Dl. 22 | April 13, 2022

F.M.A. 327 of 2022

Sri Gautam Kumar Saha & anr.
Vs.
Sri Rishi Baruah

Mr. Asit Baran Raut,
Mr. Tuhin Subhra Raut,
Ms. Suniti Chatterjee,
…for the appellants.

Mr. F. Rabi,
Mr. Lutful Haque,
Mr. Golam Karim Chowdhury,
…for the respondent.

In a suit for specific performance of agreement for sale, the injunction was denied by the trial court in view of the fact that the agreement for sale was insufficiently stamped

In the suit for specific performance of agreement for sale, the court, at the stage of receiving the application for injunction, being satisfied with the prima facie case made out for injunction can pass an conditional order of injunction subject to the agreement being properly stamped, the agreement could have been impounded and sent it to the registering authority for putting in the requisite stamp. However, the court may put a condition that in the event such stamp duty is not paid within a particular time, the order of injunction may stand vacated.

In the instant case, the admitted position is that the plaintiffs/appellants have paid Rs. 15.50 lakh out of Rs. 32 lakh and on the basis of such part consideration, the respondent had released the title deed of the suit property. it is recorded that the last instalment was paid in September 2020.

We cannot say at this stage that there was any lack of diligence on the part of the plaintiffs and the explanations offered for not being able to pay the balance consideration amount, which may be assessed at the trial.

In view of the aforesaid circumstances and in view of the decisions rendered by this court in the case of **GTZ India Private Limited vs. Power Electronic Engineers & ors.** reported in **2009 (4) C.H.N. 415** and in the case of **Merlin Orihects Ltd. vs. Educo Ventures Pvt. Ltd.** reported in **2016 (2) ICC (Cal) 235**, we direct the appellants to deposit a sum of Rs. 23 lakhs with the trial court within one week from date. The trial court shall impound the document and send the same to the authority concerned for assessment and payment of the required stamp duty within seven days from the date of making the deposit as aforesaid. However, the assessment shall be subject to the remedy of appeal or revision as may be available to the appellants, if they would be dissatisfied with such assessment.

There shall be an order of injunction for a period of seven days restraining the respondent from alienating and/or encumbering the suit property and in the event the said sum of Rs. 23 lakh is deposited in the trial court, the order of injunction shall continue till disposal of the suit.

We make it clear that expeditious steps should be taken by the assessing authority to assess the stamp duty and the appellants would be required to cure the defect with regard to the stamp duty at the earliest.

The learned trial judge is requested to expedite the hearing of the suit as far as practicable. The defendant/respondent shall file his written statement within a period of four weeks from date. The learned trial judge is requested to pass peremptory directions with regard to procedural matters in order to make the suit ready for hearing.

We also make it clear that the document shall not be admitted on evidence unless it is properly stamped. It is an admitted position that the agreement does not provide the time schedule within which the entire consideration amount is to be paid. There cannot be any doubt that it must be paid within a reasonable time and it would be open to the defendant/respondent to accept the balance consideration amount. .

With the aforesaid observations, the appeal stands disposed of even at the admission stage.

In view of disposal of the appeal, nothing remains in the application for injunction filed under CAN 1 of 2022 and the same is also disposed of.

There will be no order as to costs.

**( Soumen Sen, J. )**

**( Ajoy Kumar Mukherjee, J. )**

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