IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2527 OF 2022

Eldred Anthony Nicholas Lobo
Age 71 Years, Occupation – Business;
Resident at – A/12, Debonaire Co-op.
Hsg. Soc. Almeda Road,Thane – 400602 … PETITIONER

V E R S U S

1. Shri Vasant Nathu Karlekar

2. Shri Shreekant Vasant Karlekar

3. Smt. Suchita Sachin Dalvi

All Adults; carrying out business at Partnership in the name and style of M/s Ganaraj Groups, having their office at 9, Basement Summer Castle Shopping Centre, Meenatai Thakare Chowk, L.B.S. Marg, Thane – 400 601.

4. The State of Maharashtra
through Collector of Stamps, Mumbai. … RESPONDENTS

Ms. Leena Patil, Advocate for Petitioner.
Mr. S. H. Kankal, Assistant Government Pleader for Respondent No.4/State.

CORAM : NITIN W. SAMBRE, J.
RESERVED ON : 27 APRIL 2022.
PRONOUNCED ON : 6TH JUNE, 2022

JUDGMENT

. By this Petition, the Petitioner has challenged the order dated 17th August 2019 passed by the learned Joint Civil Judge Senior Division, Thane below Exhibit-63 in Special Civil Suit No.613 of 2007.

2. The Petitioner/Original Plaintiff initiated Special Civil Suit No. 613 of 2007 seeking a decree for recovery of an amount of ₹1,82,31,660/- with interest @ 24% per annum based on the registered Deed of Conveyance *(hereinafter shall be referred to as 'the Principal Agreement' for the sake of brevity)* dated 30th August 2004. In the said suit Respondent Nos.1 to 3/Original Defendants took out application Exhibit-63 for impounding another unregistered Agreement dated 30th August 2004 alleging that the said unregistered document is not supplementary or in continuation to the aforesaid registered Principal Agreement. Though such claim was resisted by the Petitioner, vide order dated 17th August 2019 passed below Exhibit-63 the learned Joint Civil Judge Senior Division, Thane ordered impounding of unregistered

Principal Agreement dated 30th August 2004 which is impugned in this Petition.

3. The issues raised in this Petition are already reflected in the earlier order passed by this Court on 8th April 2022.

4. Heard Ms. Patil, learned Counsel for the Petitioner and Mr. Kankal, the learned Assistant Government Pleader for Respondent/State.

5. The contention of Ms. Patil, learned Counsel appearing for the Petitioner is that the Deed of Conveyance came to be registered wherein the market value of the suit property is shown to ₹ 2,42,38,366/-. According to the learned Counsel, in the said Principal Agreement total consideration was agreed to ₹ 3,05,00,000/-. After valuation of the claim in the said Principal Agreement stamp duty of ₹ 15,25,000/- was paid excluding registration charges of ₹30,000/-. According to the learned Counsel, the document was executed *inter se* between the parties to the Petition which was registered on 30th August 2004. The learned Counsel would invite

attention of this Court to the agreed consideration reflected in the said Principal Agreement which is said to be ₹ 3,05,00,000/-.

6. The learned Counsel would invite attention of this Court to the another unregistered Agreement of the very same date i.e. 30th August 2004 *inter se* executed between the Petitioner and Respondent Nos.1 to 3, in which according to the learned Counsel, it was agreed that the suit amount to the extent of ₹ 1,81,00,000/- is to be paid by the Respondents through various modes, *viz* – the cheques as mentioned therein. In addition the learned Counsel would urge that the recitals in aforesaid unregistered Agreement in categorical terms speaks of the execution and registration of above referred Principal Agreement, the agreed consideration and balance consideration. The learned Counsel would further urge that the aforesaid Principal Agreement was specifically referred to with an intention to refer the unregistered Agreement as supplementary one.

7. Based on the provisions of Section 4 of the Maharashtra Stamp Act, 1958 *(for short, 'the Act')* contention of the learned Counsel is that since the Supplementary Agreement, *viz* – unregistered one is in

tune with the Principal Agreement, the separate registration and stamp duty was not required. Drawing support from the provisions of Section 4 of the Act and the recitals from Principal Agreement so also Supplementary Agreements, the learned Counsel would urge that the court below erred in recording the findings that since the consideration in the Supplementary Agreement is more than that of a Principal Agreement, Supplementary Agreement needs to be impounded.

8. Though served, none appears for the Respondent Nos. 1 to 3.

9. So as to assist the Court, the Court has called upon Mr. Kankal, the learned Assistant Government Pleader to extend his response to the aforesaid submissions. The learned AGP would urge that the order impugned is very much justified. According to the learned AGP, on 9th November 1981, Mr. Gavand land owner entered into an agreement with the partnership firm in the name and style of M/s Lobo Natraj & Associates. Based on the aforesaid Agreement, on 18th October 1984 Mr. Gavand entered into further Agreement with M/s Span Construction.

10. On 30th April 2004 principal owner Mr. Gavand entered into an Agreement with the Respondents herein. Accordingly Mr. Gavand executed an Agreement which is termed as Principal Agreement. The learned AGP would further claim that the Supplementary Agreement which provides for the total consideration of Rs.2,70,00,000/- is to be received by the Petitioner and his partners which is independent of the Principal Agreement. The learned AGP would rely on the recitals of the aforesaid Supplementary Agreement which is unstamped and unregistered. In the wake of above, contentions of the learned AGP are that the Supplementary Agreement has to be read as Principal Agreement which assessed by the court below was justified in passing the order impugned, having regard to the provisions of Sections 4(1), 17 and 33(1) of the Act.

11. The sum and substance of the contentions of the learned AGP is that if several documents executed by and between the parties to complete the transaction, in that event the principal instrument which attracts payment of highest stamp duty would be chargeable.

12. According to the learned AGP the Principal Agreement i.e.

Conveyance Deed is executed and in addition the independent Agreement is entered into between the Petitioner and Respondents. The Supplementary Agreement has initiated rights in the partnership firm. The court below was justified in impounding the another unregistered Agreement dated 30th August 2004. So as to substantiate his claim, the learned AGP has drawn support from the recitals of the Supplementary Agreement.

13. I have appreciated the said submissions. The fact remains that the Principal Agreement is valued and at the time of registration, on Principal Agreement stamp duty of ₹ 15,25,000/- is paid as against the total consideration of ₹ 3,05,00,000/-. Such parties who are also the parties to the Supplementary Agreement are shown to be the parties to the Principal Agreement also. The recitals in the Principal Agreement speaks of the total agreed consideration of ₹ 3,05,00,000/- and independent consideration to be paid to each of the party to the said Agreement. On perusal of the Principal Agreement the recital to that extent is quite clear.

14. As far as the Supplementary Agreement is concerned, same

is executed on a stamp paper of ₹ 100/-. The Principal Agreement also contains receipt which speaks of receipt of the amount of ₹ 90,00,000/- which are paid by the Respondent No.2 through pay order drawn on Bank of India.

15. The Supplementary Agreement is *inter se* between the Respondents/Original Defendants and the Petitioner/Original Plaintiff, in which the Petitioner is shown to be ex-partner of the partnership firm namely, M/s Lobo Natraj & Associates which is shown to be dissolved. By the said Supplementary Agreement, the present Petitioner is shown to be entitled to receive an amount of ₹ 1,81,00,000/- and further mentions the schedule of said payment to be received by the Petitioner from the Respondents/Defendants. It also speaks of the entitlement to ₹ 2,71,00,000/- along with an amount of ₹ 90,00,000/-which was paid under earlier Principal Agreement. As such, what can be noticed is, even if under the Principal Agreement the Petitioner is shown to have to received an amount of ₹ 90,00,000/- towards his share, by way of unregistered Agreement the Petitioner has agreed to receive an amount of ₹ 1,81,00,000/- from the Respondents. In the said transaction, the

Petitioner and Respondents have avoided to pay stamp duty towards the amount of ₹ 1,81,00,000/-.

16. It is claimed by Ms. Patil, the learned Counsel for the Petitioner that though the recital in the Supplementary Agreement speaks of the unregistered Agreement being Supplementary Agreement to the Principal Agreement, the aforesaid findings *prima facie* depicts that valuation of the Principal Agreement is only to the tune of ₹ 3,50,00,000/- as market value, which has no recitals about consideration of ₹ 1,81,00,000/- which is claimed to be receivable by the Petitioner from the Respondents in Supplementary Agreement.

17. In the aforesaid background the claim of the learned Counsel for Petitioner that in the Supplementary Agreement there is a reference to the Principal Agreement and the Supplementary Agreement is in continuation to the Principal Agreement which cannot be accepted for the aforesaid reasons i.e. non-disclosure of the entitlement of the Petitioner for an additional consideration of ₹ 1,81,00,000/- in the Principal Agreement. That being so, it cannot be said that unregistered Supplementary Agreement is in continuation to

the Principal Agreement which is registered and executed on 30th August 2004.

18. Though Ms. Patil, the learned Counsel for Petitioner has tried to rely on the provisions of Section 4 of the Act, however, it cannot be said that the Supplementary Agreement to the aforesaid extent is in continuation of the Principal Agreement so as to complete the transaction. Rather the intention of the parties to the Supplementary Agreement appears to be to suppress the said transaction from revenue so as to avoid payment of stamp duty on the same.

19. In response to the Court's query, the learned Counsel is unable to satisfy as regards the aforesaid Agreement for entitlement of the Petitioner to receive over and above ₹ 90,00,000/- received by him under the Principal Agreement and an amount of ₹ 1,81,00,000/- as is reflected in Supplementary Agreement, based on which the suit claim is initiated.

20. That being so, for the purpose of valuation, the court below was justified in ordering impounding of the Supplementary Agreement,

thereby directing the Petitioner to pay stamp duty after submitting the said document for payment of deficit stamp duty and penalty, if any. An appropriate support *qua* the aforesaid observation has drawn from the Judgment of this Court in the matter between ***M/s Prasun Developers V/s State of Maharashtra and Ors. in Writ Petition No.9923/2014 dated 30th January 2015.***

21. In the case in hand, even if it is sought to be claimed by the learned Counsel for Petitioner that the Supplementary Agreement is aimed at completing the particular transaction, as reflected in the Principal Agreement, this Court cannot be ignorant of the suppression of the true value and the liability of the Petitioner to pay the stamp duty on the same. Certainly it is not the intention of the legislature to stretch the interpretation of Section 4 of the Act, to mean that, if the several instruments were employed for completing the one and the same transaction i.e. Supplementary Agreement like the one in this case need not to be impounded for want of payment of appropriate stamp duty on the total consideration involved in such transaction. Rather the conduct of the Petitioner claiming that several instruments were

employed for completing the transaction cannot be accepted to give benefit to the Petitioner under Section 4 of the Act.

22. That being so, no case for interference is made out. As such, the Writ Petition stands dismissed.

[NITIN W. SAMBRE, J.]