

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

C.R.No.3627 of 2017

Ashok Kumar Bangar

....Petitioner

Versus

Pawan Kumar and Ors.

....Respondents

Date of Order: 26.4.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Aditya Dassaur, Advocate for
Mr. C.L. Verma, Advocate for the petitioner.

Mr. Umesh Narang, Advocate for the respondents.

AMIT RAWAL, J (ORAL)

Plaintiff-petitioner is aggrieved of the impugned order dated 26.4.2017 passed by learned Addl. Civil Judge (Sr. Division), Phagwara whereby the application filed by respondent-defendant Nos.4 & 5 for impounding of agreements Ex.P.1 and Ex.P.3 dated 01.7.2010 and 17.8.2010 respectively has been allowed with a direction to the plaintiff to make deficiency of stamp duty by making payment of Rs.20,900/- and Rs.21725/- respectively.

Learned counsel for the petitioner submitted that the impugned order is not only illegal and perverse but non-speaking as well. The trial Court has not taken into consideration the provisions of the Civil Procedure Code in its proper perspective. He has also shown a copy of affidavit (Ex.PW3/A) vide which various other documents have been exhibited. The

alleged agreement to sell was actually executed by respondent-defendant Nos.2 & 3 and thus defendant Nos.4 & 5 had no right in raising such objection. The original documents were enclosed along with the evidence filed in the shape of affidavit but the other party did not raise objection qua admissibility of the same and, therefore had lost the option of objecting it. In support of contentions, he relied on judgment of Hon'ble Supreme Court in **Shyamal Kumar Roy Vs. Sushil Kumar Agarwal, 2007(1) RCR (Civil) 321.**

On the other hand, learned counsel for the respondents fully supported the impugned order by submitting that concededly the agreement to sell was not executed on stamp paper and therefore the same could not have been admitted into evidence in terms of Section 36 of the Indian Stamp Act, 1899. The law qua deficiency of stamp duty is no longer *res integra*, so the application has rightly been accepted by the learned trial Court and urged this Court for dismissal of petition.

I have heard learned counsel for the parties and appraised the paper book.

The provisions of tendering evidence by way of affidavit was amended by the Legislature vide amendment dated 01.7.2002 in the light of Order XVIII Rule 4 CPC, which reads as under:

“4. Recording of evidence by Commissioner.- (1) In every case, the evidence of a witness of his examination-in-chief shall be given by affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence.

(2) The evidence (cross-examination and re-examination) of the witness in attendance, whose evidence (examination-in-chief) by affidavit has been

furnished to the court shall be taken orally by a Commissioner to be appointed by the court from amongst the panel of Commissioners prepared for this purpose on the same day:

Provided that, in the interest of justice and for reasons to be recorded in writing, the court may direct that the evidence of any witness shall be recorded by the court in the presence and under the personal direction and superintendence of the judge.

(3) The Commissioner shall be paid such sum for recording of evidence as may be prescribed by the High Court.

(4) The amount payable to the Commissioner under sub-rule (3) shall be paid by the Court or by the parties summoning the witness as may be prescribed by the High Court.

(5) The District Judge shall prepare a panel of Commissioners to record the evidence under this rule.

(6) The Commissioner shall record evidence either in writing or mechanically in his presence and shall make a memorandum which shall be signed by him and the witnesses and submit the same to the court appointing such Commissioner.

(7) Where any question put to a witness is objected by a party or his pleader and the Commissioner allows the same to be put, the Commissioner shall take down the question together with his decision.”

On perusal of the aforesaid provisions of law, the defendants, in my view, could not have moved such application as concededly the plaintiff who tendered exhibited documents by way of evidence was not subjected for cross-examination, thus the plaintiff has not been given any chance by the trial Court to raise objection at appropriate stage when he would step

into the witness box. Admissibility of the alleged documents, in terms of aforesaid provisions of law, has to be subject matter of the final adjudication by the Court.

Faced with the situation, learned counsel for the respondent submitted that his client would raise appropriate objections the moment the plaintiff steps into the witness box qua admissibility of the documents and the same may be decided by the trial Court in accordance with law.

In these circumstances, present petition is allowed and the impugned order dated 26.4.2017 is set aside. It is made clear that the order of mine will not take away the right of the defendants to raise objections in terms of Order 18 Rule 4 CPC at the appropriate stage by taking aid of law of law in **Shyamal Kumar Roy's case (supra)**.

April 26, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No