

30th September,
2020(D/L)
(SKB)

C.O. 2078 of 2019
With
CAN 1 of 2020 (Old CAN 5895 of 2020)
(Via Video Conference)

Sumita Sarkar
Versus
Runupama Bhowmik (Das) & Anr.

Mr. Supratik Shyamal,
Mr. Tarun Kumar Das,
Mr. Dilip Kumar Shyamal
... for the petitioner.

Since, due to repeated abstinence from court on the part of the opposite party no.1, service was already dispensed with on the opposite party no.1 by an order dated 4th September, 2019, the matter is being taken up for final hearing ex parte.

It is palpably clear from the impugned order, being Order No.21 dated January 29, 2019, that the Civil Judge (Senior Division), Balurghat, Dakshin Dinajpur, acted patently without jurisdiction in imposing ten times penalty on deficit stamp duty in a mechanical fashion despite the designated officer having previously assessed the deficit stamp duty payable, as per direction of the trial court itself.

It is evident from a plain reading of Section 38(2) and Section 40(1)(b) of the Indian Stamp Act, that ten times' penalty is the maximum which could be imposed and, as such, casts a duty on the assessing authority or the court look into the legitimacy and quantum, if any, of such penalty before imposing it. Moreover, in this case,

since the Sheristadar had already assessed the deficit stamp duty as per direction of the court below, there is no scope for further imposition of penalty by the court, when the Sheristadar did not do so.

It may also be noted that since this issue is primarily between the court and the plaintiff/petitioner, it is deemed that non-service on the opposite parties shall not be fatal in any event.

Accordingly, C.O.2078 of 2019 is allowed, thereby setting aside the Order No.21 dated January 29, 2019 passed by the learned Civil Judge (Senior Division), Balurghat, Dakshin Dinajpur in O.C. Suit No.29 of 2016 (Regn. No. 06 of 2016).

The plaintiff/petitioner is directed to deposit the deficit stamp duty, as assessed by the Sheristadar/officer of the court entrusted by the trial court with such duty, in the court below within a week from date.

There will be no order as to costs.

Urgent certified website copy of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)