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26.08.2021
TN

CO No.3385 of 2008

Shaidulla Molla
Vs.
Sk. Abul Kashem

(Via video conference)

Mr. Rabindranath Mahato,
Mr. Aritra Shankar Ray

.... for the petitioner

Mr. P.K. Banerjee,
Miss. Krishna Yadav

.... for the opposite party

The present revisional application has been filed on the limited question as to whether the trial court was justified in imposing ten times the deficient stamp duty as penalty, pursuant to Section 35, proviso (a) of the Stamp Act, 1899 (for short, "the 1899 Act"), without looking into the surrounding circumstances or the materials on record and/or the financial condition of the petitioner and other yardsticks which are relevant for assessing the penalty.

Learned counsel places reliance on *Gangappa and another vs. Fakkirappa,* reported at *(2019) 3 SCC 788*, in support of his arguments.

Learned counsel further submits that, in order to obviate prolongation of the matter if the petitioner is compelled to approach the Collector with an application under Section 39 of the 1899 Act, this court ought to mitigate the quantum of penalty, taking into consideration the facts sought to be brought before this court by way of a supplementary affidavit, which is filed in court today with the leave of the court.

Learned counsel appearing for the opposite party controverts such submissions and specifically submits that Section 35, proviso (a) mandates that the court would direct deposit of a sum equal to ten times of the deficit court fees as penalty. As such, it is argued that the judgment passed by the Supreme Court is not relevant in the present context.

A perusal of Section 35, proviso (a) of the 1899 Act clearly reveals that when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, the court shall require a sum equal to ten times of such duty or portion to be paid as penalty by the party to the litigation which is relying on the document-in-question.

In the present case, the trial court did precisely that and cannot be faulted for doing so, in view of there being no scope of exercising discretion in the hands of the trial court within the contemplation of Section 35, proviso (a) of the 1899 Act.

In the cited report, the Supreme Court exercised its powers under Section 142 of the Constitution of India and confirmed the quantum of the of penalty by the trial court on the ground that the suit had been kept pending for a long time in the said case.

However, the said judgment did not deal with the issue as to whether it is mandatory for the court to give reasons and/or any scope for the trial court to exercise discretion in the matter of imposing the quantum of penalty. As such, the cited report cannot be said to be a precedent on the issue involved in the present revisional application.

The language of the statute, in particular Section 35, proviso (a) of the 1899 Act, clearly leaves no scope of discretion in the hands of the trial court to remit or reduce the quantum of penalty below ten per cent of the deficit stamp duty, in the event such duty exceeds rupees five, as in the present case.

Hence, there is no infirmity in the impugned order.

Accordingly, CO No.3385 of 2008 is disposed of without interfering with the impugned order, making it clear that none of the observations made herein and/or in the order impugned herein shall preclude the petitioner from approaching the Collector under Section 39 of the 1899 Act.

If such an application is made, the Collector will be at liberty to decide and dispose of the same upon hearing both sides, if necessary, in accordance with law, without being influenced by any of the observations made herein.

There will be no order as to costs.

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

(Sabyasachi Bhattacharyya, J.)