HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2104 of 2015

ORDER :

This revision is filed, under Article 227 of Constitution of India, by the petitioner-plaintiff, challenging the order, dated 15.04.2015, passed by the IV-Senior Civil Judge, City Civil Court, Hyderabad, in O.S.No.855 of 2014 directing the office to collect the stamp duty and penalty as levied under Article 13 of Schedule 1-A of Indian Stamp Act, 1899 (for short, 'the Act') from the petitioner.

2. Learned counsel for the petitioner contended that the trial Court recorded the finding that the nature of the document i.e., promissory is changed to that of a bond as defined under Section 2(5) of the Act chargeable under Article 13 of the Act and the office note in charging the instrument under Article 48 of Schedule 1-A of the Act is negatived and not approved. Aggrieved by the order of the trial Court, the present revision is filed.

3. The main ground raised before this Court is that the order passed by the trial Court is contrary to the Full Bench judgment of this Court in **Bolisetti Bhavannarayana @ Venkata Bhavannarayana v. Kommuru Vullakki Cloth Merchant Firm, Tenali, rep. by partner Kommuru Vullakki and others**[1]. Therefore, the order cannot be sustained and set aside the same by exercising power under Article 227 of Constitution of India.

[1] 1996 (1) ALT 917 (FB)

4. During hearing, learned counsel for the petitioners, drawn the attention to the Full Bench judgment of this Court in Bolisetti Bhavannarayana's case and on the strength, urged before this Court to direct the trial Court to decide the nature of the document and collect/deposit stamp duty and penalty payable on the document exercising under Section 35 of the Act.

5. It would be appropriate to advert to the definition of bond in the Act, which reads thus:

> "*Bond* :--"Bond" includes,--
>
> (a) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;
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> (b) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and
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> (c) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another.

6. The stamp duty payable on bond is specified under Article 13 of Schedule 1-A. According to it, the stamp duty payable is Rs.3/- for every one hundred rupees or part thereof where the amount or value secured does not exceed Rs.1,000/-, however, where it exceeds Rs.1,000/-, the duty payable is the same duty as under Clause (a) for the first Rs.1,000/- and fifteen rupees for every Rs.500/- or part thereof in excess of Rs.1,000/-.

7. The trial Court has rightly categorized the document as chargeable under Article 48 of Schedule 1-A of the Act. Nowhere in the Act defined security bond and it would not fall under Section 2(5) of the Act. But, the Full Bench decided about the stamp duty payable on the bond as defined under Section 2(5) of the Act, but not on security bond.

8. The single Judge of this Court in **A. Shakunthala v. A. Mangamma and another**[2] adverted to Articles, 13, 30 and 48 and distinguished the judgment of Full Bench referred supra and concluded that the document fall within the definition of Security bond and the stamp duty is payable as per Article 48 of Schedule 1-A of the Act. The trial Court after following the legal propositions erroneously held that the character of promissory note is changed to that of a bond as defined under Section 2(5) of the Act. Therefore, the order passed by the trial Court suffers from serious legal infirmity warranting interference exercising the power under Article 227 of the Constitution of India. Therefore, the order is hereby modified holding that the petitioner/plaintiff is liable to pay stamp duty and penalty in terms of Article 48 of Schedule 1-A of the Act following the judgment of this Court in A.Shakunthala's case referred above.

9. With the above observation, the revision is disposed of directing the petitioner/plaintiff to pay the stamp duty and penalty in terms of Article 48 of Schedule 1-A of Indian Stamp Act.

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[2] 2016(3) ALD 541

10. As a sequel, miscellaneous petitions pending, if any, shall stand dismissed. No order as to costs.

M. SATYANARAYANA MURTHY, J

16th June 2017

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