IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

247 **CR No.2178 of 2015 (O&M)**
Date of Decision: November 15, 2016

UJAGAR SINGH

-PETITIONER

VS

PREMI AND ORS

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. C.B.Goel, Advocate
for the petitioner.

Mr.R.K.Dhiman, Advocate
for the respondents.

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RAJ MOHAN SINGH, J. (ORAL)

CM-17732-CII-2016

Prayer in this application is for bringing on record legal representatives of deceased-Premi widow of Mani Ram and Samesh wife of Jarnail (respondents No.1 and 3 respectively).

For the reasons mentioned in the application, the same is allowed and legal representatives of deceased-respondents No.1 and 3 respectively as shown in para No.2 and 3 of the application are ordered to be brought on record subject to all just exceptions.

Amended memo of parties is also taken on record.

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Mr. R.K.Dhiman, Advocate has filed Power of Attorney on behalf of the respondents. Appearance of Mr.R.K.Dhiman, Advocate would suffice to serve the purpose of service qua the legal representatives as well.

Main case

Petitioner has assailed order dated 19.03.2015 passed by Civil Judge (Junior Division), Yamuna Nagar at Jagadhri vide which application for making good the deficiency of stamp duty with penalty under Section 35(a) of the Indian Stamp Act, 1899 was dismissed.

Plaintiff-petitioner filed a suit for possession by way of specific performance of contract on the basis of agreement to sell dated 22.07.1995.

The suit was contested by the defendants. Execution of agreement to sell was denied, rather factum of mortgage or sale with the plaintiff-petitioner was asserted. Plaintiff-petitioner got examined PW1 Neeraj Sharma in support of agreement to sell which was executed by late Sh. Mani Ram. At the time of production of the document, an objection was raised by defendants-respondents in respect of mode of proof and production, alleging that the agreement to sell was not on stamp duty as required under law.

Plaintiff led his evidence unmindful of the objection.

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At a later stage, an application under Section 35(a) of the Stamp Act was moved for seeking permission to make good the deficiency on the stamp along with penalty on the agreement to sell as required under the proviso to Section 35(a) of the Act.

It was contended that the agreement to sell was executed on 22.07.1995 by late Sh. Mani Ram, predecessor-in-interest of the defendants in favour of the plaintiff in the presence of witnesses at the back of the original mortgage deed dated 01.07.1986. The agreement to sell was not written on separate stamp paper of Rs.3. The plaintiff showed his willingness to make good the deficiency along with penalty under proviso to Section 35(a) of the Indian Stamp Act, 1899. The application was contested by the defendants. Trial Court ultimately dismissed the application vide order dated 19.03.2015.

Learned counsel for the petitioner submitted that in terms of Section 35(a) of the Indian Stamp Act, 1899, "any such instrument [shall] be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times

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such duty or portion”.

By relying upon the proviso to aforesaid provision, learned counsel submitted that the said proviso can be relied upon to make good the deficiency irrespective of the stage of the suit because Court becomes functus officio only after pronouncement of the order. Even though the objection was raised by the defendants at the time of exhibition of document, the document was never de-exhibited thereafter. Technicality should not come in the way of imparting substantial justice between the parties. Once compounding mechanism is provided in the provision itself, the same can be resorted to by the plaintiff-petitioner. Even otherwise, issue of Court fee and stamp duty is always between the Court and the plaintiff.

It is a settled principle of law that mere technicalities cannot be pitted against substantial cause of justice. In a suit for specific performance, entire thrust would be on the agreement to sell for which a stamp was required to be affixed in terms of Schedule provided under the Stamp Act.

Even if, there was some omission on the part of the plaintiff in not resorting to the required action within reasonable time, the same can be remedied by way of imposing adequate costs.

In view of aforesaid, this revision petition is allowed

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subject to payment of costs of Rs.10,000/- payable to the respondents. Payment of costs shall be a condition precedent for granting indulgence by the trial Court in the aforesaid context. Subject to payment of costs and requisite Court fee along with penalty, let a follow up action be taken by the trial Court.

Both the parties shall appear before the trial Court on 08.12.2016.

15.11.2016
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(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable Yes/No

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