IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18595 of 2015

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1. Chandan Prasad son of Sri Ram Narayan Prasad, resident of Mohalla- Bajalpura, P.O + P.S.- Teghra, District- Begusarai (Bihar).
2. Shayam Sunder Mishra, son of Late Ram Brikha Mishra, Resident of village + Post- Chandauna, P.S.- Jale, District- Darbhanga.

.... Petitioners

Versus

1. The State of Bihar.
2. The Secretary cum IG Registration, Department of Registration, Bihar, Patna.

.... Respondents

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Appearance :

For the Petitioners : Mr. Y.V. Giri, Sr. Advocate
Mrs. Archana Sinha, Advocate

For the Respondents : Mr. Ranjeet Kumar, Pr.AAG 1

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
And
HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)
Date: 17-11-2016

Heard learned senior counsel for the petitioners and learned counsel for the State.

2. The challenge in the present writ petition is to a notification dated 21st of July 2015 whereby a proviso was added to sub-rule (2) of Rule 3 of the Bihar Stamp Rules, 1954 which reads as under:

> "Provided also that the Department of Registration, Excise & Prohibition may subject to such conditions as it thinks proper to impose, authorize any or all registering officers of the State to make endorsement, of the stamp duty paid either by cash/cheque in specified banks through consolidated challan approved by Finance Department or by debit card/credit card/ net banking through specified payment gateway on the instrument and such instrument

after endorsement shall be deemed to be stamped under sub-section (1) of Section 10 of the Indian Stamp Act, 1899 for the amount mentioned in the endorsement"

3. The argument of the learned Senior counsel for the petitioners is that such proviso is contrary to Section 10-A of the Indian Stamp Act as the Collector in terms of Section 10-A of the Act may permit duty to be paid in cash and authorize the Treasury or Sub-Treasury Officer to certify the amount of duty so paid in cash and make endorsement but such power can be exercised if there is temporary shortage of stamp in the district. Therefore, the proviso so inserted permitting payment through debit card, credit card, net banking is contrary to mandate of Section 10-A of the Act.

4. However, the argument of the learned counsel for the petitioners cannot be accepted in view of Section 10 of the Indian Stamp Act which reads as under :-

> "10. **Duties how to be paid**.- (1) Except as otherwise expressly provided in this Act, all duties, with which any instruments are chargeable, shall be paid and such payment shall be indicated on such instruments, by means of stamps-
>
> (a) according to the provisions herein contained; or
>
> (b) when no such provision is applicable thereto-as the State Government may by rule direct.
>
> (2) The rules made under sub-section (1) may, among other matters, regulate,-
>
> (a) in the case of each kind of instrument- the description of stamps which may be used;

(b) in the case of instruments stamped with impressed stamp- the number of stamps which may be used;
(c) in the case of bills-of-exchange or promissory notes- the size of the paper on which they are written."

5. In terms of Section 10, the stamp duty is payable under Sub-section (1)(a) of in terms of the provisions contained in the Act or in terms of Sub-section (1) (b) as the State may direct. Therefore, the payment through debit card, credit card, net banking is within the competence of the State Government in terms of Section 10 (1) (b) of the Indian Stamp Act i.e. as per the directions of State Government by virtue of Rules framed. Such provisions are legal and within the authority of the State Government.

6. The option under Section 10-A of the Act is to meet out urgent requirement which is a provision of exceptional circumstance. Therefore, it cannot be said that the payment through debit card, credit card, net banking is contrary of Section 10 of the Act.

7. In view of the above, we do not find any merit in the present writ petition and the same is dismissed.

(Hemant Gupta, ACJ)

(Vikash Jain, J)

B.T/-

AFR/NAFR	AFR
CAV DATE	N.A.
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