IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10189 OF 2022

Prakash Ramchandra Jadhav ...Petitioner.
Versus
Sudhir Dhanpal Bhokare & Anr. ..Respondents.

Mr. P. M. Arjunwadkar for the petitioner.
Mr. Wasif Mohammad Akil for respondent No.1.

Coram : Sharmila U. Deshmukh, J.
Date : July 6, 2023.

P. C. :

1. The challenge in the petition is to the orders dated 15th March 2022 passed below Exhibit 32 and Exhibit-33 in Special Civil Suit No. 52 of 2017.

2. At the outset, learned counsel for the petitioner submits that he does not press his challenge to the order passed below Exhibit-32 which was an application filed by the petitioner-defendant seeking a direction to the plaintiff to produce the bank account statement and income tax returns of the plaintiff.

3. As regards the application filed below Exhibit-33, learned

counsel for the petitioner submits that the application was filed seeking impounding of the agreement, which was executed on a stamp paper of Rs.100/- in the presence of two witnesses and which is the basis for filing of suit in question seeking recovery of money. He has invited the attention of this Court to the said document which is at page no.15 of the petition, and would contend that the same falls within the definition of "bond" as defined under section 2(c)(ii) of the Maharashtra Stamp Act. He would further submit that falling within the definition of bond, the document would be covered by the definition of "instrument" within the meaning of section 2(l) of the Maharashtra Stamp Act and, as such, amenable to the payment of stamp duty. He draws support from the decision of this Court in ***Mahesh Shambhulal Bhanushali v. Anuron Enterprises Pvt. Ltd [2022(5) Mh.L.J.116]*** and would contend that the document being a bond, is amenable to the payment of stamp duty and having been produced before the Court is required to be impounded by placing reliance on sections 33 and 34 of the Maharashtra Stamp Act.

4. Considered the submissions of learned counsel for the petitioner.

5. It is not necessary for this Court to go into the issue as to whether the document which is annexed at page no.15 of the petition

falls within the definition of "bond" as defined in the Maharashtra Stamp Act and, as such, amenable to the payment of stamp duty, for the simple reason that application which is filed by the defendant (copy of which at page no.38 of the petition) is bereft of details. By the vague and ambiguous application, the defendant has prayed for impounding of document by merely stating that the document which has been relied upon by the plaintiff is required to be affixed with necessary stamp under the provisions of Indian Registration Act and Mumbai Stamp Act, and that not being done, the same cannot be read into evidence. Armed with this vague application, the matter was argued before the trial Court. The trial Court on the basis of the contents of application as well as the arguments advanced by learned counsel for the defendant, has held that the defendant has no right to seek a prayer of impounding of document due to insufficient affixing of stamp duty as the suit has been filed seeking recovery of the amount.

6. Considering that the submissions which are now sought to be raised before this Court that the document in question is a bond by relying upon the definition of bond under the provisions of the Maharashtra Stamp Act, were not placed for consideration before the trial Court as is evident from the application filed by the defendant as

well as which is revealed from the perusal of impugned order, in my opinion, for the first time in exercise of jurisdiction under Article 227 it is not open for this Court to consider the submissions of learned counsel for the petitioner to arrive at a finding as to whether the document in question is a bond or not. The reliance placed by learned counsel for the petitioner on the decision of this Court in ***Mahesh (supra)*** cannot be considered for the simple reason that the submissions which are now sought to be advanced were not placed for consideration before the trial Court.

7. In view of the above, writ petition is devoid of merits and stands dismissed.

[Sharmila U. Deshmukh, J.]