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

**WRIT PETITION NO. 4557 OF 2015**

Damodar Bhavan CHS. Ltd. ..Petitioner
V/s.
Stamp Collector Andheri & Ors. ..Respondents

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Ms.Prabha V. Badadare for the Petitioner.
Mr.N.C. Walimbe, AGP for Respondent No.1.

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**CORAM : C.V. BHADANG, J.**
**DATE : 22nd JANUARY 2020**

**P.C.**

1. Heard learned counsel for the petitioner and the learned Assistant Government Pleader for the respondents.

2. The only contention raised on behalf of the petitioner is that the petitioner is not liable to pay the stamp duty and the penalty to the extent of 7 flats and 1 shop which are still owned and possessed by the builder. The contention is that the said flats not being belonging to the petitioner society, the petitioner is not liable to pay, stamp duty and penalty levied on the price/valuation of the 7 flats and 1 shop. The learned counsel for the petitioner on instructions stated that the petitioner is ready and willing to deposit the stamp duty and penalty except levied on the 7 flats and 1 shop.

3. With the assistance of the learned counsel for the parties I have gone through the record. It appears that the petitioner had filed Short Cause Suit No.1782 of 1984, before the City Civil Court, Mumbai for specific performance of the contract. It appears that the said suit was disposed of on 16th October 2006 on the basis of the consent terms and the concerned decree was drawn. The office of the City Civil Court sent a decree to the Collector for recovery of the deficit stamp duty. This was so sent, some where in the year 2012. The Collector by an interim order dated 08th May 2013 levied the deficit stamp duty and penalty under Section 25(b) of the Maharashtra Stamp Act, which order was confirmed on 17th December 2013. The petitioner challenged the same before the Chief Controlling Revenue Authority, Maharashtra State at Pune in appeal No.17 of 2014. The Chief Controlling Revenue Authority by an order dated 29th May 2014 has dismissed the appeal as being not maintainable which order is subject matter of challenge in this petition.

4. A perusal of the record further shows that a reply was sent by the petitioner to the Chief Controlling Revenue Authority on 13th May 2014 in which the petitioner did not raise any contention that there are 7 flats and 1 shop still belonging to the builder and

therefore the petitioner is not liable to pay stamp duty to the extent of the 7 flats and 1 shop. It is also not clear as to whether any such ground was raised before the Chief Controlling Revenue Authority, when the order passed by the Collector was challenged, as the copy of the application/appeal memo, filed before the Chief Controlling Revenue Authority is not produced on record. In my considered view in the absences of any particulars/details as to the nature, extent and the valuation of the said flats and the shop, it is not possible to apportion the liability between the petitioner and builder at this stage, in a petition under Article 227 of the Constitution of India.

5. The learned counsel for the petitioner has placed reliance on the circular dated 18th March 2014 which pertains to clarification issued by the Government on certain issues/difficulties which are faced by the authorities while considering the application for deemed conveyance which is not a case in the present petition. In that view of the matter I decline to entertain the petition which is accordingly dismissed, with no order as to costs.



**C.V. BHADANG, J.**