Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15400 OF 2025

Ali Ahmed Haji Salamat Chaudhary ...Petitioner

Versus

The Municipal Corporation Of Greater Bombay And Anr. ...Respondents

Mr. Mohit Jadhav, a/w Kajal Chourasiya and Manish Shirke, for the Petitioner.
Mr. Santosh Mali, i/b Komal Punjabi, for Respondent No.1/ BMC.
Mr. Vijay Gharat, for Respondent No.2.

CORAM: N. J. JAMADAR, J.
DATED: 18th NOVEMBER, 2025

Oral Order:-

1. Heard the learned Counsel for the petitioner.

2. The challenge in this petition is to an order dated 11th September, 2025 passed by the learned Judge, City Civil Court, whereby the learned Judge declined to admit the document, i.e. an Agreement for Sale dated 10th December, 1990, in evidence.

3. The plaintiff has instituted a suit assailing the legality and validity of the notice dated 3rd May, 2005 and the order dated 8th March, 2023 passed by respondent No.1 in respect of the suit structure. In the said suit, the plaintiff adduced evidence of Niaz Ahmed Choudhary (PW2). In the evidence of the said witness, the Agreement for Sale dated 10th December, 1990 was introduced. By an order dated 8th March, 2023, the learned Judge, City Civil Court, was persuaded to impound the said document by invoking the provisions contained in Section 33 of the Maharashtra Court Stamp Act, 1958 ("the Stamp Act"), as the said document was not sufficiently stamped.

4. It appears that, the plaintiff had not paid the requisite deficit stamp-duty and penalty after the document was sent to the Collector of Stamps for adjudication of the stamp-duty and penalty. It was the stand of the plaintiff that despite the payment of the deficit stamp-duty and penalty, eventually, the document would not be registered and, therefore, no purpose would be served by paying the deficit stamp-duty and penalty. The plaintiff, however, insisted for admission of the said document in evidence.

5. By the impugned order, the learned Judge declined to admit the document in evidence as the plaintiff did not comply with the directions to pay the deficit stamp-duty and penalty, if any, thereon. The impugned order further records that the order impounding the document has not been challenged and has attained finality.

6. The learned Counsel for the petitioner submitted that, the document though not registered can be looked into for collateral purpose. Therefore, notwithstanding the default on the part of the plaintiff to pay the deficit stamp-duty and penalty, the document ought to have been admitted in evidence. Reliance was placed on the judgment of the Supreme Court in the case of ***P. Anjanappa (D) by LRs. vs. A. P. Nanjundappa and ors.*[1]*.***

7. The learned Judge, City Civil Court, was fully justified in declining to admit the document, which has been impounded, as the deficit stamp-duty and penalty thereon, was not paid. The issues of payment of deficit stamp-duty on an instrument and the registration of the instrument, are totally distinct. Under the provisions of Section 34 of the Stamp Act no instrument chargeable with duty can be admitted in evidence unless such instrument is duly stamped. The proviso to Section 34 provides that, any such instrument shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or in the case of an insufficiently stamped instrument, the amount required to make up such duty, is paid.

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1 MANU/SC/1489/2025.

8. In this view of the matter, till the petitioner pays the deficit stamp-duty and penalty on the said instrument, the same cannot be admitted in evidence. Therefore, in exercise of the supervisory jurisdiction no interference is warranted with the impugned order.

9. The petition stands dismissed.

[N. J. JAMADAR, J.]