HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.6372 OF 2017

ORDER:

The present Civil Revision Petition under Article 227 of the Constitution of India is filed challenging the dismissal order dated 14.09.2017 in I.A.No.626 of 2016 in O.S.No.52 of 2016 passed by the Additional District Judge, Warangal.

The petitioner filed suit for specific performance of contract along with I.A.No.626 of 2016 under Order XXXIX Rules 1 and 2 C.P.C. to grant temporary injunction restraining the respondents from alienating the suit property to third parties during pendency of the suit. During hearing the respondents raised objection about admissibility of agreement of sale, which was written on Rs.100/- stamp paper. The Court below held that as per Article 6B of Schedule 1-A of the Indian Stamp Act and as amended in G.O.Ms.No.581, dated 30.11.2013, proper stamp duty for sale agreement without possession of 05% not adjustable and thereby concluded that the agreement of sale cannot be marked as insufficient stamp.

Aggrieved by the impugned order, the present revision petition is filed on the ground that when the document is insufficiently stamped, the duty of the Court is to collect stamp duty and penalty, but cannot reject the same from marking.

During hearing, learned counsel for the petitioners contended that on payment of stamp duty and penalty, the document can be received in evidence or at best it must be impounded on application filed under Order XIII Rule 8 C.P.C. The Court below instead of resorting to such procedure, committed an error in rejecting the document in evidence.

Whereas, learned counsel for the respondents contended that the suit itself is not maintainable and in such a case, the agreement of sale cannot be received in evidence. Learned counsel for the respondents filed lengthy counter denying the material allegations referring various decisions including **Naina Thakkar v Annapurna Builders**[1] case and requested to affirm the order passed by the Court below.

The short question that fall for consideration is that:

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[1] Laws (SC) 2012-07-106

Whether the document filed in a suit for specific performance of contract is insufficiently stamped, the Court can admit the same on payment of deficit stamp duty and penalty as required under law?

POINT:

Section 33 of the Indian Stamp Act obligates every person having by law or consent of parties, authority to receive evidence, and every person in charge 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. 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 [62] [India] when such instrument was executed or first executed subject to proviso contained thereunder. When the agreement of sale is produced, it is the duty of the Court, who is competent to receive the same in evidence and examine whether it was sufficiently stamped or not to admit the same in the evidence in view of the obligation that imposed on the Court under Section 33 of the Indian Stamp Act. The Court examined agreement of sale and concluded that the agreement of sale cannot be admitted in evidence as it is insufficiently stamped. But Section 33 of the Stamp Act obligates impounding of insufficiently stamped documents and collect deficit stamp duty and penalty payable on such instrument by the officer of the Court, when it is produced before it. If the Court did not exercise such power of impounding, it would result in loss of revenue to the public exchequer. Therefore, it is the duty of the Court to impound the document levying deficit stamp duty and penalty as permitted under Section 35 of the Indian Stamp Act. As such the Court itself can levy and collect deficit stamp duty and penalty or refer the document to the Collector under the provisions of the Stamp Act sue motto or on the application made by the petitioners under Order XIII Rule 8 C.P.C., But the Court cannot straight away deny admission of the document.

During hearing, learned counsel for the petitioners expressed their readiness to pay deficit stamp duty and penalty as per law and the trial Court may be directed to collect stamp duty and penalty as per law and on payment of such deficit stamp duty and penalty, the Court can admit such document in evidence subject to other laws, under Rule 60 of the Civil Rules of Practice. Even according to the guidelines laid down in **Naina Thakkar's** case referred supra, it is the duty of the Court to collect stamp duty and penalty and the Court cannot reject the admission of document on payment of stamp duty and penalty as per law. Thus, the impugned order of the Court below is erroneous and liable to be set aside.

In the result, the civil revision petition is allowed setting aside the order dated 14.09.2017 in I.A.No.626 of 2016 in O.S.No.52 of 2016 passed by the Additional District Judge, Warangal while directing the Additional District Judge, Warangal to levy deficit stamp duty and on payment of stamp duty and penalty, the Court is bound to admit the document in evidence subject to bar to admit under any other law to receive the same in evidence. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending shall stand closed.

M. SATYANARAYANA MURTHY, J

12.11.2018
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