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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment pronounced on: 22.2.2018

\+ W.P.(C) 11586/2015, CM APPL.30690/2015, 25887/2017

FARGO ESTATES PVT. LTD. ..... Petitioner

Through: Mr. Ateev Mathur with Mr. Amol Sharma and Ms. Jagriti Ahuja, Advocates.

versus

CHIEF CONTROLLING REVENUE AUTHORITY SECRETARY (REVENUE) & DIVISIONAL COMMISSIONER AND ORS.

..... Respondents

Through: Mr. R.P. Pahwa with Ms. Akanksha Gupta, Advocate for R-3.

Mr. Gautam Narayan, ASC, GNCTD with Mr. R.A. Iyer and Ms. Mahamaya Chatterjee.

Ms. Palak Rohmetra, proxy for Ashok Popli, Advocate for R-2.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SHAKDHER

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RAJIV SHAKDHER, J. (ORAL)

1. This writ petition is directed against the order dated 12.6.2015 passed by the Chief Controlling Revenue Authority (hereafter referred to as "the appellate authority").

2. The petitioner who is a builder by the name of Fargo Estates Pvt. Ltd (hereafter referred to as "Fargo") is aggrieved by the impugned order on two broad counts. First, that Fargo was made a party to the proceedings before the appellate authority for the first time. In this behalf, it is contended that Fargo was not a party before the Collector of Stamps i.e., the authority from which the appeal was preferred and the resultant impugned order came to be passed. Second, that in any event, no liability towards

stamp duty and penalty could befall Fargo, as Fargo, was not the vendee of the subject property.

3. Given this preface the following broad contours of the case are required to be noticed in order to adjudicate upon the matter:

4. On 16.5.2007, Fargo has entered into a Space Buyer's Agreement with respondent no.2/i.e., Vivek Arora (hereafter referred to as "Vivek"). The underlying land which belonged to Vivek was converted into a freehold property. A superstructure was built on the said land. The subject property is located within building.

5. On 5.11.2008, Vivek entered into an agreement to sell with respondent no.3 i.e., Asha Khanna (hereafter referred to as "Asha"). Thereafter, Fargo executed a conveyance/sale deed dated 14.11.2008 in favour of Asha.

5.1 The consideration disclosed in the conveyance/sale deed dated 14.11.2008 was a sum of Rs.60,64,275/-. It is not disputed by Asha, as a fact which stands adverted to recorded in the proceedings of the Collector of Stamps dated 19.2.2018 that she had, in fact, paid a sum of Rs.2.78 Crores to Vivek ,*albeit,* via cheques.

5.2 It is in this background that the Collector of Stamps in his order dated 19.2.2013 made the following observations: -

> *"I have carefully gone through the complaint and its enclosures and also the submissions made by Smt. Asha Khanna. It is noticed that the alleged payment of Rs.2.78 Crores had indeed been made by the vendee to Shri Vivek Arora through cheques, as per details contained in the agreement to sell dated 5.8.2011. Further, the vendee too has not refuted the allegations made in the complaint and has even shown her willingness to pay the balance/deficient stamp duty immediately.*
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> *In view of the above, the total stamp duty on the document is computed as under: -*

Actual consideration amount	*Rs.2,78,00,000/-*
Stamp Duty Chargeable	*Rs.11,12,000 (4% of Rs.2,78,00,000/-)*
Stamp Duty already paid	*Rs.2,42,600/-*
Deficient Stamp Duty	*Rs.8,69,400/-*

Further, considering the case in its entirety, allegations and submissions by the Vendee, I am of the considered opinion that a willful attempt has been made to evade Stamp Duty, by undervaluing the property. As such, I hereby impose a penalty of Rs.50,00,000/- u/s 40 of the Indian Stamp Act, 1899."

6. Being aggrieved, Asha carried the matter in appeal to the appellate authority and, as indicated above, the appellate authority on 12.6.2015, passed the impugned order. The impugned order, in brief, made all three, that is, Fargo, Vivek and Asha jointly and severely liable for payment of stamp duty. Furthermore, via the very same order, the appellate authority called upon Fargo, Vivek and Asha to explain why penalty ought not to be levied and prosecution ought not to be launched against them under the provisions of the Indian Stamp Act, 1899 (in short "Stamp Act").

7. It is in this background, that Fargo was impelled to institute the present writ petition.

8. I have heard the learned counsels for the parties which includes Mr. Ateev Mathur for Fargo, Mr. R.P. Pahwa for Asha Khanna, Ms. Palak Rohmetra, for Vivek Arora and Mr. Gautam Narayan, who appears for the official respondents.

8.1 Clearly, what emerges from the record is that there were two legs to the transaction. The first leg involved the execution of the Space Buyer's Agreement dated 16.5.2007 between Fargo and Vivek, while the second leg of the transaction involved execution of an Agreement to Sell dated 5.11.2008 between Vivek and Asha which finally morphed into a conveyance/sale deed dated 14.11.2008. The conveyance/ sale deed was executed, though, by Fargo in favour of Asha.

8.2 It is contended before me by learned counsel for Asha that the Collector of Stamps has missed the first leg of the transaction which is the Space Buyer's Agreement and that qua this agreement the vendee/buyer is Vivek.

8.3 Thus, the contention of Mr. Pahwa is that stamp duty had to be first adjudicated on that leg of the transaction. Mr. Pahwa, however, does not dispute that the second leg of the transaction, whereby, the subject property was conveyed to Asha, clearly, states that the vendee/buyer has to bear the burden of the Stamp duty.

8.4 It is also not disputed by Mr. Pahwa that the conveyance/ sale deed dated 14.11.2008 did not reflect the real consideration, an aspect which is adverted to in the order of the Collector of Stamps. Mr. Pahwa, thus, does admit that the actual sale consideration *qua* the subject property was a sum of Rs.2.78 Crores, which was paid by Asha to Vivek via cheques.

9. On the other hand, Mr. Ateev Mathur, stated that since Fargo was not the vendee in either leg of the transactions, no liability will befall Fargo. In this behalf, Mr. Mathur has referred me to Clause 30 of the Space Buyer's Agreement. Based on this clause, it is contended that the burden of stamp duty can only fall on the vendee i.e., if at all, on Vivek. Reference is also made by the learned counsel to Clause 39 of the conveyance/sale deed dated 14.11.2008 to buttress his submission, which is, that *qua* that agreement the vendee was Asha and, therefore, the liability, if any, with regard to deficient stamp duty be that of Asha. Reliance was placed by Mr. Mathur on section 29(c) of Stamp Act, to buttress his submission that only Vendee had have to bear the burden of Stamp duty.

10. Mr. Gautam Narayan, who appears for the official respondents, on the other hand, says that it is quite clear that the Collector of Stamps has not examined the first leg of the transaction. It is, therefore, his submission that this aspect may have to be addressed by the Collector of Stamps. It is, however, contended by Mr. Narayan that Asha cannot run away from this fact that insofar as the second leg of the transaction is concerned, deficient stamp duty would have to be paid by her, as calculated by the Collector of Stamps.

10.1 Learned counsel further says that insofar as the appellate authority is concerned, there was, ex-facie, no final determination made by it *vis-a-vis* the aspect pertaining penalty. According to Mr. Narayan, the appeal was only at the stage of show cause insofar as this aspect of the matter was concerned.

11. It is quite clear that the Collector of Stamps did not examine both legs of the transaction, to which I have made a reference hereinabove. It is also quite evident that the appellate authority mulcted Fargo with liability without having regard to the fact that it was not the party before the Collector of Stamps. Resultantly, Fargo was, as a matter of fact, denied a right of appeal.

12. Given these circumstances, I am inclined to set aside the order of the appellate authority with the following directions: -

i) The parties, that is, Fargo, Vivek and Asha will appear before the Collector of Stamps for a fresh adjudication with regard to the first leg of the transaction which involved execution of the Space Buyer's Agreement dated 16.5.2007;

ii) Asha, would in the meanwhile pay the deficient stamp duty amounting to Rs.8,69,400/-;

iii) Insofar as the aspect of imposition of penalty is concerned, that would be re-examined by the Collector of Stamps after giving due opportunity to all parties which would include, Fargo, Vivek and Asha

iv) The direction contained in the order of the Collector of Stamps imposing Rs.50,00,000/- as penalty, ostensibly, on Asha is,thus, set aside.

13. As indicated above, a fresh order, if necessary, will be passed in that behalf which will not only determine the person/entity which is to bear the liability qua penalty but would also quantify the penalty. It is made clear that the remaining part of the order of Collector of Stamps calling upon Asha to pay deficient stamp duty of Rs. 8,69,400/- shall remain intact. For this purpose, the parties will appear before the Collector of Stamps on 4.4.2018 at 11:00AM. In case, this date is not convenient the Collector of Stamps will fix a fresh date which will be proximate to the date fixed by this Court. Collector of Stamps will endeavour to conclude the proceedings, expeditiously, though not later than ten weeks from date given by the Court. Furthermore, Asha will be heard only after a sum of Rs.8,69,400/- is deposited by her towards deficient stamp duty.

14. Needless to say that any defences that Fargo and Vivek have with regard to first leg of the transaction and penalty are kept open. Likewise, Asha's defence with regard to imposition of penalty are kept open.

15. Writ Petition is disposed of as above along with pending applications in the aforesaid terms.

RAJIV SHAKDHER, J

FEBRUARY 22, 2018
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