IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.07.2021

DATE OF DECISION : 26.08.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A.No.1655 of 2016

K.Balaji Sundaram
rep by his Power Agent M.K.Sundaram ..Appellant/Petitioner

-vs-

1. The Chief Controlling Revenue Authority/
Inspector General of Registration
Chennai 600 028

2. The District Revenue Officer (Stamps)
Office of the District Collector
5th Floor, Singaravelar Maligai
Rajaji Salai, Chennai 600 001

3. The Sub Registrar
Office of the Registrar
Kodambakkam
Chennai 600 024 .. Respondents/Respondents

Appeal filed under Clause 15 of the Letters Patent, against the order dated 04.11.2016 made in W.P.No.3959 of 2010.

Prayer in W.P.No.3959 of 2010:-

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus,Calling the records of the proceedings of the 2nd respondent herein in his proceedings in Na.Ka.C.Pa.No.A3/423/2001 dated.17.2.2010 received on 22.2.2010 and quash the same and consequently directing the respondent herein to issue treasury chellan for the payment of difference in stamp duty in respect of Document No.2956/01 to 2959/01 for a sum of Rs.313769/- in respect of each document thereby permitting the petitioner to pay stamp duty without interest pursuant to the order of the 1st respondent in his proceedings in Pa.Mu.No.66998/N5/04 dated.22.1.2010 passed afresh u/s 47A(4)

Indian Stamp Act pursuant to the direction of Honble High Court in C.M.A.No.1019 of 2004 dated.6.4.2009.

For Appellant	::	Mr.K.M.Vijayan Senior Counsel for M/s K.M.Vijayan Associates
For Respondents	::	Mr.V.Manoharan Government Advocate

JUDGMENT

T.RAJA, J.

The issue raised in this appeal by the appellant is whether the respondents are empowered to levy interest on the deficit stamp duty from the date of order of the respondent after excluding two months grace period to till date of default of payment of deficit stamp duty.

2. The appellant/writ petitioner registered his property by way of four sale deeds in Document Nos.2956 to 2959 of 2001 by paying the stamp duty. Pursuant to the proceedings issued under Section 47-A(1) of the Indian Stamp Act, the stamp duty was fixed by the Collector at Rs.2,150/- per square feet. Aggrieved thereby, when an appeal was filed before the first respondent, the stamp duty was reduced to Rs.1,884/- per square feet by his order dated 28.3.2003. The said order of the first respondent under Section 47-A(5) of the Indian Stamp Act was again challenged before this Court in C.M.A.No.1019 of 2004 before this Court. This Court, while setting aside the order of the first respondent for fixing the market value of Rs.1,884/-, as against Rs.1,594.70p, directed the first respondent to determine afresh the market value within one month from the date of receipt of a copy of the order. Thereafter, the first respondent, by his order dated 22.1.2010, fixed the same market value as it was fixed earlier that was in fact set aside by this Court in C.M.A.No.1019 of 2004 on 6.4.2009. It was further stated that the order passed by the first respondent did not specify the date of payment of the freshly assessed market value and that order was received by the appellant on 20.2.2010. However, the order stated that the interest would be levied at 2% per month on the difference in the market value assessed from the date specified for its payment. Therefore, it was claimed that even though no date was specified, as per the rules, difference of amount has to be paid within 60 days from the date specified or the date of receipt of the order. In the meanwhile, the second respondent issued the order impugned in the writ petition demanding the stamp duty and also the interest under Section 47-A(4) of the Indian Stamp Act to the extent of a sum of Rs.5,77,392/- for each one of the four documents. It was also

contended that the said demand of interest is inconsistent with the order of the first respondent as well as the order passed by this Court in C.M.A.No.1019 of 2004. Now the appellant is willing to pay the amount of difference in stamp duty, whereas the calculation of interest as demanded by the second respondent was put to challenge in the writ petition unsuccessfully. Therefore, as mentioned already, the issue raised in this appeal is whether the respondents are empowered to levy interest on the deficit stamp duty from the date of order of the respondent after excluding two months grace period to till date of default of payment of deficit stamp duty.

3. Heard both sides.

4. Section 47-A of the Indian Stamp Act, reads thus:-

> "47-A. Instruments of conveyance etc. undervalued, how to be, dealt with :--(1) If the registering officer appointed under the Registration Act, 1908 (Central Act XVI of 1908), while registering any instrument of conveyance, exchange, gift release of benami right or settlement, has reason to believe that the market value of the property of which is the subject matter of conveyance exchange, gift, release of benami right or settlement, has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon.
>
> (2)On receipt of a reference under sub-section (1), the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules made under this Act, determine the market value of the property which is the subject matter of conveyance, exchange, gift, release of benami right or settlement, and the duty as aforesaid. The difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty.
>
> (3) The Collector may, suo motu or otherwise, within five years from the date of registration of any instrument of conveyance, exchange, gift, release of

benami right or settlement, not already referred to him under sub-section (I), call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property which is the subject matter of conveyance, exchange, gift, release of benami right or setttlement and the duty payable thereon and if after such examination,he has reason to believe the market value of such property and duty as aforesaid in accordance with the procedure provided for in sub-section (2). The difference, if any, in the amount of duty, shall be payable by th eperson liable to pay the duty;
Provided that nothing in this sub-section shall apply to any instrument registered before the date of the commencement of the Indian Stamp (Tamil Nadu Amendment) Act, 1967.

(4)Every person liable to pay the difference in the amount of duty under sub-section (2) or sub-section (3) shall pay such duty within such period as may be prescribed. In default of such payment, such amount of duty outstanding on the date of default shall be a charge on the property affected in such instrument. On any amount remaining unpaid after the date specified for its payment, the person liable to pay the duty shall pay, in addition to the amount due, interest at one per cent per month on such amount for the entire period of default:

Provided that where a person has preferred an appeal against the order under sub-section (2) or sub-section (3), the interest payable under this sub-section shall be postponed till the disposal of appeal and shall be calculated on the amount that becomes due in accordance with the final order passed in appeal as if such amount had been determined under sub-section (2) or sub-section (3), as the case may be.
(5) Any person aggrieved by an order of the Collector under sub-section (2) or sub-section (3) may appeal to such authority as

may be prescribed in this behalf. All such appeals shall be preferred within such time, and shall be heard and disposed of in such manner, as may be prescribed by rules made under this Act.
(6) to (11).....”

5. A perusal of the above proviso to sub-section (4) shows that where a person has preferred an appeal against the order under sub-section (2) or sub-section (3), the interest payable under this sub-section shall be postponed till the disposal of appeal and shall be calculated on the amount that becomes due in accordance with the final order passed in appeal as if such amount had been determined under sub-section (2) or sub-section (3), as the case may be. Therefore, when the interest payable has to be postponed till the disposal of appeal and the same shall be calculated on the amount that becomes due in accordance with the final order passed in appeal as if such amount had been determined under sub-section (2) or sub-section (3), the appellant is entitled to get the postponement of the payment of interest during the pendency of appeal. However, when the appellate authority decides the matter, the interest shall be calculated on the deficit stamp duty fixed by the appellate authority from the date of determination till the date of payment thereof.

6. For example, if the registering officer, while registering any instrument of conveyance like, exchange, gift, release of benami right or settlement, has reason to believe that the market value of the property has not been truly set-forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the market value of such property. On such reference, if the Collector determines the market value of such property at Rs.100/-, aggrieved thereby, if further appeal is taken to the Inspector General of Registration, who, after setting aside the order of the Collector, fixes the market value and determines at Rs.50/-, and thereafter, if further appeal is taken to the High Court by way of Civil Miscellaneous Appeal, the High Court, after dissatisfying with the order passed by the Inspector General of Registration, fixes Rs.150/-, and again, if such order of the High Court is modified by the Supreme Court, then the interest on the deficit stamp during the pendency of the appeal either before the Collector or before the Inspector General of Registration or before the High Court or the Supreme Court shall remain postponed. But, as and when the determination of the market value is finalized in the appeal, the interest on the deficit stamp shall accrue from the date of determination made by the Collector taking into account the final amount fixed by the Higher Forum, till the date of payment

and the same shall be collected in one lump-sum as if such amount had been determined under sub-section (2) or sub-section (3).

7. In the present case, as already noted by the writ Court, the first respondent fixed the market value on 28.3.2003. As against the said order, the appellant preferred further appeal under sub-section (10) before this Court in C.M.A.No.1019 of 2004 and the same was pending before this Court till 2009 and ultimately by order dated 6.4.2009, the appeal was disposed of remanding the matter back to the first respondent for reconsideration for refixing the market value of the property concerned of the appellant. Only thereafter, the first respondent passed the order on 22.1.2010 fixing the market value at Rs.1,884/-. The appellant has no quarrel over the said fixation of market value, as he is willing to pay the same. However, with regard to the payment of interest, he has challenged the same by stating that the period of pendency of the appeal should be excluded. As the interest to be paid by the party has been calculated from the date of determination of the market value, but not from the date of registration, interest has been calculated by the respondents for the difference of stamp duty to be paid by the appellant for the period excluding the statutory period of payment of 60 days. Accordingly, the writ appeal fails and it is dismissed directing the appellant to make the payment within a period of 30 days from the date of receipt of a copy of this order. Consequently, C.M.P.No.20498 of 2016 is also dismissed. However, there is no order as to costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

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Chennai 600 024

+1cc to Mr.K.M.Vijayan, Advocate, S.R.No.42968
+1cc to the Government Pleader, S.R.No.43381

NMI(CO)
CT(22/09/2021)