

Sneha
N.
Chavan

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2510 OF 2020

Manmohansingh R. Anand .. Petitioner
V/s.

Paramjeet Singh Anand & Ors. ..Respondents

Mr. Siddharth Wakankar for the Applicant.

Mr. Vaibhav Ugle, for the Respondents.

CORAM : C.V. BHADANG, J.

DATE : 27th JANUARY, 2021

PC.

1. The challenge in this petition is to the order dated 10.10.2019 (below application Exhibit 98) by which a document regarding surrender of leasehold rights at Exhibit 76 has been impounded and sent for adjudication, to the Competent Authority under the Maharashtra Stamp Act.

2. The learned counsel for the petitioner submitted that the said document does not contemplate *in presenti* surrender of the tenancy rights. Secondly, it is submitted that the document is properly stamped as a bond under Article 13 of the Stamp Act. It is submitted that the impugned order is cryptic and does not consider

the reply filed by the petitioner, both on the ground of Section 35 and about the document being properly stamped.

3. The learned counsel for the respondent has supported the impugned order. It is submitted that the document is chargeable to stamp duty under Article 52 and 58 of the Stamp Act. It is pointed out that the agreement is executed on stamp of Rs.10/- and it is insufficiently stamped and it has been rightly impounded and sent for adjudication.

4. I have considered the submissions made and I have gone through the impugned order. Principally, in such case the Trial Court is required to see *prima facie* whether the document is insufficiently stamped, before directing it to be impounded and being sent for adjudication of the stamp duty. In this case, according to the petitioner, the document is properly stamped, while the respondent claims that the document invites stamp duty under Article 52 and 58 of the Stamp Act. A perusal of the impugned order shows that there is absolutely no finding recorded by the Trial Court in this regard. The Trial Court, in such case, ought to come to a *prima facie* conclusion as to the article which covers the documents as regards the incident of stamp duty and then should decide whether the document is insufficiently stamped. As noticed earlier, only reasoning worth the same is found in paragraph 4

where no finding is recorded by the Trial Court. In such circumstances, I find that application Exhibit 98 can be remitted back to the learned Trial, Court for deciding it afresh, on its own merits and in accordance with law.

5. In the result, the following order is passed:

ORDER

- i) The petition is partly allowed.
- ii) The impugned order dated 10.10.2019 is hereby set aside .
- iii) Application Exhibit 98 is remitted back to the learned Trial Court for deciding it on its own merits and in accordance with law.
- iv) Rival contentions of the parties on merits are kept open.
- v) In the circumstances, there shall be no order as to costs.

C.V. BHADANG, J.