IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.1749 of 2016 (O&M)

Date of Decision : 08.09.2016

The State of Haryana and others

...Appellants

Versus

M/s Bestech India Private Limited
and another

...Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE DR.SHEKHER DHAWAN

....

Present: Mr. Gagandeep S.Wasu, Addl. Advocate General, Haryana, for the appellants.

....

MAHESH GROVER, J.

This appeal is directed against the judgment of the learned Single Judge dated 10.02.2016.

The writ petitioner (respondent No.1) came to the court impugning the order passed by the Collector under Section 33 of the Indian Stamp Act, 1899 (hereinafter referred to as 'the Act') which empowers the Collector to impound an instrument upon examination. Section 33 is extracted herebelow :

> "**33. Examination and impounding of instruments. -**
>
> (I) Every person having by law or consent of parties authority to received evidence, and every person incharge

of a public office, except an officer of police before whom any instrument chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in India when such instrument was executed or first executed:

Provided that –

(a) nothing herein contained shall be deemed to require any magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (V of 1898);

(b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

(3) For the purposes of this section, in cases of doubt,- (a) the State Government may determine what offices shall be deemed to be public offices; and,

(b) the State Government may determine who shall be deemed to be persons in charge of public offices."

Pursuant to the aforesaid the Collector demanded of the writ petitioner that they deposit Rs.6,51,14,800/- for undervaluing the instrument (Collaboration Agreement).

The writ petitioner contended that these powers under Section 33 of the Act were erroneously invoked as no instrument was presented to the competent authority and if at all, the Collaboration Agreement has to be questioned on the issue of deficiency of stamps, the appropriate procedure was enshrined under Section 47-A of the Act which ought to have been invoked.

The proposition that Section 33 was erroneously invoked was not disputed by the appellants and thus the learned Single Judge proceeded to discard the order largely on the premise of a consent given by the learned counsel for the appellants during the course of proceedings and gave the liberty to the appellants to invoke the appropriate procedure under Section 47-A of the Act.

The appellants have now questioned the judgment of the learned Single Judge to contend that once the Collector was empowered in law to exercise jurisdiction under Sections 33 and 47-A both, it is the "substance and not the form" that ought to have been appreciated by the learned Single Judge and thus proceedings under Section 33 of the Act should have been construed under Section 47-A to uphold the demand of the

Collector. Apart from the aforesaid argument, learned counsel for the appellants also states that merely because a counsel representing the State gave an opinion about the erroneous procedure exercised by the Collector, it ought not bind the State and neither does it liberate the court from giving findings on the issue.

We have noticed this contention but we would deal with it after determining the main controversy.

Section 47-A of the Act may be extracted as under :

> "**47-A**. **Instruments under-valued how to be dealt with**. -
>
> (I) If the Registering Officer appointed under the Registration Act, 1908, while registering any instrument transferring any property has reason to believe that the value of property or the consideration, as the case may be, has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to Collector for determination of the value or consideration, as the case may be; and the proper duty payable thereon.
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> (2) On receipt of reference under sub-section (I), the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules made under this Act, determine the value or consideration and the duty as aforesaid and the deficient amount of duty, if any, shall be payable by the person liable to pay the duty.

(3) The Collector may suo motu, or on receipt of reference from the Inspector General of Registration or the Registrar of a district in whose jurisdiction the property or any portion thereof which is the subject-matter of the instrument is situate, appointed under the Registration Act, 1908, shall, within three years from the date of registration of any instrument, not already referred to him under subsection (l), call for and examine the instrument for the purpose of satisfying himself as to the correctness of its value or consideration, as the case may be, and the duty payable thereon and if after such examination, he has reasons to believe that the value or Consideration has not been truly set forth in the instrument, he may determine the value or consideration and the duty as aforesaid in accordance with the procedure provided for in sub-section (2); and the deficient amount of duty, if any, shall be payable by the person liable to pay the duty:

Provided that the Collector shall, within a period of two years from the date of the commencement of the Indian Stamp (Haryana Amendment) Act, 1973, also be competent to act as aforesaid in respect of the instruments registered on or after the first day of November, 1966 and before the first day of October, 1970.

(4) Any person aggrieved by an order of the Collector under sub-section (2) or subsection (3) may, within thirty

> days from the date of the order, prefer an appeal before the [the Commissioner of the Division]1 and all such appeals shall be heard and disposed of in such manner as may be prescribed by rules made under this Act."

A comparative reading of Sections 33 and 47-A of the Act reveals two distinct procedures envisaged therein to be adopted by the competent authority who incidentally is the Collector in both the circumstances. Section 33 empowers the Collector to impound an instrument if in his opinion it appears to him that it is not duly stamped. He is further empowered to examine each and every instrument to ascertain whether it is stamped with an appropriate value and conforms to the description required by law in force when the instrument was first executed. The language of this section further goes on to state that nothing contained in this section would be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceedings other than a proceeding under Chapter XII or Chapter XXXVI, of the Code of Criminal Procedure, 1898. We are, however, not concerned with this aspect of the matter.

Under Section 47-A when a document is presented for registration before the Registering Officer, who has a reason to believe that the value of the property or the consideration, as the case may be, has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the value or consideration, as the case may be and the Collector upon receipt of such reference shall, after giving the parties reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules under the Act, determine the value or consideration thereof to determine the sufficiency of duty or deficiency thereof to be payable by a person liable to pay such amount.

It also empowers the Collector to suo moto or on receipt of a reference from the Inspector General of Registration or Registrar of a District in whose jurisdiction the property or any portion thereof which is the subject-matter of the instrument exercise similar power as noticed above within three years from the date of registration of any instrument. Sub-section (4) of Section 47-A enables a person aggrieved of an order passed by a Collector under sub-section (2) or sub-section (3) to file an appeal within thirty days from the date of the order before the Commissioner.

Apparently, the procedure prescribed under Section 47-A is absolutely distinct from the procedure envisaged under Section 33 of the Act. It is not *ipso facto* that a proposition of law 'to condone an irregular procedure' be applied by saying that it is the 'substance and not the form' that matters. Rather, it is the substantive content of the statute which would dictate such a course.

If a statute prescribes a distinct procedure of an enquiry with a right of appeal which procedure does not manifest itself in the procedure adopted then there is a danger of violating an inherent safeguard resulting in prejudice to a party. A perusal of Section 33 to which recourse has been taken reveals a process distinct from Section 47-A. Use of a procedure which if violated is likely to result in denial of a fair opportunity to the aggrieved person can never be encouraged to legitimise a procedural irregularity even if the best argument of the appellants is accepted. The judgment cited by the learned counsel for the appellants reported as *M/s Oberoi Motors and another v. the Union Territory Administration, Chandigarh and others*, **1978 AIR (Punjab) 294** is thus completely distinguishable and not applicable to the facts of the case.

We may state that it is not such an irregularity which could have been cured by mere change of nomenclature and to read the provisions and process enshrined in Section 47-A into Section 33 which if accepted is fraught with dangerous consequences.

For the aforesaid reasons, we find the appeal to be without any merit and substance, particularly when the interests of both the parties have been adequately safeguarded with liberty to the appellants to proceed against the respondents under Section 47-A, if so advised.

Coming to the contention raised by the learned counsel for the appellants before us as to whether the opinion/concession of a counsel would bind the State or the Court. We are of the opinion that during the course of proceedings before the court the counsels do make statements which are ordinarily accepted by the courts. We also notice that the learned counsel for the appellants has conceded before this Court as well that procedure under Section 33 was ill-advised and erroneous. The argument in this regard made by the learned counsel for the appellants is thus untenable. State would be bound by the consequence of such a statement made by a counsel for the State if it results in a judgment.

Before parting with the judgment, we may notice that this is a totally frivolous appeal which has been filed by the State particularly when it was conceded before the learned Single Judge as well as before this Court that Section 33 was not a proper procedure and the writ court granted liberty to the appellants to initiate proceedings under Section 47-A. But instead of doing so they have filed this frivolous appeal to burden the courts and waste their time. The appeal is also barred by an inordinate delay of 178 days attributed to procedural lapses which we do not intend to condone.

Appeal dismissed.

(MAHESH GROVER)
JUDGE

08.09.2016 (SHEKHER DHAWAN)
dss JUDGE

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