IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-1734 of 2019(O&M)
Date of decision: 20.07.2022

Gurinder Singh Dhaliwal ..Petitioner

Versus

Pargat Singh and others ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ravi Chadda, Advocate
for the petitioner.

Mr. Ankit Joshi, Advocate, and
Mr. Amritpal Singh Gill, Advocate
for the respondents.

ANIL KSHETARPAL, J(Oral)

The trial court, after finding that the agreement to sell is insufficiently stamped, has impounded the same while directing the plaintiff to pay the deficiency in the stamp duty and penalty equal to ten times of the said deficiency within a period of one month from today.

The petitioner herein is a plaintiff in a suit for possession by way of specific performance of the agreement to sell dated 08.12.2015. As per the agreement to sell, defendant no.1 and 2, on receipt of the entire sale consideration i.e. Rs. 50,00,000/-, delivered the possession to the petitioner.

The liability to pay stamp duty in accordance with the amendment in the Indian Stamp Act, 1899 (hereinafter called the 1899 Act) inserted by State of Punjab is not in dispute. In ***Narinder Kapoor and others vs. Inderjit (since deceased) through his legal heir and others*** *(Civil Revision No.1931 of 2017 and other connected case, decided on 12.02.2020)* the distinction between the stamp duty payable at the time of execution of the agreement to sell evidencing delivery of possession has been examined in the context of the amendment brought in Entry no.5 in Schedule 1-A as applicable to the State of Punjab and Entry no.5, Clause 'CC added by the Indian Stamp (Punjab Amendment) Act 2001 notified on 21.12.2001. Whereas Entry no.23 was amended by the Indian Stamp (Punjab Amendment) Act, 2007, with effect from 25.01.2008. In view of the aforesaid amendments, there is deficiency in payment of the stamp duty.

The next question which arises is the correctness of the amount of penalty ordered by the trial court.

The court has interpreted Section 35 of the 1899 Act in a manner as if imposition of penalty of 10 times is mandatory. This is not the correct position of law. The Supreme Court in ***Trustees of H.C. Dhanda Trust vs. State of Madhya Pradesh and others, 2020 AIR (Supreme Court) 4349*** has examined the matter and found that on collective reading of Section 33, 35, 38 and 39 of the 1899 Act, the discretion lies with the authority which impounds the insufficiently stamped document. The relevant discussion is as under:-

> *"17. The amount of penalty thus can be an amount not exceeding ten times. The expression "an amount not exceeding ten times" is preceded by expression "if he thinks fit". The statutory scheme, thus, vest the discretion to the Collector to impose the penalty amount not exceeding ten times. Whenever statute transfers discretion to an authority the discretion is to be exercised in furtherance of objects of the enactment. The discretion is to be exercised not on whims or fancies rather the discretion is to be exercised on rational basis in a fair manner. The amount of penalty not exceeding ten times is not an amount to be imposed as a matter of force. Neither imposition of penalty of ten times under Section 40(1) (b) is automatic nor can be mechanically imposed. The concept of imposition of penalty of ten times of a sum equal to ten times of the proper duty or deficiency thereof has occurred in other provisions of the Act as well. We*

may refer to Section 35(a) in this context is as follows:

> *"35. Instruments not duly stamped inadmissible in evidence, etc. — No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped :*
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> *Provided that—*
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> *(a)any such instrument shall be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of any instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;*
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> *b)........."*

18. It is relevant to notice that Section 35 contemplates that when ten times the amount of theproper duty of or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion is required to be deposited. Under Section 39 Collector is empowered to refund penalty. As noticed above under Section 35(a) there is no option except to pay sum equal to ten times of such duty or deficient portion but Section 39 empowers the Collector to refund any portion of the penalty in excess of five rupees which is expressed in following words: "if he thinks fit refund any portion of the penalty in excess of five rupees which has been paid in respect of such instrument."

19. The legislative intent which is clear from reading of Sections 33,35,38 and 39 indicates that with respect to the instrument not duly stamped, ten times penalty is not always retained and power can be exercised under Section 39 to reduce penalty in regard to that there is a statutory discretion in Collector to refund penalty.

20. Section 39(1)(b) of the Indian Stamp Act, 1899 came for consideration before this Court in Gangtappa and another vs. Fakkirappa, 2019(3) SCC 788 (of which one of us Ashok Bhushan, J. was a member). This Court *noticed the legislative scheme and held that the legislature has never contemplated that in all cases penalty to the extent of ten times should be ultimately realized. In paragraph 16 following has been laid down by this Court:*

> *"16. Deputy Commissioner under Section 38 is empowered to refund any portion of the penalty in excess of five rupees which has been paid in respect of such instrument. Section 38 Sub-section (1) again uses the expression "if he thinks fit". Thus, in cases where penalty of 10 times has been imposed, Deputy Commissioner has discretion to direct the refund of the penalty in facts of a particular case. The power to refund the penalty Under Section 38 clearly indicates that legislature have never contemplated that in all cases penalty to the extent of 10 times should be ultimately realised. Although the procedural part which provides for impounding and realisation of duty and penalty does not give any discretion Under Section 33 for imposing any lesser penalty than 10 times, however, when provision of Section 38 is read, the discretion given to Deputy Commissioner to refund the penalty is akin to exercise of the jurisdiction Under Section 39 where while determining the penalty he can impose the penalty lesser than 10 times." 20. The expression "if he thinks fit" also occurs in Section 40 sub-clause (b). The same legislative scheme as occurring in Section 39 is also discernible in Section 40(b), there is no legislative intentment that in all cases penalty to the extent of ten times the amount of proper stamp duty or deficient portion should be realised. The discretion given to Collector by use of expression "if he thinks fit" gives ample latitude to Collector to apply his mind on the relevant factors to determine the extent of penalty to be imposed for a case where instrument is not duly stamped. Unavoidable circumstances including the conduct of the party, his intent are the relevant factors to come to a decision.*

21. The purpose of penalty generally is a deterrence and not retribution. When a discretion is given to a public authority, such public authority should exercise such discretion reasonably and not in oppressive manner. The responsibility to exercise the discretion in reasonable manner lies more in cases where discretion vested by the statute is unfettered. Imposition of the extreme penalty i.e. ten times of the duty or deficient portion thereof cannot be based on the mere factum of evasion of duty.

> *The reason such as fraud or deceit in order to deprive the Revenue or undue enrichment are relevant factors to arrive at a decision as to what should be the extent of penalty under Section 40(1)(b).*
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> *22. We may refer to judgment of this Court in Peteti Subba Rao vs. Anumala S. Narendra, 2002 (10) SCC 427. This Court had occasion to consider in the above case provisions of Section 40 of the Indian Stamp Act, 1899. Referring to Section 40 this Court made following observation in paragraph 6:*
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>> *"6.........The Collector has the power to require the person concerned to pay the proper duty together with a penalty amount which the Collector has to fix in consideration of all aspects involved. The restriction imposed on the Collector in imposing the penalty amount is that under no circumstances the penalty amount shall go beyond ten times the duty or the deficient portion thereof. That is the farthest limit which meant only in very extreme situations the penalty need be imposed up to that limit. It is unnecessary for us to say that the Collector is not required by law to impose the maximum rate of penalty as a matter of course whenever an impounded document is sent to him. He has to take into account various aspects including the financial position of the person concerned."*
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> *23. This Court in the above case categorically held that it is only in the very extreme situation that penalty needs to be imposed to the extent of ten times."*

In the present case, the amount of stamp duty payable comes to Rs.3,00,000/-. The plaintiff cannot be penalized to the extent of 10 times merely in order to double the amount of total sale consideration. There is no evidence that the plaintiff was in the knowledge of the amendment carried out and he, intentionally, evaded the payment of the stamp duty.

In the facts of the present case, it is considered appropriate to direct the plaintiff to pay the amount of deficient stamp duty along with an equal amount as penalty.

With these observations, the revision petition is disposed of.

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

July 20th, 2022 **(ANIL KSHETARPAL)**
nt **JUDGE**

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*