petitioners, once it had come to the notice of the trial court that the agreement of tenancy was an unregistered document, it was incumbent upon the trial Court to have impounded the said document and it was correctly referred to the Collector of Stamps for determination of deficit stamp duty. In such a situation, according to the learned counsel for the petitioners, there was no escape from the liability to pay the deficit stamp duty and penalty as per the amounts determined by the Collector of Stamps. The learned counsel placed

reliance on Sections 34 and 43 of the aforesaid Act, to contend that even if the respondents deposit the said amounts with the Collector of Stamps and it was their contention that it was the petitioners who were liable to pay the same in the proceedings before the trial Court, they could move appropriate application for recovery of the amount that is payable to the Collector of Stamps. On this basis, it was contended that the respondents were liable to deposit the said amounts so that the document i.e. the agreement of tenancy was produced before the trial Court.

7. On the other hand, Mr. S.S. Sitani, learned counsel appearing for the respondent nos. 1 and 2 submitted that a statutory provision i.e. Section 30 of the aforesaid Act was abundantly clear that the liability to pay stamp duty for the said document in the present case was entirely upon the petitioners. Reference was also made to a term in the said agreement of tenancy where it was expressly stated that the said amount shall be paid by the petitioners. On this basis, it was contended that even though the respondents had not challenged order dated 06.02.2018 passed by the trial Court and order dated 26.11.2018 had been passed by this Court, leading to the respondent no.3 Collector of Stamps placing before this Court details of the amounts to be paid towards deficit stamp duty and penalty, the respondents could not be held responsible for depositing the said amount. It was further submitted that a perusal of the plaint and the written statement would show that the petitioners did not specifically deny the

existence of the said agreement of tenancy and that in any case, the respondents were not seeking eviction of the petitioners on the ground of breach of any of the terms of the agreement. It was submitted that the ground for eviction was bona fide need and it was only for collateral purpose that the agreement was being referred to by the respondents. On this basis, the learned counsel submitted that the impugned order was justified and no interference was warranted in writ jurisdiction.

8. Heard counsel for the parties and perused the record.

9. It is evident from the documents on record that by order dated 06.02.2018, the respondents were indeed directed by the trial Court to send the aforesaid document i.e. the agreement of tenancy to the Collector of Stamps, Nagpur, for ascertainment of the amount of stamp duty payable on the said document. It is also on record that the said order was never challenged by the respondents. Thereafter, the petitioners had filed the said application before the trial Court seeking a direction to the respondents to produce the document which had been impounded as per the directions of the trial Court. A perusal of the impugned order dated 07.07.2018 shows that a Xerox copy of the tenancy agreement was already on record before the trial Court and that relationship between the parties as landlords and tenants had not been disputed. On this basis, the trial Court found that the insistence of the petitioners that

the respondents must place the said document on record was not justified. Whether the said view taken by the trial Court was correct or not, will depend upon the nature of pleadings of the parties. A perusal of the plaint in the present case shows that in paragraph 3, the respondents have pleaded as follows: -

"3. That after her death the plaintiffs became the lawful owner and in possession of the said property and hence the tenancy was continued by executing an agreement of tenancy dated 01/01/2013 wherein the defendant agreed to pay a rent of Rs.12,000/- per month which was agreed to be paid equally to the plaintiffs. It was further agreed that the rent will be paid within 15 days of the calendar month and further the electricity charges will be borne by the defendant as per consumption."

10. In response to the same, in their written statement, the petitioners have stated as follows:-

"3. As to para No.3 :- It is all false hence specifically denied that after the death of Prabhadevi, plaintiffs became the lawful owner and in possession of the said property. Tenancy was continued by executing an agreement of tenancy dated 1.1.2013 wherein these defendants agreed to pay rent of Rs.12,000/- PM which was agreed to be paid equally to the plaintiffs and it will be paid within 15 days of the calendar month and electricity charges will be borne by the defendants as per consumption and tenancy remained for indefinite period. Fact remains that it is the practice adopted by the plaintiffs

that rent shall be payable as and when demanded by the landlord or collected by them. Rest of the contents of this para are denied in toto. Plaintiffs be directed to prove each and every contents of this para in accordance with law by leading strict and cogent evidence to that effect."

11. The above quoted portions of the plaint and written statement clearly show that the petitioners as tenants did not deny the existence of the said agreement dated 01.01.2013 and even the quantum of rent at Rs.12,000/- per month was not denied.

12. It is clear from the documents on record that the stand taken by the respondents before the trial Court, as reflected in order dated 06.02.2018 passed by the trial Court below Exh.26, was that the question of impounding and payment of stamp duty on the said document would arise only if they desired to tender the said document in evidence or that they relied upon the same. The said stand of the respondents before the trial Court is recorded in paragraph 3 of the aforesaid order dated 06.02.2018 passed below Exh.26, which reads as follows:-

"3. The plaintiff has strongly resisted the application by filing reply vide Exh.27. It is submitted that though the document is unregistered. It is admissible for collateral purpose. The question of impounding will arise, only when plaintiff relies on that document and tenders it in his evidence. However, the said stage is yet to come. Hence, the present application is

prematured. The application is devoid any substance and deserved to be rejected. It is prayed that application be rejected."

13. Despite the said stand taken by the respondents, the trial Court thought it fit to allow the application of the petitioners and thereby directed the document be sent to the Collector of Stamps, Nagpur with the further direction to the respondents to pay the deficit stamp duty and penalty that will be determined by the Collector of Stamps. It is also correct that when the order dated 26.11.2018 was passed by this Court, the respondents did not specifically make any contention about the liability to pay deficit stamp duty and penalty being on the petitioners. Yet, this Court cannot ignore the mandate of Section 30 of the aforesaid Act, which specifically provides under the head 'duties by whom payable' that in the absence of the agreement to the contrary, the expenses of providing proper stamp shall be borne by the lessee or the intended lessee in the case of agreement to lease. Although it is true, as pointed out by the learned counsel for the petitioners, that under Section 43 of the said Act, even if the amount towards the stamp duty is paid by the person who was not supposed to pay the same, he could recover the same from the person liable to deposit such amount, what is relevant in the present case is that under Section 30 of the said Act, the respondents/landlords could certainly not be held liable to pay the deficit stamp duty and penalty before the Collector of Stamps. In any case, the respondents had

made their stand clear before the trial Court as well this Court that they have not sought eviction of the petitioners on the ground of breach of any of the terms of the agreement and that the suit for eviction is filed on the ground of bona fide need. It is also relevant that in the pleadings, as also the affidavit in evidence and the examination-in-chief, the respondents have through out insisted upon eviction of the petitioners on the ground of bona fide need and certainly not on breach of any of the terms of the aforesaid agreement of tenancy. In fact, the examination-in-chief dated 17.03.2018 of the witness for the respondents refers to certain documents that have been exhibited, but there is no such reference to the agreement of tenancy being exhibited or the respondents insisting that the said document be marked as exhibit, thereby showing that the respondents have not specifically relied upon the said document in the proceedings before the trial Court.

14. In any case, in the written statement the petitioners have admitted the existence of the said agreement as also the quantum of rent, thereby establishing the relationship of landlord and tenant between the parties. It is in this backdrop that the trial Court has correctly stated in the impugned order that since there is no dispute about the relationship between the parties, even the Xerox copy of the said agreement of tenancy would be sufficient to go ahead with the proceedings before the trial Court. Accordingly, the trial Court has rejected the application filed by the petitioners.

15. The facts of the present case show that the petitioners are not justified in insisting that the proceedings before the trial Court could proceed only after the respondents deposit the deficit stamp duty and penalty before the Collector of Stamps, because the respondents have made their stand very clear as to the manner in which they intend to proceed with the eviction proceedings before the trial Court. In view of the stand taken by the respondents before the trial Court and this Court, and looking at the provisions of the aforesaid Act, particularly Section 30 thereof, this Court finds that the impugned order passed by the trial Court cannot be said to be erroneous.

16. Accordingly, this writ petition is found to be without any merit and it is dismissed.

17. Considering the fact that the suit for eviction was filed in the year 2016, the trial Court shall make an endeavor to dispose of the same expeditiously and in any case within a period of one year from today.

JUDGE

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