In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 1254 of 2022 (O&M)

Date of Decision: 24.08.2022

M/s Welkin Overseas

... Petitioner(s)

Versus

M/s Aryan Villa & Resort LLP and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. M.L.Saggar, Senior Advocate
with Mr. Rohit Joshi and Mr.Tajeshwar Sullar, Advocates
for the petitioner(s).

Mr. D.S.Bhinder, Advocate
for the respondent No.1 to 3.

Mr. Rakesh Gupta, Mr. Rakshit Gupta and Mr. Kamal Jindal, Advocates, for the respondent No.4.

Anil Kshetarpal, J.

1. The petitioner (plaintiff) has been directed to make good the deficiency in the stamp duty along with 10 times penalty on the amount of deficient stamp duty. The plaintiff has filed a suit for specific performance of the agreement to sell.

2. On 05.04.2022, the learned counsel representing the petitioner prayed that he will make good the deficiency in the stamp duty, however, the amount of penalty should be scaled down. According to the learned counsel representing the petitioner, the amount of deficient stamp duty comes to ₹12,89,700/-.

3. In view of the judgment passed by the Supreme Court in *Trustees of H.C.Dhanda Trust v. State of Madhya Pradesh and Others*

2020 AIR (Supreme Court) 4349, it is not mandatory to order penalty of 10 times under Section 40(1)(b) of the Stamp Act, 1899. In view of the amendment brought in by the State of Punjab in the Stamp Act, 1899 the stamp duty at the time of agreement to sell is required to be paid. There is no material to prove that the petitioner has intentionally tried to evade its payment. Hence, it is considered appropriate to direct the petitioner (plaintiff) to pay the penalty which is equivalent to the amount of stamp duty.

4. Mr. Rakesh Gupta, Advocate, appearing for the bank submits that the property is already mortgaged with the bank and an application under Order VII Rule 11 CPC is pending. The bank shall be entitled to press the aforesaid application after the petitioner makes good the deficiency in the stamp duty along with the amount of penalty as modified above.

5. With the observations made above, the present revision petition is disposed of. The miscellaneous application(s) pending, if any, shall also stand disposed of.

(Anil Kshetarpal)
Judge

August 24, 2022
"DK"

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

DEEPAK KUMAR BHARDWAJ
2022.08.29 10:17
I attest to the accuracy and integrity of this document