THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.2827 OF 2016

ORDER:

This petition is filed under Section 115 of C.P.C, challenging the order in I.A.No.72 of 2016 in I.A.No.1371 of 2015 in O.S.No.1 of 2002 dated 22.02.2016 passed by the I Additional District Judge at Nizamabad.

The petitioners filed I.A.No.72 of 2016 under Section 114 and Order 47 of C.P.C for reviewing the order dated 05.11.2015 in I.A.No.1371 of 2015 in O.S.No.1 of 2002, pending on the file of the I Additional District Judge, Nizamabad.

For the sake of convenience, the petitioners are referred to as plaintiffs and the respondents are referred to as defendants.

The brief facts of the case are that the plaintiffs filed O.S.No.1 of 2002 for specific performance against the defendant nos. 1 to 5 on the basis of agreement of sale dated 19.01.2001 executed by the first defendant, who is a General Power of Attorney Holder of defendants 2 & 3 in respect of Ac.0.324 guntas of land in Sy.No.225 situated at Phulong road, Nizamabad. The defendants filed I.A.No.726 of 2002 for sending the agreement of sale dated 19.01.2001 for impounding and also levying the stamp duty and penalty. The Trial Court allowed I.A.No.726 of 2002 and sent the document to Revenue Divisional Officer, Nizamabad. Further, the Revenue Divisional Officer without issuing notice, by its order dated 11.07.2002 directed the plaintiffs to pay an amount of Rs.3,08,550/- as stamp duty and penalty. On coming to know about the said direction, the plaintiffs made couple of representations on 20.05.2004 and 09.03.2009 before the Revenue Divisional Officer. Thereupon, the Revenue Divisional Officer issued a letter to the Trial Court on 18.06.2009 for returning the document. Accordingly, the Trial Court sent the document to District Collector, Nizamabad for impounding the document. Since the power was delegated to the Revenue Divisional Officer, the Revenue Divisional Officer vide his order dated 17.05.2010 ordered the plaintiffs to remit an amount of Rs.2,05,900/- through challan towards deficit stamp duty and penalty of Rs.6,17,700/-, thus in total Rs.8,23,600/-.

The plaintiffs challenged the orders of the Revenue Divisional Officer in W.P.No.15155 of 2010 and this Court set-aside the order of Revenue Divisional Officer dated 17.05.2010 and remanded the matter to the Revenue Divisional Officer for fresh consideration and disposal, after providing opportunity. Thereafter, the Revenue Divisional Officer by his order dated 11.06.2012 returned the document to the Trial Court along with letter stating that the stamp paper worth Rs.100/- which was used for agreement of sale is sufficient as per the Rules in force as on the date of agreement of sale dated 19.01.2011. The Revenue Divisional Officer further stated that his predecessor exhibited bias against the plaintiffs when the plaintiffs filed a petition before this Court for transfer of the case to any other Court. Since, the predecessor of the Revenue Divisional Officer was transferred pending disposal of the case, the plaintiffs filed I.A.No.1371 of 2015 for reopening matter for marking agreement of sale. Further, the Trial Court observed in its order dated 05.11.2015 in I.A.No.1371 of 2015 that the earlier order passed by the Trial Court in I.A.no.726 of 2002 for sending the document to Revenue Divisional Officer was not challenged and it became final and further observed that as the plaintiffs did not pay stamp duty and penalty, the Revenue Divisional Officer directed to pay the same and disposed of I.A.No.1371 of 2015. The Trial Court further observed that the order dated 11.06.20132 passed by the Revenue Divisional Officer prevails over all other orders. The Trial Court while coming to a conclusion observed as follows:

> "that in the circumstances the plaintiffs have no other go way, except to pay stamp duty and penalty as levied by the Revenue Divisional Officer, Nizamabad and that now it is too late for the plaintiffs to argue that the agreement of sale was executed on sufficient stamp papers and it does not require any further stamp duty and penalty. There are no merits in the petition. The petition is dismissed"

Now, it is contended that on the ground that there is an apparent error on the face of record and the Trial Court did not consider the order passed in W.P.No.15155 of 2010, setting aside the order passed by the Revenue Divisional Officer, impounding the document, levying stamp duty and penalty thereon and again the document was referred to Revenue Divisional Officer, who in-turn addressed a letter that the document was properly stamped and the petitioner is not required to pay stamp duty and penalty. The agreement of sale is the document is sued upon and therefore, without marking the said document, it is difficult to prove the case of the petitioners. But, the Trial Court committed an error on the face of record, denying to provide an opportunity to mark the document by reopening the evidence of the petitioners. Therefore, sought to review the order passed by the Trial Court in I.A.No.1371 of 2015.

Respondents 6 to 14 filed detailed counter affidavit while admitting filing of W.P.No.15155 of 2010, setting aside the order passed by the Revenue Divisional Officer dated 10.02.2012 and supporting the order passed by the Court while contending that there was no error, much less, an apparent error on the face of the record to exercise power under Section 114 read with Order XLVII C.P.C. It is also contended that the agreement of sale is liable to be impounded and accordingly, the petitioners themselves filed applications to send the document to Revenue Divisional Officer for impounding. But the Revenue Divisional Officer, instead of following the procedure under the Act, returned the document. Therefore, the document is inadmissible. However, the Trial Court passed a reasoned order based on the material available on record, thereby the question of review of the order would not arise and prayed for dismissal of the petition.

The Trial Court dismissed I.A.No.72 of 2016 on various grounds. One among them is that document was returned without certification as agreement of sale, as required under law when the document was referred to impounding, by exercising power under Sections 33 & 35 of the Act, on the application filed by the plaintiffs themselves.

Heard learned counsel for the petitioners at the admission stage and none appeared for the respondents.

During hearing, learned counsel for the petitioners Sri Sridhar Lendalay by over vehemence contended that the order passed by the Trial Court in I.A.No.72 of 2016 is without consideration of any material, including the order passed by this Court in W.P.No.15155 of 2010 and this itself shows nonapplication of mind by the Trial Court in passing such an order and when the Trial Court failed to apply its mind, the order is required to be set-aside even while deciding review petition. Further, it is contended that the Trial Court totally neglected in verifying the record and passed the order under challenge without any basis, thus, committed a grave error in dismissing the petition. Therefore, prayed to set-aside the same by placing reliance on the judgment of the Apex Court in **Board of Control for Cricket, India and another v. Netaji Cricket Club and others**[1]**.**

Few facts are relevant to decide the real controversy between the parties, as narrated in the order under challenge and they are as follows:

1. The plaintiff filed suit for specific performance based on agreement of sale dated 19.01.2001 against respondents 1 to 5 executed by the first respondent, being the General Power of Attorney of respondents 2 & 3 for an extent of Ac.0-34 gts in Sy.No.225 at Phulong Shivar, Nizamabad Town.
2. The defendants filed I.A.No.726 of 2002 to send the agreement of sale dated 19.01.2001 for impounding, to levy and collect stamp duty and penalty, the Trial Court allowed the petition and sent the document to the Revenue Divisional Officer, Nizamabad. But the Revenue Divisional Officer passed an order levying stamp duty and penalty by order dated 11.07.2002 directing the petitioners to pay Rs.3,08,550/- towards stamp duty and penalty.

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[1] AIR 2005 SUPREME COURT 592

Powers of the Court to review the order are limited. Section 114 deals with 'Review' and according to it, any person considering himself aggrieved by the following conditions, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.

(a) by a decree or order from which an appeal is allowed by this Court, but from which no appeal has been preferred;

(b) by a decree or order from which no appeal is allowed by this Code; or

(c) by a decision on a reference from a Court of Small Causes,

Review means re-examination or second examination of a case. It is the Act of looking something again with a view to correct or improve the order. Dictionary and judicial meaning of review is re-examination or re-consideration of the same case by same Judge. That means, judicial re-examination of the case by the same Court and by the same Judge.

The scope of review is limited, in view of Order XLVII Rules 1 & 2 C.P.C.

Order XLVII Rule 1 C.P.C deals with application for review of judgment, and according to it-

(1) Any person considering himself aggrieved:

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed; or

(c) by a decision on reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

Similarly Rule 4 of Order XLVII deals with application where rejected and according to it-

(1) Where it appears to the Court that there is not sufficient ground for a review, it shall reject the application.

(2) Application where granted. Where the Court is of opinion that the application for review should be granted, it shall grant the same :

Provided that_

(a) no such application shall be granted without previous notice to the opposite party, to enable him to appear and be heard in support of the decree or order, a review of which is applied for; and

(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the decree or order was passed or made, without strict proof of such allegation.

Thus, when a new fact or evidence is discovered, the Court normally on proof that it was not within the knowledge, may allow the review. But here, it was not the new fact or evidence so collected subsequent to disposal of the petition. Therefore, keeping in mind the scope of review, I would like to examine the present review petition with reference to the law declared by Apex Court.

In the present facts, the suit was admittedly filed for specific performance on the basis of agreement of sale. But, the defendants disputed execution of agreement of sale and its admissibility in evidence on the ground that it was not sufficiently stamped. Unless sufficient stamp duty and penalty was paid as required under law, the same cannot be admitted in evidence. Therefore, the defendants filed an application I.A.No.726 of 2002 to impound the document. Accordingly the document was sent to the Revenue Divisional Officer who in turn levied stamp duty and penalty of Rs.3,08,550/-. Since such order was passed without notice to the plaintiffs, the same was challenged before this Court in W.P.No.15155 of 2010 which was allowed by this Court by order dated 17.05.2010 remanding the matter to the Revenue Divisional Officer for fresh consideration. Thus, the order passed by both the Revenue Divisional Officers on 11.07.2002 and 17.05.2010 were set-aside by this Court and ordered for fresh consideration after affording opportunity to the petitioner.

Curiously, the Revenue Divisional Officer, instead of certifying the document as required under Section 32 of Indian Stamp Act, he addressed a letter to the Court that the document was drafted on a proper stamp paper worth Rs.100/- which is sufficient under Stamp Act and that the earlier Revenue Divisional Officer has exhibited bias and imposed such penalty and stamp duty. Therefore, the successor Revenue Divisional Officer did not follow the procedure under Sections 31 & 32 and consequently, the document cannot be admitted, as observed by the Court. In view of the specific conclusions arrived by the Court, it is necessary to advert to Sections 31 & 32 of Stamp Act.

> "**31. Adjudication as to proper stamp :--** (1) When any instrument, whether executed or not and whether previously stamped or not, is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount * [not exceeding fifteen rupees and not less than five rupees] as the Collector may in each case direct, the Collector shall determine the duty (if any) with which, in his judgment, the instrument is chargeable.
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> (2) For this purpose the Collector may require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein, and may refuse to proceed upon any such application until such abstract and evidence have been furnished accordingly:
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> Provided that :--
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> (a) no evidence furnished in pursuance of this section shall be used against any person, in any civil proceeding, except in an enquiry as to the duty with which the instrument to which it relates is chargeable; and
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> (b) every person by whom any such evidence is furnished, shall, on payment of the full duty with which the instrument to which it relates is chargeable, be relieved from any penalty which he may have incurred under this

Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid.

32. Certificate by Collector:-- (1) When an instrument brought to the Collector under Section 31, is, in his opinion, one of a description chargeable with duty, and

(a) the Collector determines that it is already fully stamped, or

(b) the duty determined by the Collector under Section 31, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid,

the Collector shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid.

(2) When such instrument is, in his opinion, not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable.

(3) Any instrument upon which an endorsement has been made under this section, shall be deemed to be duly stamped or not chargeable with duty, as the case may be; and, if chargeable with duty, shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped :

Provided that nothing in this section shall authorise the Collector to endorse--

(a) any instrument executed or first executed in India and brought to him after the expiration of one month from the date of its execution or first execution, as the case may be;

(b) any instrument executed or first executed out of India and brought to him after the expiration of three months after it has been first received in India; or

(c) any instrument chargeable with the duty of twenty paise or a mortgage of a crop (Article 36(a) of Schedule I-A) chargeable under clause (aa) or (bb) of Section 3 with a duty of forty paise or any bill of exchange or promissory note when brought to him, after the drawing or execution thereof, on paper not duly stamped.

Section 32 envisages that when an instrument is brought to the Collector under Section 31, is, in his opinion, one of a description chargeable with duty, the Collector determines that it is already fully stamped. The District Collector has to issue certificate making an endorsement on reverse of the document by levying stamp duty and penalty or concluding that it is properly charged. But, in the present case, the Revenue Divisional Officer who is designated for the purpose of impounding the document, instead of following Section 32 i.e. Certification by endorsement on the reverse of the document, he addressed a letter attributing malafides and bias to his predecessor of his office and returned the document. Unless the document is supported by a certification on the reverse of it, it shall not be deemed to be admitted when there is a serious dispute about the stamp duty payable on the document, which affects the state's revenue.

As on the date of passing the order, the agreement of sale is inadmissible in evidence, since it was not certified as required under Section 32 of Stamp Act. Therefore, the Trial Court declined to reopen the evidence of the petitioner by exercising power under Section 151 C.P.C for marking of an inadmissible document.

It is the main contention of the learned counsel for the petitioners is that the Trial Court ignored the order passed by this Court in W.P.No.15155 of 2010 and held that the order passed by the Revenue Divisional Officer holds good. The observation of the Trial Court in I.A.No.1371 of 2015 is against the order of Revenue Divisional Officer levying stamp duty and penalty of Rs.8,23,600/- was not challenged before the Court, holds good thereby declined. The order is sought to be reviewed by the petitioner and recall P.W.1 to mark the document. But, the Trial Court refused to exercise power under Section 114 r/w Order XLVII C.P.C to set-side such findings. No doubt, the observation made by the Trial Court that the Revenue Divisional Order dated 17.05.2010 levying Rs.8,23,600/- prevails over the other orders is an apparent error on the face of record. But, the interlocutory application filed before the Trial Court was to reopen the evidence for specific purpose of marking agreement of sale. The Trial Court concluded that, since the document is not accompanied by a certificate as required under Section 32, it cannot be received while making an observation that earlier order of Revenue Divisional Officer prevails over the later addressed by the subsequent Revenue Divisional Officer.

In fact, the orders passed by the Revenue Divisional Officer levying Rs.3,08,550/- & Rs.8,23,600/- was already set-aside by this Court in W.P.No.15155 of 2010. Consequently, they are deemed to have been cancelled. Later, on directions of this Court, the Revenue Divisional Officer instead of following procedure under Section 32, addressed a letter contrary to Section 32 to the Trial Court informing that the document is properly stamped and not required to be impounded. Therefore, as on the date of filing I.A.No.1371 of 2015, the document is still inadmissible, as it was not accompanied by a certificate as required under Section 32 of Stamp Act. Therefore, the order passed by the Trial Court in I.A.No.1371 of 2015 cannot be interfered by this Court. However, the observations of the Trial Court that the opinion of the Revenue Divisional Officer and calling upon the plaintiffs to pay stamp duty and penalty of Rs.8,23,600/- is an illegality, as the order was set-aside by this Court in W.P.No.15155. Therefore, the observations made by the Trail Court in I.A.No.1371 of 2015 to the fact that the Revenue Divisional Officer levying penalty on the stamp duty of Rs.8,23,600/- prevails over the letter addressed by the Revenue Divisional Officer dated 17.05.2010 is expunged by exercising power under Order XLVII and Section 114 C.P.C. Since the Trial

Court rejected the application on the ground, that the document was not accompanied by certificate as required under Section 32 holds good, the order passed in I.A.No. 1371 of 2015 in O.S.No. 1 of 2002 cannot be set-aside by exercising power of review.

Learned counsel for the petitioner Sri Sridhar Lendalay would draw attention of this Court in support of this contention that this Court can review and set-aside the order, since the Trial Court in review petition did not exercise its duty property.

In **Board of Control for Cricket, India[1],** the Apex Court highlighted the power of review and held that the jurisdiction of the High Court in entertaining a review application cannot be said to be *ex facie bad* in law. Section 114 of the Code empowers a Court to review its order if the conditions precedents laid down therein are satisfied. The substantive provision of law does not prescribe any limitation on the power of the Court except those which are expressly provided in Section 114 of the Code in terms whereof it is empowered to make such order as it thinks fit.

Thus, in view of the law declared by the Apex Court, this Court has got power of review, subject to satisfying conditions required under law. But here, the Trial Court dismissed I.A.No.1371 of 2015 on two grounds and in the order on review petition, the Trial Court concluded that the observations made by the Revenue Divisional Officer, predecessor in office cannot be set-aside, since it was not challenged in any review or appeal, which is an error apparent on the face of record. Therefore, the observations referred above are expunged while upholding the reason assigned by the Trail Court i.e. failure to certify the document as required under Section 32.

Therefore, by exercising power under Article 227 of the Constitution of India, this Court cannot interfere with the order passed by the Trial Court on the sole ground of non-compliance of Section 32 of Stamp Act, while expunging the other observations.

In the result, the civil revision petition is dismissed.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:12-07.2017
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