



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.2356 OF 2021

Chandrakant Kaluramji Agrawal and another .Vs. Sachin Manoharlal Agrawal and
others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri M.A. Deo, Advocate for petitioners.

Shri P.P. Kotwal, Advocate for the respondent Nos.1 to 3.

CORAM : ANIL S. KILOR, J.

DATED : 29/02/2024

1. In a suit for cancellation of agreement, on production of the agreement during the evidence, it was objected by the petitioner on the ground that it is insufficiently stamped and requires registration, which came to be rejected vide impugned order dated 14.02.2020.

2. Admittedly, the construction in question was not started on the date of agreement and it was incomplete on the date of impugned order passed and therefore, the learned trial Court rejected the objection with following observations:

"8. Considering the observations in the above authorities, it is clear that, the agreement not requires registration and stamps when there is no present and immediate demise. On perusal of recitals in the alleged agreement, it appears that, there was no handing over of possession of the suit property to the plaintiffs on the date of execution of the said agreement. On the contrary, in condition No.6 of the agreement, it is mentioned that, the party Nos.2 and 3 i.e. the defendant Nos.1 and 2 shall construct

the building, start the hospital and handover the possession of the shop to the party No.3 (sic) within one year of the commencement of the said agreement. Therefore, it is clear that, the defendant Nos.1 and 2 agreed to handover the shop, after completion of the construction. In condition No.6 of the alleged agreement, it is mentioned that, on failure to start the hospital within 15 months from the date of agreement, the party Nos.2 and 3 shall refund the entire amount of deposit. Therefore, it is clear that, the demise takes place only if the defendant Nos.1 and 2 fulfills the condition precedent i.e. construction of hospital as per the agreement. The plaintiffs have paid some amount as deposit cannot be sole factor to arrive at the conclusion that, there is present and immediate demise. The conditions in the alleged agreement contemplated that, both the parties have to comply some requirement i.e. payment of amount and construction within stipulated period. There were many prior conditions attached thereto. Therefore, the alleged agreement is an executory agreement. No possession, right or title had passed on the date of execution of the alleged agreement. Therefore, I am of the opinion that, there is no immediate and present demise. Therefore, the alleged agreement needs no registration and stamps.”

3. Considering the reasons recorded by the learned trial Court, I do not find any legal infirmity committed by the learned trial Court in rejecting the application. Accordingly, the writ petition is **dismissed**.

JUDGE