

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

1 CR No.1272 of 2016
Date of decision:27.02.2016

Aerens Goldsouk International Ltd. ... Petitioner

Vs.

Usha Gupta and others ... Respondents

2 CR No.1282 of 2016

Aerens Goldsouk International Ltd. ... Petitioner

Vs.

Usha Gupta and others ... Respondents

3 CR No.1287 of 2016

Aerens Goldsouk International Ltd. ... Petitioner

Vs.

Usha Gupta and others ... Respondents

4 CR No.1290 of 2016

Aerens Goldsouk International Ltd. ... Petitioner

Vs.

Usha Gupta and others ... Respondents

5 CR No.1291 of 2016

Aerens Goldsouk International Ltd. ... Petitioner

Vs.

Usha Gupta and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Sanjeev Sagar, Advocate with
Mr. Sourabh Goel, Advocate and
Mr. Yajur Bhalla, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

Notice of motion.

On asking of the Court, Mr.K.S.Khehar, Advocate accepts notice on behalf of the respondents.

This order of mine shall dispose of five revision petitions bearing Nos.1272, 1282, 1287, 1290 and 1291 of 2016, filed against the order, whereby, an application filed under Sections 33 to 35 of the Indian Stamp Act, 1899 (for short '1899 Act'), seeking indulgence of the trial Court for impounding of the un-registered lease deed, has been dismissed.

Mr.Sanjeev Sagar, learned counsel assisted by Mr. Sourabh Goel and Mr. Yajur Bhalla, Advocates, appearing on behalf of the petitioner, in support of the grounds of revision petition, has raised multi-fold arguments which are enumerated herein below:-

1. De hors of the fact that vide order dated 19.03.2014, the defence of the petitioner-defendant has been struck off,, it would not preclude them from raising such an objection by bringing it to the notice of the Court of aforesaid provision. In support of his contention, relied upon para 20 of the judgment rendered by

the Hon'ble Supreme Court in **Sopan Sukhdeo Sable and others vs. Assistant Charity Commissioner and others AIR 2004 SC 1801**, wherein, it has been held that irrespective of the right to contest such objections, the same can be taken in view of the provisions of Rule 11 of Order VII of the Code of Civil Procedure.

2. Section 33 of 1899 Act envisages the situation where the document can be impounded, whereas, in the instant case, lease deed dated 25.08.2009 is for 9 years and unregistered, thus, an unregistered document cannot be admitted into evidence as per the provisions of Section 35 of 1899 Act, as required to be chargeable with duty. In support of such contention, relied upon para 13 and 14 of the judgment of the Hon'ble Supreme Court in **Tirupati Developers vs. State of Uttarakhand and others, 2013(4) RCR (Civil) 57**; para 8 of the judgment of the High Court of Delhi in **Eider PW1 Paging Limited; Eider PW1 Communications Ltd. vs. Union of India (UOI) and others 2010(115) DRJ 263** and para 17 and 18 of the judgment of High Court of Delhi in **Bhupender Singh Bhalla vs. Neelu Bhalla @ Neelam Singh 2014 Indian Apex Decision (Delhi) 69** to contend that even if the terms and conditions or a clause of the lease deed cast duty upon the lessee to pay the stamp duty, the plaintiff-lessor cannot be prevented from the payment of the same but shall be at liberty to recover the same but in the absence of the same, the document is required to be impounded.

3. He also relied upon para 12 of the judgment of the

Hon'ble Supreme Court in **SMS Tea Estates Pvt. Ltd. vs. Chandmari Tea Company Pvt. Ltd. 2012(1) RCR (Civil) 305**, to contend that in case, the document is not found to be duly stamped, there is an embargo as per the provisions of Section 35 of the 1899 Act, and in essence, the document cannot be acted upon and therefore, the suit seeking ejectment cannot proceed until and unless, the objections are decided.

4. Despite there being an order dated 29.08.2014, whereby, an application by invoking the aforementioned provisions, the trial Court had given liberty to raise an objection at the stage of final arguments yet the Court did not show any concern or interest in deciding the objections and proceeding further to decide the suit, in essence, with pre-determination is writ large. It is in these circumstances, an occasion arose to move an application.

Whereas, Mr. K.S.Khehar, learned counsel appearing on behalf of the respondent/lessors submits that lease deed, aforementioned contains the clause of the resolution of dispute through arbitration. Since the dispute had arisen, the lessors approached this Court for appointment of the Arbitrator but such application was seriously and vehemently contested by taking up the plea that the agreement cannot be looked into for want of signatures and in view of such precarious situation, the lessors were compelled to withdraw the petition/application filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short '1996 Act') and filed the present suit.

The lessee, whose, defence has been struck off is creating all possible myriad circumstances in adjudication of the suit which are demonstrated herein below:-

1. Initially they filed an application under Section 8 of 1996 Act which was rejected. Siimilar application invoking the provisions of Section 33 to 35 of 1899 Act, as noticed above was moved which was disposed of vide order dated 29.08.2014 by giving liberty to the petitioner-defendant to raise an objection, much less, the objection shall be considered at the time of final arguments.

2. The application under Section 10 read with Section 151 CPC and Section 5 of 1996 Act was filed which was dismissed vide order dated 20.08.2015. An application invoking the provisions of Order 1 Rule 10 read with Section 151 of the CPC was moved for deletion of the name of Union of India from the array of the parties on the premise that in the cross-examination of the lessor, it surfaced that there is no relationship of landlord and tenant and accordingly, the said application was dismissed by the trial Court. The said order was assailed by filing five revision petitions which were dismissed vide order dated 11.01.2016 by taking the facts from CR No.7982 of 2015. This Court, while dismissing the revision also held that it was a mischievous act to stall the legal proceedings. The petitioner had also filed an application under Section 151 and 152 of the CPC in CR No.5 of 2014 and the same was also dismissed, vide order dated 19.02.2016.

All these factors would lead to show that the respondents

are adopting all possible dilatory tactics to stall the adjudication of the suit.

I have heard the learned counsel for the parties and of the view that there is no force/substance in the plea of Mr. Sanjeev Sagar, much less, civil revisions sans merits, for, there is no dispute to the applicability of the provisions of Sections 33 to 35 of 1899 Act but each case has to be seen on its own facts.

There is also no dispute with regard to the ratio decidendi culled out in the judgments cited above. The trial Court vide order dated 29.08.2014 had kept the objections vis-a-vis the admissibility and impounding of the document open to be considered at the time of final arguments. For the sake of brevity, the order dated 29.08.2014 reads thus:

“Application under Section 33 to 35 of the Indian Stamp Act

*Present: Sh. Vivek Sharma, counsel for plaintiff.
Sh. R. Y. Kalia, Counsel for defendant No.1.
Defendant No.2 ex parte.*

ORDER

This order of mine shall dispose off an application filed by the applicant/defendant No.1 and the defendant No.2 under Section 33 to 35 of the Stamp Act.

2. The application stated that the case of the plaintiff is based upon the Lease Deed which is an unregistered document and the same cannot be admitted into the evidence. He further submitted that putting Exhibit at this stage would mean that the document has been admitted

on the case file and the provisions of Stamp Act would be violated.

3. *On notice, Ld. Counsel for the plaintiff appeared and denied the contentions of the application. He submitted that the present application is just to delay the trial of the Court. He also argued that the plaintiff asked many time to get the sale deed registered but the defendant did not do it with malafide intention. Hence prayed for dismissal of the same.*

4. *argument have been heard.*

5. *In the present case the contention of the applicant is that the lease deed should not be exhibited into the evidence because the same is not stamped. The whole case of the plaintiff is based upon the lease deed. The contention of the plaintiff is that he asked the defendant many times to get the sale deed registered but they did not do it.*

6. *It is important to mention here that the whole case of the plaintiff is based upon the lease deed. The admission of one document is different issue and allowing the document is a separate issue. The question whether the document is relevant or can be relied upon or not can be decided at the stage of final argument. Onus to prove the Lease Deed on which the whole case of the plaintiff is based upon the plaintiff if the plaintiff fails to prove the*

document, the same would not be read into evidence at the time of passing judgment but at this stage, denying to put Exhibit on the lease deed without giving an opportunity to lead evidence would be that the same could not be read in evidence and further the whole case of the plaintiff fails.

7. *Ld. Counsel for the applicant relies upon M/s SMS Tea Estate Pvt. Ltd. vs. Chandmari Tea Co. Pvt. Ltd. 2011 (14) SCC 66, in which the Hon'ble Supreme Court has held that "if the document is found to be not duly stamped, Section 35 of Stamp Act bars the said document being acted upon." There is no dispute in regard to authority cited by the Ld. Counsel for the applicant but what was the reason that the document was not stamped and only be explained by the plaintiff in evidence. The Hon'ble Apex Court in the above cited authority has clearly mentioned that the Court cannot act upon the document which is not duly stamped but that can only be done at the stage of passing the judgment. At this stage, the contention of the plaintiff is that the defendant did not get the lease deed registered. Let the plaintiff proof this fact in evidence and let the opportunity to bring evidence on this point be given to the plaintiff so that his right is not violated. If he fails to bring any evidence the document would not be read into evidence.*

8. Also, the plaintiff in his plaint clearly mentioned that to get the lease stamped was the duty of defendant No.1 and the perusal of Clause (9) of the Lease also says it was the responsibility of the lessee to get the lease stamped, so at this stage without giving any opportunity to lead evidence the applicant cannot seek that the document should not be exhibited.

9. It was held by Hon'ble Apex Court in *Bipin Shanti Lal Panchal vs. State of Gujrat*, 2001 (1) RCR Criminal 859 that "whenever objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence, the trial Court can make a note of such objection and marked the objected document tentatively as an Exhibit in the case (or record the objected part of the oral evidence)", subject to such objection to be decided at the last stage in the final judgment. If the Court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. Can there is no illegality in adopting such a course. It was also held in *Narbata Devi Gupta vs. Virender Kumar Jaiswal*, 2003(8) SCC 745, by Hon'ble Supreme Court that "mere marking the document as Exhibit not sufficient. Execution has to prove admissible evidence."

10. Hence, in view of my finding above, the application

under Section 33 to 35 of Stamp Act filed by defendant No.1 dated 02.08.2014 and filed by defendant No.2 dated 29.7.2014 dismissed. Ld. Counsel for the applicant is at liberty to record his objection in record to the document which will be considered at this stage of final argument.”

The factors noticed above, in my view, lead to irresistible conclusion, the petitioner has been making all possible attempts, hindrance/impediments to thwart the adjudication of the suit, much less, to bring it to its logical end. The order dated 29.08.2014 is clear and unambiguous. It does not lead to any confusion in the mind of the Court or as well as party that objection raised vis-a-vis the admissibility and the impounding of the document shall not be considered by the Court. In my view, the impugned order deciding the application, seeking invocation of the provisions under Sections 33 to 35 of 1899 Act, is an act of the skepticism which does not have any answer to it. In case the Court does not decide the objection vis-a-vis the admissibility and the applicability of the provisions of the 1899 Act, the party would be at liberty to seek the vindication of the order in accordance with law, but not in the manner and mode which has been adopted. I am of the opinion that it is a clear cut case of adoption of a dilatory and delaying tactics at the instance of the petitioner/lessee which should not go unnoticed by this Court.

In view of what has been noticed above, the impugned order is hereby affirmed as I do not find any illegality and perversity and the same cannot be said to have been passed without

jurisdiction. There is no merit in the revision petitions and the same are dismissed with costs of ₹7500/- in each case. Let the costs be paid to the respondent-plaintiffs in the trial Court, failing which, the petitioner shall be precluded to raise arguments before the trial Court. The trial Court is directed to expedite the decision of the suit as early as possible preferably within a period of one month from the date of receipt of certified copy of this order.

(AMIT RAWAL)
JUDGE

February 27, 2016
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