

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

SUIT NO.1304 OF 1986

Tirupati (Mahalaxmi Co-op. HSG Soc. Ltd.)....Plaintiff
V/s.

M/s.Gowani Builders (Pvt) Ltd.& Ors.)....Defendants

Mr.Akash Rebello a/w Mr.Keegan Almeida I/by M.T.Miskita and Co.
for plaintiff.

Mr.D.V.Deokar I/by Parimal K.Shroff for defendant no.1.

Mr.M.A.Kamdar I/by M/s.Kanga & Co. for defendant no.2.

CORAM : K.R.SHRIRAM,J

DATE : 5.10.2018

P.C.:-

1. Mr.Deokar for defendant no.1 states that by an order dated 30.7.2015 this court had granted liberty to defendant no.2 to cross examine witness of defendant no.1 and similar liberty was also given to defendant no.1 to cross-examine witness of defendant no.2.

Mr.Rebello for plaintiff, however, disagrees and submits that liberty was granted only for defendant no.2 to cross-examine the witness of defendant no.1 and no such liberty was granted to defendant no.1 to cross-examine the witness of defendant no.2.

2. I have considered the order dated 30.7.2015 and when the order is read holistically it does appear that liberty has been given to defendant no.1 and defendant no.2 to cross-examine the witnesses of each other. The court has, however, put a caveat stating if the cross-examination does not establish the adverse interest of defendants, the evidence to the extent of cross-examination could not and would not be considered. Paragraph-12 of the said order reads as under :-

“12. Hence to determine the entire truth an opportunity is required to be given to defendant No.2 to cross examine defendant No.1 and then to see the worth of the cross examination before it can be accepted on record. Needless to state that if the cross examination does not establish the adverse interest of the defendant it could not and would not be considered.”

3. In view of the above, if plaintiff is able to establish at the time of final arguments that cross-examination of defendant no.1 and defendant no.2 of the witness of defendant no.2 & defendant no.1 respectively, establishes adverse interest, certainly the Court will not consider the evidence to the extent of those portions in cross-examination. Mr.Rebello also states that plaintiff has enough material to establish that the order dated 30.7.2015 has been obtained by defendant no.2 by making false statement to the court. The court shall consider the same while deciding whether the cross-examination should be considered or not. Mr.Rebello states that even

if cross-examination does not establish any adverse interest, plaintiff will still be able to satisfy the court that in view of the manner in which defendant no.2 obtained the order dated 30.7.2015, the court will have to ignore/discard those portions of cross-examination by defendant no.1 & defendant no.2 of each others' witness. It will certainly be open for plaintiff to make out such a case at the final hearing.

4. Accordingly, time to complete cross-examination of DW-2 is extended upto and including 31.10.2018.

5. Mr.Rebello states that document received in evidence as Exh.D4 is consent terms dated 2.11.1982. By this document, defendant no.1 is conveying property mentioned therein to defendant no.2 and therefore, even if the court has received this document in evidence for whatever reason, still, this court is obliged under Section 33 of the Maharashtra Stamp Act 1958 to impound this document and send it for adjudication.

6. Mr.Kamdar for defendant no.2 states that based on these consent terms, decree has been drawn up and registered and therefore, at this stage, question of any impounding document or

paying stamp duty does not arise. Mr.Kamdar also states that copy of that decree will also be handed over to Prothonotary & Senior Master by 10.10.2018.

Mr.Rebello states that copy of Exh.D-4 will also be handed over by plaintiff to Prothonotary & Senior Master by 10.10.2018.

7. Interest of justice will be met if Prothonotary & Senior Master, High Court, Bombay forwards a copy of this document to the Collector of Stamp to ascertain whether :- (a) it requires stamp duty to be paid and registration; (b) if it has to be paid then quantum and (c) if any penalty or interest has to be paid.

8. Therefore, Prothonotary & Senior Master, High Court, Bombay to forward both these documents to the Collector of Stamp who shall upon receiving these documents determine :- (a) whether any stamp duty is payable on the two documents ; (b) quantum ; (c) any penalty or interest is payable and (d) whether it require compulsory registration and if so, what would be the registration charges.

9. Collector of stamp shall submit a report within six weeks of receiving a communication from the Prothonotary & Senior Master

who shall mark a copy of the communication to the Advocate for respective parties. Collector of stamp to also give the parties, a hearing before passing final order. The effect of the order can be considered at the time of final hearing of the suit.

Stand over to 2.11.2018 for directions.

(K.R.SHRIRAM,J)