118 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-6050-2019 (O&M)
Date of decision: 03.08.2022

Amit Kumar ....Petitioner

Versus

Neha Bhatia and others ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Munish Gupta, Advocate for the petitioner

Mr. Amit Jhanji, Sr. Advocate with
Mr. Nikita Garg
Mr. Vaibhav Sehgal, Advocates for the respondents

ANIL KSHETARPAL, J (Oral)

The dispute is with regard to order passed by the trial court directing the plaintiff to make good the deficient stamp duty 10 times of the amount of the deficient stamp duty as penalty.

While examining the amended provisions of the Indian Stamp Act, 1899 this Court in CR-1931-2017 (**Narinder Kapoor vs. Inderjit (since deceased) through his legal heir)** held that the stamp duty is to be calculated on the amount which is paid to the intending vendor.

While interpreting Section 33, 35, 38 and 39 of the Indian Stamp Act, 1899, the Supreme Court in **Trustees of H.C.Dhanda Trust vs. State of Madhya Pradesh and others' 2020 AIR (SC) 4349** held that imposition of penalty to the extent of 10 times of deficiency in the stamp duty is not mandatory and the discretion lies with the authority. Relevant discussion is in para 17 and 18 of the judgment, which are extracted as under:-

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*“**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, vests 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.*

__18.__ We may refer to Section 35(a) in this context which 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:

Provided that—

(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;”

In the present case there is no material to show that the plaintiff intentionally tried to evade the payment of stamp duty or tried to cause loss to the revenue. Basically, the parties enter into an

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agreement to sell without having knowledge of the amendment carried out by the State of Punjab. The amount of the deficient stamp duty comes to Rs.6,00,000/- approximately. The plaintiff shall be liable to deposit the deficient stamp duty alongwith the equivalent amount as penalty.

With all these observations, the present petition is disposed of Let the deficient stamp duty be made good within a period of one month, from today.

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

03.08.2022 **(ANIL KSHETARPAL)**
rekha **JUDGE**
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

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