

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.1168 of 2016

ORDER:

This Civil Revision Petition is filed against the order dated 28.01.2016 in Memo S.R.No.7867 of 2014 in O.S.No.11 of 2009 on the file of III Additional District Judge, East Godavari District at Kakinada.

2. The revision petitioner is the plaintiff and the revision respondents are defendants 1 to 9 in the above said suit, which is filed for eviction and recovery of possession with other incidental reliefs including for the amount.

3. Ex.A6 is the document which is titled as Memorandum of Understanding executed on 26.06.2008 between plaintiff and the 1st defendant, represented by 4th defendant as Secretary and Correspondent. The document speaks about termination of tenancy and surrender of lease covered by earlier lease deed dated 27.03.2006 w.e.f. surrender 25.06.2008 registered document No.2524 and regarding the irregular payment of rents and what is paid acknowledged with what is further liable of Rs.22,40,517/- as on 24.06.2008 which the Second Party means the 1st defendant undertakes to pay entire arrears supra with

interest to be calculated up-to-date of actual handing over possession of property mentioned in schedule on or before 31.08.2008 and Second Party also unconditionally assures to vacate and hand over possession to the First Party by that date to continue in the mean time as per mutual agreeing. When the document while marking on 12.12.2012 as Ex.A6, objection raised regarding the sufficiency of stamp duty and the Court answered after hearing both sides vide order dated 28.01.2016 finally. It is to say on 13.06.2014 to impound the document, the Administrative Officer of the Court put a note on 14.11.2014 referring to Article 35 of the Indian Stamp Act of the same is chargeable with duty as bond of Rs.100/- with penalty of 10 times total payable on impound comes to Rs.1,100/-. On that when the Court collected the stamp duty, the defendants filed another memo stating that the document cannot be collected as bond as such it requires stamp duty more. It is after hearing the rival contentions including by plaintiff saying it is only a mere acknowledgment and not a bond and defendants saying it is something more not a mere bond and liable more than Rs.100/- with 10 times penalty the Court ultimately observed under the impugned order to pay deficit saying stamp duty for the bond being the highest.

4. In fact the stamp duty payable to the bond is Rs.100/-. Before that, a reading of Section 2(14) defines instrument and the document in question satisfies the definition of instrument and Section 2(2) defines bond and clause (b) of it satisfies the meaning of bond from clause (5) of the memorandum of understanding supra. In fact clause 2(6) says an instrument executed after commencement of the Act from 16.11.1948, and chargeable under the Act applied to any other instrument chargeable under the law in force where executed or by several persons at different times including the first executed the highest to be paid. Here, said clause has no application. Even taken the document contains a covenant of lease and extinguish and surrender of lease and also an acknowledgment regarding what is due and undertaking to pay and also contains a receipt for what is paid as acknowledged, apart from the same is attested and undertaking to pay further amount, it is within the meaning of bond. The bond is the highest stamp duty chargeable, when compared to lease and acknowledgment and receipt and what was paid of Rs.1,100/- is thus sufficient. However, if at all there is any difficulty for the lower Court it should have been referred to the District Registrar from the provisions of Sections 39 to 42

of the Stamp Act and also from the expression of the Apex Court in *Chilkoti Gangulappa v. Revenue Divisional Officer, Madanapalli*¹. The impugned order besides for nothing more of what more if payable and what is paid is insufficient even.

5. Having regard to the above, the impugned order is set aside and what is paid is held sufficient and it is still left open to the Court if at all shown what is paid is insufficient to refer to the District Registrar for impounding to collect any balance amount by deducting whatever paid of Rs.1,100/- and in the event the District Registrar impounded with lesser amount, the plaintiff is entitled to refund also.

6. Accordingly, this Civil Revision Petition is disposed of. No costs.

7. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

Date:29-08-2016
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¹ AIR 2001 SC 1321