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

\+ **W.P.(C) 4273/2019**

RAKESH KUMAR JAIN ..... Petitioner

Through Mr A.K. Bajpai, Mr Diwakar Kumar, Mr Udit Grover, Advocates.

versus

GOVT. OF N.C.T. DELHI AND ANR. ..... Respondents

Through Mr Ramesh Singh, Standing Counsel for Govt. of NCT of Delhi with Mr Chirayu Jain, Mr Shlok Chandra, ASG Mr Chirayu Jain, for GNCTD.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 24.04.2019

CM APPL. 19083/2019

1. Allowed, subject to all just exceptions.

2. The application is disposed of.

W.P.(C) 4273/2019 & CM APPL. 19082/2019

3. The petitioner has filed the present petition, *inter alia*, praying as under:-

> "Issue a writ of mandamus or any other appropriate writ directing the Respondent No.l to appoint Chief Controlling Revenue Authority in Delhi as provided in Indian Stamp Act, 1899 so that the appeal filed by Petitioner can be adjudicated.
>
> b. Direct the Respondent No.2 not take any coercive action of recovery of amount imposed vide order dated 29.10.2018 in F.No10(1762)/COS(Ch. Puri)2018/4243 till disposal of the Appeal filed by Petitioner."

4. The controversy in the present petition relates to an arbitral award dated 12.10.2015, whereby the petitioner has been awarded a sum of

₹6,62,64,300/-, along with interest at the rate of 18% per annum from 01.11.2011, till the date of actual payment. Concededly, the petitioner has not taken any steps for paying the stamp duty payable on the said award. The said arbitral award was delivered on 12.10.2015 and this court is informed that an application for the enforcement of the said award has already been filed in this court. However, the award has not been impounded on account of deficient stamp duty.

5. Realising the error in not paying the stamp duty, the petitioner had filed an application, under Section 31 of the Indian Stamp Act, 1899 (hereafter 'the Act') for adjudication of the stamp duty payable on the said arbitral award. The petitioner had also simultaneously deposited the stamp duty of ₹66,300/-, by way of an e-stamp certificate dated 06.09.2018, as according to the petitioner that was the amount of duty payable on the Award.

6. Pursuant to the said application, the Collector of Stamps had passed an order dated 29.10.2018 adjudicating the stamp duty payable on the award at ₹1,12,981/-. After adjusting the amount of Stamp Duty of ₹100/- already paid, the Collector opined that a sum of ₹1,12,881/- was payable as stamp duty.

7. The petitioner has no grievance with regard to the stamp duty as adjudicated by the Collector of Stamps as the petitioner had not accounted for the interest accrued till the date of the award. The petitioner's grievance stems from the levy of penalty which is computed at ₹9,03,048. The petitioner has also pointed out that by the said order, the Collector has directed the petitioner to pay a sum of ₹9,49,626/- within a period of 15 days, failing which the said amount would be recovered as arrears of land

revenue.

8. At this stage it would be relevant to refer to Section 31 of the Act, which reads as under:-

> "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 five rupees and not less than 59 [fifty naye paise]) 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: 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."

9. It is clear from the above that the adjudication contemplated under Section 31 of the Act is with regard to the Stamp Duty payable, and not with

regard to the penalty that may be imposed. In this view, it is also well settled that an opinion rendered by the Collector of Stamp under Section 31 of the Act is neither binding on the applicant nor on the concerned authority.

10. Having stated the above, it is noticed that the prayer made in the present petition is limited to seeking a direction to respondent no.2 to not take any coercive action for recovery of the amount as quantified in the said order, till the disposal of an appeal filed by the petitioner.

11. It is clear from the provisions of Section 31 of the Act that an order passed thereunder is not enforceable and, therefore, the order dated 29.10.2018, to the extent that it directs payment and recovery of the amount quantified therein, is not sustainable. This Court also has reservations as to whether an appeal under Section 56 of the Act, would lie in respect of the said order. However, this Court is not called upon to adjudicate the said question.

12. In view of the above, the present petition is disposed of by directing that no coercive steps would be taken against the petitioner for enforcing the order dated 29.10.2018.

13. It is further clarified that the concerned authority is not precluded in any manner from taking any steps that are otherwise entitled to do in accordance with law.

14. The petition is disposed of. The pending application is disposed of.

15. Order *dasti* under the signature of Court Master.

VIBHU BAKHRU, J

APRIL 24, 2019

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