HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.1896 of 2017

ORDER :

This revision is filed, under Article 227 of Constitution of India, by the petitioners-defendants, challenging the order, dated 03.03.2017, passed by the XI-Additional Chief Judge, City Civil Court, Hyderabad, in dismissing the petition in I.A.No.680 of 2016 in O.S.No.185 of 2012 filed under Section 151 C.P.C. to pay the duty and penalty on the documents i.e., (3) promissory notes.

2. Learned counsel for the petitioners contended that the trial Court did not record any finding whether the second part of the document would fall within the meaning of bond or security bond. 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 the power under Article 227 of Constitution of India.

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 documents and collect

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

deficit stamp duty and penalty payable on the documents exercising power under Sections 33 and 35 of Indian Stamp Act, 1899 (for short, 'the Act').

5. Whereas, Sri A.L.Raju, learned counsel for the respondents/plaintiffs, supported the order of the trial Court in all respect.

6. As seen from the document i.e., promissory note, it consists two parts. The first part is promissory note for certain amount and the second part is a security duly signed by one witness and the debtor. The contents of the second part of the document, reads thus:

> "I, Anugula Harish Son of Anugula Venkateshwarlu Occupation Business residing at 7-1-569, Ameerpet, Hyderabad, 500016, do hereby stand security for the Promissory Note amount of Rs.2,00,000/- and agree that on demand if Shri Anugula Venkateshwarlu does not repay this Promissory Note amount to the said sahukar I will pay same myself. I have Written this as a deed of security so that it may remain as an authority."

7. Therefore, taking advantage of the bond executed as security by Anugula Harish, it is contended that it is a bond within the meaning of Section 2(5) of the Act and stamp duty is payable under Article 13 Schedule I-A of the Act.

8. Section 2(5) of the Act, defines bond, 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;

> (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
>
> (c) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another.

9. 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 excess 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/-.

10. But, here, the contents of security bond i.e., the second part of the document executed as a security though styled as 'security bond'. The third party Anugula Harish agreed to pay the amount in case Anugula Venkateshwarlu does not repay the amount covered by the promissory note. Thus, Anugula Harish stood as surety for due payment of the amount by Anugula Venkateshwarlu. Thus, the second part of the document executed would fall under security bond and the stamp duty payable thereon is under Article 48 of Schedule 1-A of the Act. The document i.e., security bond is not defined anywhere 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.

11. 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. But, the trial Court did not decide whether the document would fall under Article 30 or 48 of Schedule 1-A of the Act and simply rejected the objection raised by the petitioners. Therefore, the order suffers from any illegality. However, the document in question would fall under Article 48 of Schedule 1-A of the Act and the respondents/plaintiffs are 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.

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

13. 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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[2] 2016(3) ALD 541