

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.5814 OF 2011

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the propriety and legality of the order dated 21.07.2011 in I.A.No.33 of 2009 in O.S.No.143 of 2006 on the file of Principal Junior Civil Judge, Yellamanchili, dismissing the application, filed under Order XXXIII Rule 8 read with Section 151 CPC, to exempt payment of stamp duty and penalty on the lease deed dated 27.06.2000.

Learned counsel for the petitioner contends that the petitioner filed the suit for recovery of lease amount based on unregistered and insufficiently stamped lease deed dated 27.06.2000 but the lease deed, on the stamp papers worth Rs.50/- and Rs.10/-, was returned as it was unregistered. He contends that the petitioner was since declared as an indigent person after due enquiry and permitted to proceed as *informa pauperis*, the Trial Court cannot pass an order directing him to pay stamp duty and penalty and he seeks exemption from payment of stamp duty and penalty under Order XXXIII Rule 8 CPC.

Admittedly, the document sought to be marked, i.e. lease deed dated 27.06.2000, is insufficiently stamped which is inadmissible in evidence in view of bar under Section 35 of the Indian Stamp Act, 1899 (the Act). It is clear from the

language used in Order XXXIII Rule 8 CPC that, where an application is granted, it shall be numbered and registered, and shall be deemed the plaint in the suit, and the suit proceed in all other respects as a suit instituted in the ordinary manner, except that the plaintiff shall not be liable to pay any court-fee or if payable in respect of any petition, appointment of a pleader or other proceeding connected with the suit; and taking advantage of the word 'other proceeding connected with the suit', learned counsel for the petitioner contended that exemption from payment of stamp duty and penalty on the unregistered and insufficiently stamped lease deed dated 27.06.2000 can be granted but, Order XXXIII CPC deals with permitting a party to sue as an *informa pauperis* exempting from payment of court fee subject to other conditions. At best, Rule 8 of Order XXXIII CPC permits the party to avoid payment of court fee on any other proceedings but not stamp duty and penalty. The procedural law will not override the fiscal enactment i.e. Indian Stamp Act, 1899. Therefore, Order XXXIII Rule 8 CPC has no application to exempt petitioner from payment of stamp duty and penalty on the unregistered and insufficiently stamped lease deed dated 27.06.2000. Since the Trial Court already passed an order directing the petitioner to pay stamp duty and penalty or impound the document under Order XIII Rule 3 CPC or under Section 35 of the Act and, unless and until, the stamp duty and penalty is paid, the document produced before the

Public Officer cannot be admitted in evidence. In view of bar under Section 35 of the Act, the petitioner is disentitled to claim exemption from payment of stamp duty and penalty invoking Order XXXIII Rule 8 CPC since Order XXXIII deals with exemption of payment of court fee payable on the plaint but not the penalty and stamp duty payable on the document to admit the same in the evidence. Hence I find no substance in the argument advanced by the counsel for the petitioner.

The order passed by the Trial Court is free from any legal infirmity. However, the petitioner is at liberty to pay stamp duty and penalty and, in the event of payment of stamp duty and penalty, as required, or on collection of stamp duty and penalty on impounding the document, under Order XIII Rule 3 CPC, the document may be admitted subject to the provisions of the Indian Stamp Act.

In the result, the Civil Revision Petition is dismissed.

Consequently, miscellaneous petitions, if any, pending shall stand closed.

M.SATYANARAYANA MURTHY, J

Dt:19.01.2018
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