

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

WRIT PETITION NO.3226 OF 2021

Pravinkumar L. Jain ...Petitioner
V/s.
Chandralekha Vimal Shukla & Anr. ...Respondents

AND

WRIT PETITION (STAMP) NO.3684 OF 2020

Pravinkumar L. Jain ...Petitioner
V/s.
Chandralekha Vimal Shukla & Anr. ...Respondents

AND

WRIT PETITION (STAMP) NO.3688 OF 2020

Shantilal L. Jain ...Petitioner
V/s.
Chandralekha Vimal Shukla & Anr. ...Respondents

AND

WRIT PETITION (STAMP) NO.3690 OF 2020

Arvind Kumar L. Jain ...Petitioner
V/s.
Chandralekha Vimal Shukla & Anr. ...Respondents

Mr. Rajiv Narula i/b. Jhangiani Narula & Associates for Petitioners.
Mr. Sanjiv Sawant with Mr. Rutu Pawar i/b. Mr. Abhishek Deshmukh for
Respondents.
Mr. S. H. Kankal, AGP for State.

CORAM : G. S. KULKARNI, J.
DATE : DECEMBER 13, 2021

PC :

1. Heard Mr. Narula, learned counsel for the petitioners and Mr. Sawant,
learned counsel for the respondents.

2. These petitions are filed assailing two orders dated 17 February, 2020 passed by the learned District Judge-2, Palghar, whereby an application (Exhibit 19) filed by the petitioners for adjournment of hearing of civil appeal in question and an application (Exhibit 20) filed by the petitioners praying for exhibiting the document of Memorandum of Understanding and reading the same in evidence, stand rejected.

3. The appeal in question has arisen from a judgment and decree of the learned trial judge dismissing the petitioners' suit on account of the document in question namely Memorandum of Understanding is not being sufficiently stamped. It is not in dispute that the petitioners had approached the Collector of Stamps for adjudication of the stamp duty on the document in question. The Collector of Stamps had initially decided the stamp duty by an order dated 29 October, 2010. The petitioners being aggrieved by the said order, preferred an appeal before the appellate authority. The appellate authority by an order dated 7 December, 2011 remanded the matter back to the original authority with a direction that the petitioners be granted an opportunity of a hearing by the Collector of Stamps and an appropriate order be passed. After such remand, by an order dated 17 May, 2012, the Collector of Stamps decided the stamp duty on the document, however without following the directions of the appellate

authority namely without hearing the petitioners against which the petitioners had approached this Court by filing writ petitions. The said petitions are decided today by a separate order whereby the Collector of Stamps is directed to adjudicate and decide the stamp duty on Memorandum of Understanding within a period of six weeks with effect from 28 December, 2021.

4. In so far as the present petitions are concerned, as the issue in regard to adjudication of the stamp duty was pending and was not being decided, the petitioners had approached the learned District Judge praying for adjournment of hearing of appeals in question which the District Court has rejected by the impugned order, primarily observing that the petitioners cannot ask the Court to stay the proceeding pending decision of the Collector of Stamps. The petitioners had also approached the learned District Judge by filing an application praying for exhibiting the document of Memorandum of Understanding and reading the same in evidence, the said application also came to be rejected by the learned District Judge. The reasons to reject the said application of the petitioners as set out by the learned District Judge are as under:-

“5. The Hon’ble Bombay High Court in case of **Santosh Anant Raut Vs. Pukharaj Chogmal Rathod [2010] 4 MhLJ 22** held that, IF the Civil Court finds that the document which is not duly stamped is sought to be tendered in evidence, the power under

section 33 of the said Act will have to be exercised and the document will have to be impounded. After impounding the document, the Court is under an obligation to send a true copy of the said document to the adjudication of the Collector in accordance with subsection (3) of section 32-A of the said Act. Only after adjudication is made by the collector, the party relying upon the document will have to pay deficit stamp duty and penalty. After a certificate issued by the Collector regarding compliance with the requirement of payment of deficit stamp duty and penalty, Civil Court can exercise power under proviso (a) to section 34 of the said Act. Thereafter, the document can be admitted in evidence if the same is proved and if it is otherwise admissible in evidence.

6. Here in this case, the suit was made time-bound by the Hon'ble Bombay High Court and appellant has not paid the deficit stamp duty as per the order of Collector of Stamps. Hence, the document of MOU was not proved before the Trial Court and the Trial Court decided the suit. Now the appellant stated that, the order of Collector of Stamp has been stayed by the Hon'ble Bombay High Court and hence prayed for exhibiting the document of MOU and reading in evidence. The Hon'ble Bombay High Court in above cited authority held that, only after the adjudication is made by the Collector and certificate issued by the Collector regarding compliance with the requirement of deficit stamp duty and penalty, the document can be admitted in evidence if the same is proved and if it is otherwise admissible in evidence. Here in this case no such certificate has been issued by the Collector of Stamps and therefore no question arise to exhibit the document of MOU which is impounded by the Trial Court and still the deficit stamp duty is not paid. Hence, application is without merit and needs to be rejected. Hence, I pass following order.

ORDER

Application is rejected.”

5. In my opinion, in making the above observations to reject the petitioners' application, the learned District Judge has overlooked that the petitioners were pursuing a statutory remedy which was available to them to get the document in question stamped in accordance with law, as noted

above. The steps as taken by the petitioners were certainly relevant for considering the petitioners' application which does not find any reference in the impugned order. The petitioners cannot be said to be at any fault when they were diligently pursuing the proceedings before the stamp authorities to remove the defect on the document. In any event as directed by this Court in a separate order passed in Writ Petition No.1339 of 2020 along with connected writ petitions, Controller of Stamps has been directed to decide the stamp duty which is payable on the document i.e. Memorandum of Understanding in question after an opportunity of hearing is granted to the petitioners to be decided within six weeks. As soon as such adjudication is available, the learned District Judge would be free to proceed with the pending appeals in accordance with law. In the meantime, till the stamp authority decides the issue of stamp duty, the learned District Judge shall not proceed with the appeals in question. Liberty to the parties to approach the learned District Judge after the decision of the Collector of Stamps. All contentions of the parties in that regard are expressly kept open.

6. The anxiety of the respondents is that respondent no.1 is a senior citizen and the proceeding is delayed and hence, it would be open for the respondents to move an application for expeditious hearing of the appeals. In the event such an application is made, the same be given due

consideration of the learned District Judge.

7. Writ petitions are disposed of in the above terms. No costs.

(G. S. KULKARNI, J.)