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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.15684 OF 2022

Suresh Jotiram Mhamane … Petitioner

V/s.

Suman Ashok Mittal Through Her P/O Holder Ajinkya Dinkar Patil & Ors. … Respondents

Mr. Anilkumar K. Patil for the petitioner.

Mr. Nilesh Wabale with Ms. Bhavika Shinde i/by Mr. Umesh R. Mankapure for respondent No.1.

Mr. Nikhil G. Hire i/by Mr. Kuldeep Patil for respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 7, 2023

P.C.:

1. Challenge in this petition is to the order dated 22nd September 2022 impounding unregistered agreement to sell.

2. The petitioner is original plaintiff who filed suit for specific performance based on agreement to sell dated 22nd February 2012. Clause 3(b) of the agreement to sell contains a recital that actual and vacant possession of the property described in para 1a and 1b of the suit property shall be delivered at the time of execution of sale deed.

3. During the course of evidence, when the plaintiff requested for exhibiting the document, the Trial Court examined the document in the context of Article 25 of the Maharashtra Stamp Act, 1958, and recorded a finding that the agreement falls within the ambit of Explanation-I of Article 25 of Schedule-I of the Maharashtra Stamp Act, 1958. Said order is subject matter of challenge.

4. Learned advocate for the petitioner relying on the judgment of the Apex Court in the case of **Veena Hasmukh Jain And Another vs. State of Maharashtra And Others** reported in (1999) 5 SCC 725, submitted that in absence of time being specified for execution of sale deed, the instrument is not covered by Explanation-I of Article 25 of Schedule-I of the Maharashtra Stamp Act, 1958.

5. The Explanation-I of Article 25 of Schedule-I of the Maharashtra Stamp Act, 1958, reads as under:

> "**Explanation I.** For the purposes of this article, where in the case of agreement to sell an immovable property, the possession of any immovable property is transferred to the purchaser before the execution, or at the time of execution, or after the execution of, such agreement without executing the conveyance in respect thereof, then such agreement to sell shall be deemed to be a conveyance and stamp duty thereon shall be leviable accordingly :
>
> Provided that, the provision of section 32A shall apply *mutatis mutandis* to such agreement which is deemed to be a conveyance as aforesaid, as they apply to a conveyance under the section :
>
> Provided further that, where subsequently a conveyance is executed in pursuance of such agreement of sale, the stamp

duty, if any already paid and recovered on the agreement of sale which is deemed to be a conveyance, shall be adjusted towards the total duty leviable on the conveyance."

6. On meaningful reading of said explanation, it covers three contingencies in relation to agreement to sell.

(i) Recital evidencing delivery of possession before execution of sale deed;

(ii) At the time of execution of sale deed; and

(iii) After execution of such agreement without execution of sale deed.

7. The Supreme Court in paragraph No.9 of the **Veena Hasmukh Jain And Another** (supra), repelled contention on behalf of the appellants that character of an instrument cannot be determined by reason of a subsequent event to take place such as handing over of possession. The Apex Court repelled said contention by observing that Explanation-I of Article 25 of the Maharashtra Stamp Act, 1958, makes it clear that the said explanation covers even the contingency. Only exception referred in paragraph No.10 of the judgment is in relation to the agreement executed under the Maharashtra Ownership Flats Act, 1963. The agreement in question is not executed in exercise of provision under the Maharashtra Ownership Flats Act, 1963, and therefore, the exercise of power by the Trial Court cannot be faulted. There is no merit in the writ petition.

8. The civil writ petition is, therefore, dismissed. No costs.

(AMIT BORKAR, J.)