IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

116

CR-1132-2019
Date of decision: 09.11.2022

BALWANT SINGH AND ORS. ..Petitioners

Versus

SURINDER SINGH AND ORS. ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Prateek Gupta, Advocate
for the petitioners.

ANIL KSHETARPAL, J(Oral)

1. The dispute is with regard to the quantum of stamp duty payable on the agreement to sell. The petitioners have filed a suit for specific performance of alleged agreement to sell dated 04.06.2007. The trial Court has impounded the agreement to sell while directing them to pay *ad valorem* stamp duty along with the penalty of 10 times the stamp duty payable. Assailing its correctness, the plaintiffs have filed the present revision petition.

2. This Bench has heard the learned counsel representing the petitioners and with his able assistance perused the paperbook.

3. The learned counsel representing the petitioners, while relying upon the judgment passed by the Supreme Court in ***Ameer Minhaj Vs. Dierdre Elizabeth Issar (2018) 7 SCC 639***, contends that the stamp duty on the suit for specific performance of the agreement to sell is not payable even if the agreement to sell evidences delivery of possession. This Court has considered the arguments and carefully

examined the judgment passed by the Supreme Court in ***Ameer Minhaj case (supra)***. In that case the Court was examining the requirement of mandatory registration of the agreement to sell in the context of Section 53A of the Transfer of Property Act, 1882, which was amended in the year 2001. It may be noticed that a corresponding amendment was also made in Section 17 of the Registration Act, 1908, by the same amending Act. In this case, the question is different. The State of Punjab has amended Indian Stamp Act, 1899 to the following effect:-

> *"**Sub-Section 10 of Section 2:-***
> ***(10) "Conveyance"-** "Conveyance" includes a conveyance on sale and every instrument by which property, whether moveable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule I or by Schedule 1-A [or by (Schedule 1-B or] Schedule 1-C], as the case may be;*
> ***SCHEDULE 1-A:-***
> ***Entry No.5:-***

5	*AGREEMENT OF MEMORANDUM OF AN AGREEMENT-]*	
	(a) if relating to the sale of a bill of exchange;	*Twenty-five rupees.*
	(b) if relating to the sale of a Government security or share in an incorporated company or other body corporate;	*Five rupees for every ten thousand or part thereof, of the value of the security or share.*
	(c) if relating to the sale of immovable property	*Three hundred rupees*
	(cc) in the case of agreement to sell followed by or evidencing delivery of possession of the immovable property agreed to be sold;]	*The same duty as is leviable under column 2 of entry No.23 of this schedule, subject to the adjustment of duty chargeable at the time of execution of conveyance made in pursuance of such agreement; and*
	(d) if not otherwise provided for	*Fifteen rupees*
	Exemption *Agreement or memorandum of agreement-* *(a) for or relating to the sale of goods or merchandise exclusively, not being a note or memorandum chargeable under No.43:* *(b) made in the form of tenders to the Central Government for or relating to, any*	

	loan; *AGREEMENT TO LEASE – See Lease No.(35)*	

Entry No.23:-

23	***CONVEYANCE*** *as defined in Section 2(10) not being a transfer charged or exempted under No.62.*	***Where conveyance amounts to sale of immovable property***	***Other conveyances***
	1	***2***	***3***
	where the value or amount of the consideration for such conveyance as set forth therein does not exceed Rs.50	*Two rupees and fifty paise*	*Two rupees*
	Where it exceeds Rs.50, but does not exceed Rs.100	*Five rupees*	*Three rupees*
	Where it exceeds Rs.100, but does not exceed Rs.200	*Ten rupees*	*Six rupees*
	Where it exceeds Rs.200, but does not exceed Rs.300	*Fifteen rupees*	*Nine rupees*
	Where it exceeds Rs.300, but does not exceed Rs.400	*Twenty rupees*	*Twelve rupees*
	Where it exceeds Rs.400, but does not exceed Rs.500	*Twenty five rupees*	*Fifteen rupees*
	Where it exceeds Rs.500, but does not exceed Rs.600	*Thirty rupees*	*Eighteen rupees*
	Where it exceeds Rs.600, but does not exceed Rs.700	*Thirty five rupees*	*Twenty one rupees*
	Where it exceeds Rs.700, but does not exceed Rs.800	*Forty rupees*	*Twenty four rupees*
	Where it exceeds Rs.800, but does not exceed Rs.900	*Forty five rupees*	*Twenty seven rupees*
	Where it exceeds Rs.900, but does not exceed Rs.1000	*Fifty rupees*	*Thirty rupees*
	And for every Rs.500 or part thereof in excess of Rs.1000	*Twenty five rupees*	*Fifteen rupees*
	Exemption *Assignment of copyright under the Copyright Act, 1957, Section 18 Co-Partnership-Deed – See Partnership (No.46)*		

Entry No.62:-

62	***TRANSFER*** *(whether with or without consideration)-*	
	(a) of shares in an incorporated company or other body corporate;	*As in Schedule I*
	(b) of debentures, being marketable securities,	*One-half of the duty*

	whether the debenture is liable to duty or not, except debentures provided for by Section 8;	*payable on a debenture (No.27) for a consideration equal to the face amount of the debenture.*
	(c) of any interest secured by a bond, mortgage-deed or policy of insurance;	*The duty with which such bond, mortgaged deed or policy of insurance is chargeable subject to a maximum of five hundred rupees.*
	(d) of any property under the Administrator General's Act, 1918, Section 25;	*Fifty rupees*
	(e) of any trust-property without consideration from one trustee to another trustee, or from a trustee to a beneficiary.	*Fifty rupees*
	Exemption *Transfers by endorsement* *(a) of a bill of exchange, cheque or promissory note;* *(b) of a bill of lading, delivery, order, warrant for goods, or other mercantile document of title to goods;* *(c) of a policy of insurance;* *(d) of securities of the Central Government* *See also Section 8; and*	
	[(f) by way of assignment of debt or securitization of loans.	*0.1% of the amount, subject to a maximum of one lakh rupees.]*

5. In fact, in ***Civil Revision No.1931 of 2017, titled as Narinder Kapoor and others Vs. Inderjit (since deceased) through his legal heirs and others, decided on 12.02.2020***, the aforesaid amendment has been examined in detail. This Court has formed an opinion that the amount of stamp duty on the agreement to sell evidencing delivery of possession is payable as per 2nd part of column No.2 of entry No.23 of the schedule attached to the Indian Stamp Act, 1899. On a joint reading of various amendment carried out by the Punjab Government, it is evident that the stamp duty, at the prescribed rate, is payable even when the agreement to sell evidences delivery of possession, however, the stamp duty is to be calculated on the amount of earnest money. The

relevant discussion in the aforesaid judgment is as under:-

> *5. Now, let us examine further amendments in Schedule 1-A. Entry No.5 is with respect to agreement of memorandum of an agreement. Clause CC of Entry No.5 clearly takes in its sweep agreement to sell followed by or evidencing delivery of possession of all the immovable property agreed to be sold. Thus, even if the agreement to sell followed by or evidencing delivery of possession of immovable property does not fall within the definition of the word 'conveyance', however, it would not be appropriate to hold that no stamp duty as is leviable under Column No.2 of Entry No.23 of this Schedule is payable. Column No.2 clearly specifies that an agreement to sell followed by or evidencing delivery of possession of immovable property shall be charged same duty as is leviable under Column No.2 of Entry No.23 of this Schedule. However, significance has also to be given to the second part of the sentence which reads as "subject to adjustment of duty chargeable at the time of execution of the conveyance made in pursuance of such agreement". This second part is also to be kept in mind while interpreting the entries. However, this aspect would be discussed in the later part of this judgment, in view of the amendment in entry No.5 for the purpose of determining the amount of stamp duty payable.*
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> *6. Now let us examine Entry No.23 which is with respect to the documents which are conveyance or deemed to be conveyance. Although, as noticed above, the agreement to sell followed by or evidencing delivery of possession does not fall in the definition of the word 'conveyance', however, in view of Entry No.5 for the purpose of stamp duty payable, Entry No.23 is applicable.*
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> *7. However, it is important to note that Column No.2 has been divided in two different sub-columns. Sub-Column No.1 of Column No.2 give the rate at which the stamp duty is payable where the conveyance amounts to sale of immovable property. In other words, the duty payable under Sub-Column No.1 of Column No.2 would be leviable only when the conveyance amounts to sale of property. An agreement to sell does not amounts to sale of immovable property. Thus, the stamp duty*

> *payable on agreement to sell followed by or evidencing delivery of possession would be regulated by Sub-Column No.2 of Column No.2. It needs to be clarified that stamp duty shall be payable on the amount paid/payable under the agreement to sell by the intended purchaser (vendee) to the intended seller (vendor) and not on the entire sale consideration. The reason is obvious, because of the language of Column No.2 with respect to Entry No.5. The duty which is to be charged at the time of entering into agreement to sell is subject to the adjustment of duty chargeable at the time of execution of the conveyance made in pursuance of such agreement. If the Court interprets that the same duty shall be charged as is leviable on the total sale consideration agreed to between the parties, the second part of Entry No.5 in Column No.2 would be rendered otiose. Legislature, in the considered view of this Court, never intended that the entire stamp duty as is payable on the conveyance deed, be recovered at the time of agreement to sell. Had this been the intention, then the second part in Column No.2 of Entry No.5, would not have in the statute."*

6. In the present case, the amount of total sale consideration and earnest money is same. In other words, complete payment has been made at the time of executing the agreement. Thus, the Court has correctly impounded the agreement while permitting the petitioners to pay the stamp duty. However, there is no material to prove that the plaintiffs malafidely made an effort to avoid payment of the stamp duty or made an attempt to cause loss to the Government.

7. In view of the judgment passed by the Supreme Court in ***Trustees of H.C. Dhanda Trust Vs. State of Madhya Pradesh and others (2020) 9 SCC 510***, this Court is of the opinion that the trial Court has erred in directing penalty at the rate of 10 times of the stamp duty payable. Hence, the revision petition is partly allowed. The petitioners

are permitted to make good the deficiency in the stamp duty along with an equivalent amount as penalty. In other words, the penalty shall be restricted to 1 time of the stamp duty payable.

8. All the pending miscellaneous applications, if any, are also disposed of.

November 09th, 2022 **(ANIL KSHETARPAL)**
Ay **JUDGE**

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*