IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.14824 OF 2019

Mr. Mahesh Shambhulal Bhanushali
@ Gori, Prop. of Vipul Octroi Centre
Tara Compound, Behind Hotel
Krishna, Opp. Dahisar Checknaka,
Dahisar (E), Mumbai-400068.
Through Power of Attorney
Mr.Rakesh Rameshchandra Mehta,
Age: 54 Yrs., occu. Service
and Business, r/o Lale Plot,
Madhavnagar Road, Sangli,
Maharashtra = **PETITIONER**
(Orig.Plaintiff)

VERSUS

1. Anuron Enterprises Pvt Ltd.
A Private Limited Company
Registered under the Indian
Companies Act, 1956 having
its office and place of
business at Station Road,
Ahmednagar, Maharashtra
414001.

2. Mrs. Rakhi Narendra Firodiya
Age: Adult, occ. Business,
having place of residence at
House No.5, Shobha Sadan,
Aurangabad Road,
Ahmednagar 414001.

3. Mr.Ashish Ramesh Pokharna
Age: Adult, occ. Business,
Having place of business at
A/P Karnawat Building,
Sarjepura, Ahmednagar 414001= **RESPONDENTS**
(Resp.Nos.1 to 3
orig.Defts.)

Mr.SR Dheple and Mr. Abhay Kumar Apte, Advocates for petitioner;

Mr.SP Salgar, Advocate h/for Mr. NV Gaware, Advocate for Respondent No.1.

CORAM : PRITHVIRAJ K.CHAVAN,J.

RESERVED ON : 28/03/2022
PRONOUNCED ON : 06/04/2022

JUDGMENT

1. Challenge in this petition is to an order dated 8.4.2019 passed by 4th Joint Civil Judge, Senior Division, Ahmednagar on an application moved by the original defendant to impound a document tendered by the plaintiff (petitioner herein) on the ground that requisite stamp duty on the said document has not been paid by the plaintiff.

2. Briefly stated the facts are as follows, -

i. The petitioner-plaintiff has filed a suit for recovery of outstanding octroi amount against the respondents. The petitioner was authorized by the Municipal Corporation, Ahmednagar as an authorized agent to collect the octroi for a period 1.12.2011 to 30.11.2012. In short, the Municipal Corporation had appointed the petitioner as an agent on its behalf to collect the octroi. This was pursuant to an offer made by the petitioner to the Municipal Corporation to the tune of Rs.88,00,05,000/-, (Rupees eighty eight crores and five thousand) which was accepted by the Standing Committee of the Corporation, vide Resolution No.60 dated 15.11.2011.

ii. As per the terms, the petitioner deposited a sum of Rs.8,80,00,500/- (Rupees Eight crores, eighty lakhs and five hundred) in the form of bank guarantee. As per the "Form of Agreement, the petitioner agreed to collect the octroi fixed by the Corporation on the goods which would be imported within the octroi limits of the Municipal Corporation for the aforesaid period. The document is styled as "Form of Agreement". Relevant clauses are reproduced as under,

> " WHEREAS the offer of Rs.88,00,05,000/-(In words Eighty eight crores and five thousand only) made by the Agent for collection of the octroi for a period of One year from 01-12-2011 to 30-11-2012 or work order issued for one year, has been accepted by the Standing committee of the Corporation vide its Resolution No.60 dated 15.11.2011 and Corporation has appointed

the said agent to collect the octroi on said terms & conditions.

WHEREAS, the Agent has pursuant to one of the terms and condition of the contract, furnished security deposit in the form of Bank Guarantee of Rs.8,80,00,500/- (In words Rs. Eight crores eighty lacks and five hundred only) as security for due observance and performance of the terms conditions of the contract, and

WHEREAS The said sum of Rs.8,80,00,500/- (In words Rs. Eight crores eighty lakhs and five hundred only) will not carry any interest from the Corporation and WHEREAS The parties hereto are desirous of recording the terms and conditions upon which the Agent/s has/have been authorized by the Corporation to collect the Octroi and escort (transit fee), user fees.

3) In consideration of the Agent having agreed to collect the Octroi / Escort during the subsistence of this agreement, the Agent shall be entitled to retain with him as and by way of commission, from out of amount of octroi collected by him during one year, only that much amount which exceeds the amount quoted by him in his offer as and by way of contract amount.

The octroi Agent must remit the contract amount in 24 equal installment in the municipal corporation. The agent must deposit his installment amount in the corporation on 16th and 1st day of each month.

If in any fortnight the amount of Octroi / Escort collected by the agent falls short of the amount of installment specified, then the agent shall forthwith remit to the Corporation, along with the amount of Octroi / Escort collected by him, the shortfall in the collection of octroi relating to that fifteen days, so as to make the amount of remittance of collection of octroi in the installment equal to the amount of contract for the fortnight.

16) It shall be the responsibility of the agent to pay the stamp duty which is leviable or which may be imposed on this agreement either on the date of this agreement or in future under the provisions of the Bombay Stamp Act or any other provisions. For the agent must take proper assessment from the concerned department within a month from the date of commencement of the work of Octroi collection and pay the amount payable directly to the concerned department. If the agent fails to do so, the Corporation can recover the same from his security deposit as and if found necessary like other dues which can be recovered from it.”

3. Heard learned Counsel for the parties at length.

4. Learned Counsel for the petitioner, at the outset, argued that the Trial Court had failed to consider Article 13 of Schedule 1 of The Maharashtra Stamp Act by which there was no question of payment of stamp duty on the said agreement, as the amount collected by the petitioner by way of octroi is for the purpose of

raising public utility funds for the corporation on its behalf. He would argue that Clause 16 of the said agreement, as regards payment of stamp duty etc., is a subject matter between the petitioner and the Municipal Corporation and the Respondents/defendants have no locus to raise the issue.

5. On the other hand, the learned Counsel for the respondents supported the impugned order.

6. Apart from the fact whether the application dated 15.1.2019 moved on behalf of the defendant/s, questioning the issue of stamp duty by the petitioner, the law on the point of stamp duty as well as the issue of un-registered document, has been considered by the Supreme Court in case of ***Avinash Kumar Chauhan Vs. Vijay Krishna Mishra (2009) 2 SCC 532.*** While referring to Sections 33, 35 and 36 of the Maharashtra Stamp Act, it has been held that a Civil Court has power to impound insufficiently stamped instrument. It has been held that when adequate stamp duty has not been paid, the Court is empowered to pass an order in

terms of Section 35 of the Stamp Act,1899. Un-registered Deed of sale is an instrument, which requires payment of stamp duty applicable to a Deed of Conveyance. The Court being an authority to receive a document in evidence is bound to give effect thereto. Section 33 of the Act casts statutory obligation on all authorities to impound a document. By reason of the statutory interdict, no transfer at all is permissible. Even transfer of possession is also not permissible. The Supreme Court had brushed aside the argument of learned Counsel for the appellant that a document, which is unregistered, can be considered for collateral purpose.

7. A coordinate Bench of this Court in case of ***Mr. Shabbir Ahmad S.Khan Vs Abdul Hameed Khan Matawan & Anr. - 2022 (1) ALL M.R. 90***, held that insufficiently stamped document, which is also not registered, of which registration is mandatory, cannot be received in evidence even for collateral purpose. Relevant paras of the said judgment are extracted as under, -

"11. Insufficiently stamped document which is also not registered of which registration is mandatory cannot be received in evidence as is apparent from the provisions of Section 34 of the Bombay Stamp Act and Section 49 of the Registration Act. As far as the contention of Shri Gangakhedkar that in view of Judgment of the Apex Court in the matter of ***M/s Z.Engineers Construction Pvt. Ltd. (2020 ALL SCR 681) and Ameer Minhaj (2018(5) ALL MR 449 (S.C.)*** that the documents should have been accepted subject to an objection, as statutory presumption in favour of the petitioner that the document is duly stamped and the acceptability of the document in evidence for inappropriate stamping can be gone into at the stage of final hearing is concerned, same is liable to be rejected for the reasons that by virtue of the document titled as Kharedikhat, possession is claimed to have been transferred as reflected in the recitals therein.

12. In the aforesaid background, it is apparent that the petitioner is a party to the said document. Case of the petitioner is for specific performance is founded on the said document only to which petitioner and respondent are parties. In such an eventuality, claim of the petitioner that it should have been accepted in evidence subject to objection, cannot be permitted particularly when the fact remains that document is neither registered nor properly stamped.

13. As far as the contention that the said issue can be gone into at the stage of final hearing of the suit is concerned, this court is required to be sensitive to the fact that in the matter of ***Bipin Shantilal Panchal Vs. State of Gujarat and Another [(AIR 2001 SC 1158) : (2001 ALL MR (Cri) 452(S.C.)],*** wherein

> the Apex Court has clarified that if the objection relates to the deficiency of the stamp duty of a document, court is duty bound to decide the objection before proceeding further and for all other objections procedure suggested as is relied on by Shri Gangakhedkar can be accepted or relied upon.
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> 14. This Court while dealing with the claim in an earlier Writ Petition as is refereed above has taken note of the observations made by the apex court in the matter of ***Avinash Kumar Chauhan Vs. Vijay Krishna Mishra (Civil Appeal No. 7350 of 2009][2009 ALL SCR 249]*** that there is no prohibition under Section 49 of the Registration Act to receive an unregistered document in evidence for collateral purpose. However the document needs to be duly stamped or should comply with the requirement of Section 35 of the Stamp Act. It is also provided for the consequences that if the document is not duly stamped or is not in compliance with Section 35 of the Stamp Act, same cannot be received in evidence even for collateral purpose unless it is duly stamped or duty or penalty are paid."

In the said judgment, the learned Single Judge has also referred the judgment in the case of ***Avinash Kumar (supra).***

8. In the case in hand, the document, in question is neither registered nor duly stamped and, therefore, there is no question of admitting it in evidence.

9. Even if it is referred to as a "bond" in view of Section 2(c)(ii) of the Bombay Stamp Act, it creates obligation with express promise to pay and, therefore, necessary stamp duty will have to be paid by the petitioner. It is held by the Bombay High Court in case of ***M/s Patel Stone Trading Co. Nagpur Vs. Ramsing – 1974 Mah.L.J. 616*** that, the real test to decide whether a document is a bond or not, is to find out after reading the document as a whole as to whether an obligation is created by the document itself or it is merely an acknowledgment of pre-existing liability. If the document creates an obligation in itself with an express promise incorporated therein to pay the amount with interest and it is attested by witnesses, the document is a "bond" and not an "agreement". In the said case, the learned Judge had directed that in case the plaintiff does not pay the stamp duty and penalty, the document should be sent to the Collector for recovery of the stamp duty and penalty. Para 6 of the said judgment is extracted as below, -

> "6. In the present case, either in the statute or common law there was no pre-

> existing right or liability between the parties. For the first time a liability is created by the document whereby the defendant has agreed to pay an ascertain sum to the plaintiff and an express promise about the repayment was incorporated in the document. Under these circumstances, in my opinion, the present document will have to be termed as a bond as defined in Section 2(c)(ii) of the Bombay Stamp Act."

10. In the application below Exhibit-57, the defendant had alleged that earlier a notice to pay the stamp duty had been issued to the petitioner. However, despite issuance of such notice the petitioner had deliberately not paid the stamp duty.

11. In view of the aforesaid discussion, I do not deem it necessary to interfere in the impugned order. The learned Civil Judge is directed to take further necessary steps in view of the Maharashtra Stamp Act as well as the Registration Act.

12. Consequently, the petition fails and stands dismissed.

(PRITHVIRAJ K.CHAVAN)
JUDGE

BDV