

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

WRIT PETITION NO. 14310 OF 2019

Badrinarayan Gaurishankar Palsaniya
Deceased through His LR's -
Rukhminidevi Badrinarayan Palsaniya & Ors. ...Petitioners

Versus

Omprakash Sitaram Agrawal & Anr. ...Respondents

.....

Mr. K. C. Sant, Advocate for the petitioners
Mr. Mukuld Kulkarni, Advocate for respondent no. 1

.....

**CORAM : BHARATI H. DANGRE, J.
DATE : JANUARY 17TH, 2022**

PER COURT : -

1. Heard the learned Counsel for the petitioner and the Counsel for the respondent.
2. The controversy in the writ petition revolves around exhibiting two documents being documents filed vide Exh.89 i.e. the agreement at Exh.92 on the basis of which the specific performance was sought for and the Special Power of Attorney at Exh. 90.
3. The defendnat no. 1 moved an application for raising an objection about exhibiting the aforesaid documents in the wake of

the objection raised by the Collector (Stamp), Jalgaon, recoding that the stamp duty paid on the said documents is insufficient. Therefore, since the documents were exhibited in absence of proper stamp duty, for which proper stamps were required to be affixed, the defendants prayed for de-exhibiting the said documents i.e. nullifying its effect to be read in evidence. This application came to be rejected by the learned Judge vide the impugned order on the ground that there is no process prescribed for de-exhibiting the documents but also clarified that if the plaintiff failed to pay the necessary stamp duty, the court shall not consider these documents for any purpose.

4. During the pendency of the petition, the learned Counsel for the petitioners has placed on record an affidavit sworn by original plaintiff - Omprakash Agarwal, wherein in paragraph nos. 6 and 7, he makes following averments.

- "6. In spite of the aforesaid legal position, the answering Respondent undertakes to deposit the amount of stamp duty as claimed by the Collector vide order dated 09.10.2017 without prejudice to his rights and contentions within a period of 4 weeks from today. The present Writ Petition can therefore be disposed of in view of this statement and the interim relief granted may kindly be vacated.
7. In view of the fact that the suit for specific performance is instituted in the year 2009 and the same is still awaiting decision before the learned trial court, it is just and necessary to expedite the proceedings of the suit with a direction to the trial court to decide the same within a time frame."

5. In the wake of the aforesaid statement contained in the affidavit, which is taken on record during the course of hearing of the writ petition, I do not think the impugned order must require any adjudication. The position of law being very settled that unless and until the stamp duty is properly affixed upto the satisfaction of the Collector, the document though permitted to be filed cannot be read in evidence by the learned Court. In the wake of the aforesaid situation, continuing the paragraph no. 6 in the affidavit on behalf of the plaintiff and subject to his right in the appeal, the writ petition deserves a dismissal.

6. The parties are *ad idem* that the suit requires an expeditious disposal since it is pending since the year 2009. In the wake of the above, the learned trial Court is requested to conclude the proceedings in the Special Civil Suit No. 222/2009 within a period of six months from today. The parties shall render their cooperation in concluding the proceedings in the suit.

[BHARATI H. DANGRE]
JUDGE