

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

WRIT PETITION NO.4819 OF 2021

State Bank of India (Erstwhile State Bank of Travancore) through it's Branch
Manager and having its Branch at Congress, Nagpur

Vs.

Deputy Inspector General of Registration and Deputy Controller of Stamps, Nagpur
and another

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

Court's or Judge's orders

Mr. Mohammed G. Qubbawala, Advocate for petitioner.
Mr. A. A. Madiwale, AGP for respondents.

CORAM : AVINASH G. GHAROTE, J.
DATE : 03/12/2021

Heard Mr. Mohammed Qubbawala, learned
counsel for the petitioner and Mr. Madiwale, learned
AGP for respondents.

2. The bone of contention is whether on the lease deed dated 29.08.2016, executed between the petitioner and the landlord, clause (ii) or clause (iii) of Article 36 of the Maharashtra Stamp Act, 1958 (hereinafter referred as 'the said Act') would apply.

3. It is the contention of Mr. Mohammed Qubbawala, learned counsel for the petitioner that only clause (ii) of Article 36 of the said Act would apply, considering that the lease was only for a period of 10 years commencing from 01.07.2015 to 30.06.2025. It is contended that though there is an option for renewal of term for five years Explanation II would not be

attracted, considering the language of the renewal clause.

4. Mr. Madiwale, learned AGP for the respondents submits that since there is a renewal clause which specifies the term, the lease has to be construed for a period of 15 years, and accordingly chargeable with stamp duty for the said period. The instructions received by the learned AGP are taken on record.

5. Article 36 of the Maharashtra Stamp Act and clause (ii), (iii) and Explanation II are reproduced hereunder for the sake of ready reference.

<i>“36. LEASE, including under lease or sub-lease and any agreement to let or sub-let or any renewal of lease. ---</i>	
<i>Where such lease purports to be --</i>	
<i>(i)</i>	
<i>(ii) for a period exceeding five years but nor exceeding ten years, with a renewal clause contingent or otherwise.</i>	<i>The same duty as is leviable on a conveyance under clause (a), (b) [or(c)], as the case may be, of article 25, on 25 per centum of the market value of the property.</i>
<i>(iii) for a period exceeding ten years but not exceeding twenty-nine years, with a renewal clause contingent or otherwise.</i>	<i>The same duty as is leviable on a conveyance under clause (a), (b) [or(c)], as the case may be of article 25, on 50 per centum of the market value of the property.</i>

<i>Explanation II – The renewal period, if specifically mentioned, shall be treated as part of the present lease.”</i>	
--	--

6. A perusal of clause (ii) and (iii) would indicate that both of them contain the expression “with a renewal clause contingent or otherwise”. It would thus be apparent that where there is a renewal clause in a lease, which does not exceed for ten years, what would be attracted would be clause (ii) of Article 36 of the said Act, since clause (iii) contemplates a lease for a period exceeding ten years, which is not the case in respect of the lease dated 29.08.2016.

7. The Explanation II of Article 36 of the said Act mandates that where the period of renewal is specifically mentioned, the same shall be treated as part of the present lease and if so construed, the lease would be for a period of 15 years, and therefore, chargeable with stamp duty accordingly. Explanation II, therefore, contemplates the renewal of the lease for the further fixed period and not otherwise.

8. In the instant case, the relevant clause in the lease reads as under:

“2. The lease shall be in force for a period of 10 years commencing from 01/07/2015 to 30/06/2025, with an option for renewal of for another term of 5 (five) years on mutually acceptable terms between the parties.”

9. A perusal of the renewal clause would indicate that the renewal for the further period of five years is not automatic, but is dependent upon mutually acceptable terms and conditions between the parties, and therefore, where the parties do not agree for the terms and conditions, there would be no renewal at all. Thus, considering the language of the renewal clause, in my considered opinion, it cannot be said that the lease agrees for further renewal for a period of five years, irrespective of the mutual agreement of the parties thereto, considering which, Explanation II of Article 36 of the said Act, would clearly not be attracted.

10. Considering what has been discussed above, the impugned order cannot be sustained and the same is accordingly quashed and set aside.

11. The petition is accordingly allowed in the above terms. No order as to costs.

JUDGE

Sarkate