

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12019 OF 2024
WITH
INTERIM APPLICATION NO. 12187 OF 2024

M/s. Arun Bhoomi Corporation

.. Petitioner

Versus

Jayesh Kanji Maru

.. Respondent

.....

- Mr. Piyush Raheja a/w Ms. Lizum Wangi & Ms. Meenakshi Pahuja i/by ANB Legal Petitioner
- Mr. Sandesh D. Patil a/w Mr. Krishnakant Deshmukh i/by Ms. Divya A. Pawar for Respondent No. 1

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CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 9, 2024

P. C.:

1. Heard Mr. Raheja, learned Advocate for Petitioner and Mr. Patil, learned Advocate for Respondent No. 1.

2. Present Petition impugns twin orders passed by the learned Trial Court. First order is passed on 06.10.2022 which is appended at Exh. L, page No. 97 of Petition. By virtue of this order, objection is taken to exhibiting certified copy of the Consent Terms in Writ Petition No. 3917/2009 as exhibit C/32 by Defendant who is Petitioner before me. Thereafter Defendant has filed Application dated 16.11.2022 seeking to de-exhibit the said document. It appears to be mistakenly stated in the Application to de-exhibit document at Exh. 33. The document at Ex. 33 is an approved plan. Mr. Raheja at the outset clarifies that

document referred to in the prayer clause of Application is Exh. 32. Mr. Raheja points out that in the order correct exhibit number is mentioned. Hence there is no ambiguity on that count at all. The correct document in respect of which Application below Exh. 37 has been filed is Exh. 32. Plain reading of Application below Exh. 37 and more specifically averments made in paragraph No. 5 show that there is precursor order passed by this Court on 05.07.2022 which is appended at Exh. D, page Nos. 53-54 of the Petition.

3. In his usual fairness, Mr. Raheja points out the order to me and draws my attention to it. He would submit that Defendant filed Application below Exh. 37 in view of the directions contained in this order. Perusal of order dated 05.07.2022 reveals that the dispute between the parties is with respect to marking and exhibiting of the consent terms dated 11.11.2009 between the parties in Writ Petition No. 3917 of 2009. This Court after hearing both parties held that the dispute raised by Defendant against exhibiting the said consent terms was that by virtue of enforcement of the consent terms, substantial property rights in immovable property have been created and in that view of the matter, such consent terms would be amenable to payment of stamp duty as also registration under the law of registration. Learned Court i.e. my predecessor (Coram : Rohit B. Deo, J.) heard both parties and after hearing then came to the conclusion that

learned Trial Court has not considered the assertion and denial of parties in respect of the aforesaid proposition. Needless to state that Plaintiff had denied the case of the Defendant in so far as directing impounding, stamping and registration of the consent terms. This Court specifically held that learned Trial Court having not considered the aforesaid issue in detail and presumably left it open for determination at an appropriate stage. However after hearing both sides, this Court passed the order dated 05.07.2022 of which paragraph Nos. 4 and 5 is relevant for determination of this Petition and they read thus:-

"4. Irrespective of the narrative and the counter narrative, after some hearing both the learned counsel have agreed, on the basis of instructions received, that the question of registration and payment of stamp duty qua the consent order and terms can be left open for adjudication at the stage of recording evidence, if and when the said documents are tendered in evidence. In this view of the matter, no positive observation on the issue involved is necessary.

5. The petition is disposed of with the clarification that as agreed by the parties, the issue of registration and payment of stamp duty qua consent order and terms shall be adjudicated by the learned Trial Court at the stage of recording of evidence uninfluenced by any observation in the orders impugned."

4. This Court after hearing parties recorded that both learned counsel agreed on the basis of instructions received by them that the question of impounding, stamping and registration of the consent terms can be left open for adjudication at the stage of recording evidence, if and when the said document is tendered in evidence (*emphasis supplied*). The Petition was disposed of by order dated

05.07.2022 with a clarification that as agreed between parties issue of impounding, stamping and registration of the consent terms would be at the stage of recording evidence uninfluenced by any other observations. Conjoint reading of paragraph Nos. 4 and 5 would now have to be adhered to by the learned Trial Court and more specifically so when the order dated 06.10.2022 is passed. By order dated 06.10.2022, learned Trial Court has exhibited certified copy of the consent terms as Exh. C/32 which can be seen from page No.97 of the Writ Petition. Once exhibiting of the consent terms document is done, then learned Trial Court ought to have also implemented the directions given by this Court which are delineated in paragraph Nos. 4 and 5 of its order. Having not done so, it left the field open for the Defendant to file Application. Application for de-exhibiting since by the said order the document has been exhibited below Exh. C/32. The question as to whether the said document on the eve of its marking was to be impounded, sent for stamping and registration was in fact required to be proved by both the parties by recording evidence at the stage of marking of the said document as delineated by this Court. In that view of the matter, all that the learned Trial Court could have done was to permit both parties to record their evidence or if they did not wish to record their evidence, permit them to argue the issue as to whether the said document can be marked as Exh. C/32. This having

not been done, Application filed by Defendant was filed before the Trial Court. Application filed by Defendant sought impounding of the said document below Exh. C/32 and it be sent to the Collector of Stamps for adjudication for payment of stamp duty as also registration. These are the prayers in the Application dated 16.11.2022. That Application has been rejected by the impugned order dated 04.04.2024 which is appended at Exh. O, Page Nos. 115-122 of the Petition.

5. In the first instance, I have impressed upon Mr. Raheja, learned Advocate for Petitioner - Defendant that unless and until the order dated 05.07.2022 is followed in its letter and spirit, the question of accepting the case of the Defendant to send the document for impounding, stamping and registration cannot be allowed. After deliberating for sometime and after taking instructions from the Petitioner, Mr. Raheja would submit to the order of the Court.

6. Considering that both parties have given consent for seeking an imprimatur of the Court on the issue of impounding, stamping and registration at the time of marking of the document, the impugned order though sustained, nothing contained in that impugned order will come in the way of the Petitioner at the time of seeking imprimatur of the Trial Court for sending the said document for impounding, stamping and registration. It would be open for the Petitioner -

Defendant to seek appropriate directions from the Trial Court if it does not wish to lead evidence and in that case, if the Plaintiff requires to lead any evidence in rebuttal on the above issue, it is open to the Plaintiff to also either lead evidence or argue the issue of legality with respect to impounding, stamping and registration in accordance with law. Though I sustain the impugned order, nothing contained in the impugned order will be held against the Petitioner - Defendant since there are several *prima facie* findings therein. That apart considering the fact that the Suit is filed in the year 2015, exercise of validity of sending Exh. C/32 for impounding, stamping and registration at this stage will be carried out by the learned Trial Court within a period of eight weeks from today. For that reason, I do not wish to penalize the Defendant to make one more Application before the Trial Court which is not required in law in the interest of justice so that the trial does not get protracted any further. In that view of the matter, learned Trial Court shall strictly adhere to the directions contained in the order dated 05.07.2022 in so far as Exh. C/32 is concerned, determine at this stage within a period of eight weeks as to whether the said document is required to be impounded and sent for stamping and adjudication before the further evidence proceeds.

7. Apart from the aforesaid issue, there is one more grievance raised by the Defendant in the Petition. According to Petitioner,

certain documents which have been marked as exhibits on 06.10.2022 namely documents from Exh. C/32 onwards have not adhered to proper procedure. The said grievance is expressed in paragraph Nos. 22 and 23 of the Petition. According to him, documents which are referred to in paragraph No. 17 have not been marked as exhibits by the learned Trial Court in accordance with the procedure established by law. He would submit that there is an inherent defect in the endorsement appearing on the said document and in that view of the matter, whether to consider the said document as being exhibited for the purpose of its evidentiary value is the question. On the next date of hearing before the learned Trial Court, learned Trial Court is directed by the Court to consider the documents exhibited as Exh. C/31 to C/36 on 06.10.2022 and confirm whether the endorsement on the said document is correct or otherwise. Once the order dated 06.10.2022 is read and as it clearly states in the business section that the documents are exhibited and it is in reference to the chief recorded below Exh. 22, then it *prima facie* appears that the documents have been exhibited but if there is any deficiency in the endorsement, the same shall be corrected by the learned Trial Court on the next date of hearing after hearing the Defendant. This will suffice in so far as the grievance of Defendant in paragraph No. 23 is concerned.

8. Apart from the above, considering that the Suit is filed in the year 2015, learned Trial Court is directed to decide Special Civil Suit No. 637/2015 as expeditiously as possible and in any event within a period of nine months from today strictly in accordance with law and after allowing both parties to lead their respective evidence. Parties shall co-operate with the Trial Court and shall not seek unnecessary adjournment unless it is absolutely necessary in case of any urgency or emergency.

9. Needless to state that this Court has not given its opinion or imprimatur on any of the issues which are raised in the Petition nor any opinion given by the Trial Court will be held to be against any of the parties. Learned Trial Court shall strictly proceed with the Suit in accordance with law.

10. All contentions of the parties are expressly kept open.

11. With the above directions, Writ Petition is disposed. Interim Application No.12187 of 2024 is also disposed.

[MILIND N. JADHAV, J.]

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Digitally signed
by RAVINDRA
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Date:
2024.09.11
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