**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5902 OF 2025**

M/s. Arun Bhoomi Corporation … Petitioner
versus
Jayesh Kanji Maru … Respondent

Mr. Rubin Vakil with Ms. Lizum Wangdi, Ms. Meenakshi Pahuja i/by ANB Legal, for Petitioner.
Mr.Sandesh D. Patil with Mr. Krishnakant Deshmukh, Mr. Chintan Shah i/by Ms. Divya Arvind Pawar, for Respondent.

CORAM: N.J.JAMADAR, J.

DATE : 5 MAY 2025

P.C.

1. Heard the learned Counsel for the parties.

2. This Petition is directed against an order dated 7 November 2024 passed by the learned Civil Judge, S.D., Thane on an application (Exh.54) preferred by the Petitioner – Defendant No.1 for de-exhibiting the documents marked as Exhibit Nos.31 to 36. By the impugned order, the learned Civil Judge was persuaded to reject the application. It was, inter alia, held that the prayer of the Petitioner to impound the the consent terms (Exh.32) and send it for adjudication of the stamp duty and penalty thereon, as it amounts to a conveyance, was not tenable.

3. Mr. Vakil, learned Counsel for the Petitioner, would urge that the learned Civil Judge committed a grave error in law in declining to impound the consent terms (Exh.32). It was submitted that the consent terms constitutes

an instrument which was chargeable to duty as prescribed in Schedule I of the Maharashtra Stamp Act, 1958. If not a conveyance, the consent terms were chargeable to duty under Clause (B) of Article 5 of Schedule I and, in the least, a duty of Rs.500/- was required to be paid.

4. To buttress this submission, Mr. Vakil placed reliance on a judgment of the Supreme Court in the case of Ruby Sales and Services (P) Ltd. and Anr. V/s. State of Maharashtra and Ors.[1] In the said case, it was, inter alia, enunciated that the consent terms fall under the definitions of "Conveyance" as well as "Instrument". There is no particular pleasure in merely going by the label but what is decisive is the terms of the document. In the facts of the said case, it was clear from the terms of the consent decree that it is also an "instrument" under which title has been passed over to the appellants-plaintiffs. It was a live document transferring the property in dispute from the Defendants to the Plaintiffs.

5. Mr. Vakil further submitted that the contention on behalf of the Plaintiff that since the document has already been admitted in evidence, the objection about the insufficient stamp duty was not tenable, was wholly misconceived. A reference was made to a recent pronouncement of the Supreme Court in the case of G.M.Shahul Hameed V/s. Jayanthi R. Hegde[2], wherein the duty of the Court in not receiving the instrument in evidence which is insufficienlty

1 (1994) 1 SCC 531
2 (2024) 7 SCC 719

stamped, was expounded as under :

> "21. The presiding officer of a court being authorised in law to receive an instrument in evidence, is bound to give effect to the mandate of Sections 33 and 34 and retains the authority to impound an instrument even in the absence of any objection from any party to the proceedings. Such an absence of any objection would not clothe the presiding officer of the court with power to mechanically admit a document that is tendered for admission in evidence. The same limitation would apply even in case of an objection regarding admissibility of an instrument, owing to its insufficient stamping, being raised before a court of law. Irrespective of whether objection is raised or not, the question of admissibility has to be decided according to law."

6. Mr. Patil, learned Counsel for the Respondent, would urge that it is settled principal of law that once a document is marked in evidence, it cannot be de-exhibited. Even otherwise, having regard to the nature of the consent terms, it becomes explicitly clear that it does not amount to conveyance. On the contrary, the necessity of further documents to be executed by the parties and the payment of stamp duty thereon, at that stage, are explicitly recorded in the consent terms.

7. Mr. Patil invited attention of the Court to the provisions contained in Section 4 of the Stamp Act, 1948, which provides that where several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule-I for

the conveyance and the parties may determine for themselves which of the instruments so employed shall be deemed to be the principal instrument.

8. The proposition that the consent decree amounts to conveyance, if by the said decree, the rights in the immovable property are created or extinguished in presenti, is well settled. However, the moot question that arises for consideration is whether the consent terms (Exh.32) partake the character of an instrument, under which the rights of the parties were created or extinguished. Paragraph No.8 of the consent terms is material and, hence, extracted below :

> "8. In consideration of these consent terms having been arrived at the said M/s. Arunbhoomi Corporation agrees to provide the Petitioner with residential flats of a total saleable built up area of 11,000 sq.ft. free of cost in the first building and/or building to be constructed on the suit property. The said residential area to be allotted to the Petitioner shall be demarcated on the plan sanctioned by the Mira Bhayander Corporation in the building and/or buildings to be constructed on the said plot of land as soon as it is sanctioned. The Petitioner shall have the exclusive right to sell, lease and/or execute any third party rights in the flats so allotted to the Petitioner and also appropriate the sale proceeds thereof. M/s. Arunbhoomi Corporation its partner/assignee shall transfer the said flat in favour of Petitioner or its assignee by executing agreement as directed by the Petitioner. The stamp duty and registration charges in respect of the flats so allotted shall be borne and paid for by the Petitioner exclusively. In addition to the area allotted to the Petitioner, the said M/s. Arun Bhoomi

> Corporation to pay to the petitioner, a sum of Rs.25,00,000 (Rupees Twenty Rive Lacs only) (Demand Draft) on or before execution the consent terms."

9. A bare perusal of the aforesaid stipulations in paragraph No.8 of the consent terms, indicate that the Defendant had agreed to provide to the Petitioner residential flats of a total saleable built up area of 11,000 sq.ft. in the first building and/or buildings to be constructed on the suit property. Secondly, the said area shall be demarcated on the plan sanctioned by the Mira Bhayander Corporation, as soon as such plan was sanctioned. The Defendant No.1 would transfer the said flat in favour of the Petitioner or its assignees by executing agreement as directed by the Petitioner. The stamp duty and registration charges in respect of the flats so allotted shall be borne and paid for by the Petitioner. In addition, Defendant No.1 had agreed to pay to the Petitioner a sum of Rs.25 Lakhs on or before the execution of the consent terms.

10. The aforesaid stipulations, prima facie, indicate that the consent terms were executory in nature. Defendant No.1 had agreed to transfer flats upon the construction on the suit land in accordance with the plan to be sanctioned. The area to be allotted was to be demarcated on the plan so sanctioned. Transfer was to be effected by executing instruments by the Defendant No.1 in favour of the Petitioner therein or its assignees. At that point of time, stamp duty was to be paid by the Petitioner therein. Consent terms, prima

facie, do not operate as conveyance of title in the property to the Plaintiff. Further, instruments were agreed to be executed.

11. In this backdrop, the learned Civil Judge was justified in observing that the consent terms were executory in nature. No interference is, thus, warranted in the impugned order.

12. The Writ Petition stands dismissed.

(N.J.JAMADAR, J.)