IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION No.657 OF 2019

Mr. Pedro Caetano Andre Fernandes
Son of Late Sebastiao Fernandes
Married, Indian National
Businessman, r/o 3/G-4
Ashokan Co-operative Housing
Society Limited, Ambaji, Fatorda Goa .... Petitioner

Versus

1. Miss. Mary Bertha Gracias,
d/o Late Sebastiao Gracias, major of age,
r/o 683, Uddi Goa Velho, Goa;

2. Mrs. Leena Serafina Gracias e Ribeiro
Indian National, major of age,
r/o H. no.660, Khailem Bhat
Cujira, Santa Cruz Ilhas Goa

3. Mr. Agusto Ribeiro, major of age,
r/o Hno.660 Khailem Bhatt,
Cujra Santa Cruz, Goa .....Respondents

Mr. Anthony Joe D'Silva, Advocate for the Petitioner.

Mr. M. B. D'Costa, Senior Advocate with Ms. Karishma Custa Betquecar, Advocate for the Respondent No.1.

CORAM : M. S. SONAK, J
DATE : 23rd June, 2021

ORAL JUDGMENT:

Heard Mr. Anthony J. D'Silva, learned Counsel for the petitioner and Mr. M. B. D'Costa, learned Senior Advocate with Ms. Karishma Betquecar, learned Counsel for the respondent No. 1.

2. Mr. D'Silva points out that the remaining respondents have been duly served. On 29.07.2019 this Court had made clear that this petition will be taken up for final disposal at the state of admission.

3. Accordingly, Rule. Rule is made returnable forthwith in view of the consent and request of the learned Counsel for the parties as also the order dated 29.07.2019.

4. The challenge in this petition is to the order dated 06.07.2019 made by the Adhoc Senior Civil Judge 'B' Court at Panaji requiring the petitioner-plaintiff to pay deficit stamp duty of ₹15,000/- on the agreement dated 27.12.2010 and to pay penalty of ten times of such duty.

5. Mr. D'Silva, learned Counsel for the petitioner submits that in this case the learned Trial Judge has failed to adopt the procedure prescribed in such matters by the Hon'ble Apex Court in the case of ***Chilakuri Gangulappa v/s. Revenue Divisional Officer, Madanapalle & Anr***[1]. He submits that the trial court had no jurisdiction to make the order which it had made and the matter ought to have been referred to the Collector for deciding on the issue of deficiency of stamp duty and penalty. He submits

1 AIR 2001 SC 1321

that the petitioner, in order to show his bonafides, has already deposited the amount of ₹15,000/- which corresponds to the deficit stamp duty before this Court. He submits that the impugned order is the effect of precluding the petitioner from seeking a waiver of penalty from the Collector by explaining the circumstances in which the deficit arose in the first place. He therefore submits that the impugned order to the extent it imposes the penalty may be set aside.

6. Mr. M. B. D'Costa, learned Senior Advocate for the respondent No.1 relies on the provision of Section 35 of the Indian Stamp Act, 1899 to submit that the proviso to Section 35 vests no discretion in the Court and the Court, can admit document in evidence only on requiring a party to pay the deficit stamp duty and penalty of an amount equal to ten times such duty or portion. He relies on the decision of the Hon'ble Supreme Court in ***Gangappa And Anr v/s. Fakkirappa***[2]***.***

7. Mr. D'Silva, learned Counsel now points out that what might apply is Section 6 of the Goa Stamp Act. He submits that in terms of this amendment there is no question of payment of any penalty and the only requirement may be about the payment of deficit stamp duty.

8. Upon consideration of the rival contentions and the provisions of law, I find that there was really no dispute in this mater that there was a

2 2019 3 SCC 788

deficit of ₹15,000/- insofar as the stamp duty on the instrument was concerned. The impugned order also records that there was no dispute that there was deficit of ₹15,000/-. Therefore, there was no error on the part of the learned Trial Judge in requiring the petitioner to pay this deficient amount.

9. Even Mr. D'Silva does not dispute that the deficit stamp duty is required to be paid and he submitted that this have been in fact deposited in this Court by the petitioner to show his bonafides. Thus, without going into the issue as to whether the correct procedure was adopted by the Civil Court or not and since there is no dispute that there was deficit stamp duty to the extent of ₹15,000/-, that part of the direction in the impugned order is not interfered with.

10. The amount of ₹15,000/- deposited by the petitioner in this Court is to be remitted to the file of the learned Trial Judge in Special Civil Case No. 18/2011/B so that the learned Trial Judge can deal with the same in accordance with law, i.e., forward the same to the Collector at the earliest.

11. The provision of Section 35 of the Indian Stamp Act particularly as interpreted by the Hon'ble Supreme Court in ***Gangappa*** (supra) suggests that the Court can insist upon the deposit of penalty of ten times. However, once such penalty is deposited, in terms of Section 38 of

the Indian Stamp Act, 1899, the same will have to be forwarded by the Court to the Collector forthwith. Therefore, Section 39 of the Stamp Act empowers the Collector to refund the penalty paid under Section 38 sub-Section (1) if he thinks fit or refund any portion of the penalty which may have been paid in respect of such an instrument. This means that even if the petitioner now pays the penalty amunt or rather deposits the penalty amount before the learned Trial Judge, the petitioner is by no means precluded from seeking a refund of the stamp or any portion thereof from the Collector.

12. Accordingly, the petitioner is now granted 4 weeks to deposit the penalty amount before the learned Trial Judge. Once this amount is deposited, the Trial Judge, to remit both the deficit stamp duty amount as well as the penalty amount to the Collector forthwith or in any case within a period of 2 weeks from the date of such deposit.

13. Once the petitioner deposits the penalty amount before the learned Trial Judge, there can be no difficulty to the admission of the documents in evidence and the evidence in the matter can proceed. The interim order granted by this Court is accordingly vacated. However, if no deposit is made, then, obviously, the documents in question will not be admitted in evidence.

14. Thereafter, it will be open to the petitioner to move the Collector and satisfy the Collector that the penalty amount or any portion thereof is liable to be refunded for reasons which the petitioner can always urge before the Collector. The petitioner will also be at liberty to urge that in terms of the Goa Stamp or the Goa Stamp Amendment Act, no penalty was required to be paid. If the petitioner indeed moves the Collector, the Collector is directed to dispose of such application within two months from the date of its institution. Such application will obviously have to be decided after affording an opportunity of hearing to the petitioner.

15. The impugned order is hereby modified in the aforesaid terms. The Registry to remit the amount of ₹15,000/- deposited by the petitioner in this Court within two weeks from today.

16. It is made clear that this order is made in the peculiar facts and circumstances of the present matter.

17. All concerned to act based on the authenticated copy of this order.

M. S. SONAK, J.

msr.