

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CIVIL REVISION PETITION NOS.364 OF 2015 AND 720 OF 2017

COMMON ORDER:

CRPMP No.2698 of 2015 is filed to condone the delay of 46 days in filing the application for restoration of CRP No.364 of 2015, which was dismissed on 13.02.2015. I.A.No.3 of 2015 is filed to restore CRP No.364 of 2015.

2. Heard the arguments of the learned counsel for the petitioner and the respondents.

3. The delay in filing the application (CRPMP 2968 of 2015) is condoned. CRP 364 of 2015 is restored and heard with CRP 720 of 2017.

4. Both the revisions arise out of an objection taken for payment of stamp duty and penalty on the document, which has been marked in the lower Court. Initially, the document, Ex.A1 was marked on 06.11.2012 during the course of trial. Later, on 15.02.2013 I.A.No.110 of 2013 was filed to reject the already marked agreement of sale, dated 28.06.1999, which was marked through P.W.1. Peculiarly, the said application came to be allowed. The lower Court came to the conclusion that the document is to be impounded and the stamp duty and penalty are to be paid. By an order, dated, 05.02.2014 15 days time was given for payment of stamp duty and penalty. Thereafter, it appears that on 13.02.2014, an application was filed under Section 38 (2) of Indian Stamp Act in I.A.No.82 of 2014 to send Ex.A1-agreement of sale, dated 28.06.1999 to the District Collector, Machilipatnam for impounding stamp duty and penalty.

5. The matter was heard and the lower Court passed an order, dated 06.03.2014 stating that as the stamp duty and penalty was not paid, the application was dismissed. Along with the same, the lower Court also passed an order rejecting the plaint also. These orders are questioned in these revisions.

6. Learned counsel for the revision petitioner submits that rejection of plaint is totally erroneous and that an appeal has filed against the same and the appeal was also allowed. Therefore, there is no controversy about the rejection of the plaint.

7. Now the point for consideration is whether the lower Court was right in dismissing I.A.No.82 of 2014?

8. Learned counsel for the petitioner submits that once the party makes an application for payment of stamp duty and penalty and request that the same should be sent to the appropriate authority under the Indian Stamp Act, namely to the Collector, the Court does not have an option to insist that the party should pay stamp duty and penalty. He relied on the decisions reported in **CHINTALAPADI ANNAPURNAMMA AND ANOTHER V ANDUKURI PUNNAYYA SASTRY AND OTHERS** ¹, **RAMA SEETHAMMA V TELUGU SOLIPURAM NARASIMHA** ² and **K.GOPAL REDDY AND OTHERS V M.BUCHAMMA AND ANOTHER** ³. The contention of the learned counsel for the petitioner is that once the party has exercised his option, the Court should send the document for collecting stamp duty and penalty. In response thereto, learned counsel for the respondents argues that there are no merits in the application and that order passed by the lower Court is a correct order basing on the facts and

¹ 2000 (3) ALD 649 (DB)

² 2002 (5) ALD 330

³ 2014 (2) ALT 508

circumstances of the case that are pleaded before the lower Court. He supports the impugned order.

9. This Court notices the settled case law, which has been cited across the bar and that the revision petitioner wanted to pay stamp duty and penalty, the designated authority under the Indian Stamp Act. The application is filed only to send the document to the Collector for the purpose of impounding stamp duty and penalty if necessary. This application in the opinion of this Court is as per the provisions of the Indian Stamp Act. Any Court before which, a document is filed and is insufficiently stamped, the same shall be sent to the Collector for impounding stamp duty and penalty. Otherwise the document cannot be admitted in evidence. The applicant has proved his bona fides by filing an application to send the document for impounding. But rejecting the same at the threshold is not correct. In view of the settled law on the subject, this Court is of the opinion that the part of the order by which, the application I.A.No.82 of 2014 is rejected is not correct. Therefore, the impugned order, dated 06.03.2014 insofar as it relates to rejection of the application i.e., I.A.No.82 of 2014 is set aside. Therefore, this order is limited to that portion by which I.A.No.82 of 2014 was rejected. Hence, CRP 720 of 2017 is allowed.

10. In view of the fact that CRP 720 of 2017 is allowed, this Court is of the opinion that nothing survives for consideration in CRP No.364 of 2015. The revision petitioner agreed with the order passed and filed an application to send the document for adjudication. Hence, CRP 364 of 2015 does not survive for consideration.

11. Accordingly, CRP No.364 of 2015 is dismissed and CRP No.720 of 2017 is allowed. The lower Court is

directed to send the document to the District Registrar, Krishna District, for impounding stamp duty and penalty by fixing a time frame within which the document should be examined and to return the same within 30 days. The revision petitioner should also approach the District Registrar and pay the stamp duty/penalty etc., as demanded. No order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand closed.

DATED:12-12-2018.

Hsd

D.V.S.S.SOMAYAJULU, J

