

30.8.2023
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Ct. no. 652
sb

CO 3842 of 2016

**Vijay Kapoor
Vs.
Shaique Ahmed**

Mr. Partha Pratim Roy
Mr. Anirban Das ...for the Petitioner

Mr. Vinay Kumar Purohit ...for the Opposite party

This is an application under Article 227 of the Constitution of India against the order dated 22.8.2016 passed by the learned Judge, Small Causes Court at Sealdah in Title Suit no. 46 of 2013.

Mr. Anirban Das on behalf of the petitioner contended that the petitioner as plaintiff filed aforesaid suit for specific performance of contract against the defendant/opposite party herein. The case made out in the plaint is that the defendant/opposite party has agreed to sell the suit property and entered into an agreement for sale with the petitioner herein. As the defendant/opposite party herein was not executing sale deed in favour of the plaintiff in spite of payment of consideration amount, aforesaid suit for specific performance of contract was filed. The defendant/opposite party appeared in the said suit and filed written statement denying all material allegations made in the plaint and also prayed for

impounding the said document on the ground that the alleged agreement for sale is an unregistered document. On the basis of such prayer, the document was impounded and the court below directed the collector to assess the stamp. The Collector subsequently by memo dated 30.5.2016, assessed the amount and learned court below by order dated 12.7.2016 was pleased to direct the petitioner to deposit the amount of Rs. 4,86, 820/- within 15 days. on 22nd August, 2016, when the matter was fixed for hearing before the court below, the petitioner herein made an application contending that the plaintiff is out of station and he will remain there till 23rd August, 2016 and as such he has sought for another date for compliance of the order. The petitioner contended that without considering the aforesaid application filed by the petitioner, the court below in exercising of his jurisdiction under order XVI Rule 20 of the Code, dismissed the suit.

Learned counsel for the petitioner submits that the order impugned is illegal and was passed with material irregularity and court below ought to have considered that due to some bona fide reason, the plaintiff could not deposit the said amount. Accordingly, he has prayed for setting aside the order impugned.

Mr. Purohit learned counsel appearing for the opposite party raised objection about the maintainability of the present application and he contended that writ petition under Article 227 of the Constitution of India

does not lie against the said order. In this context, he relied upon a judgment of Bombay High Court passed in Writ Petition no. 317 of 2018 in **Vaishali Shailendra Khadatkar and ors. Vs. Mahesh Vasant Dhole & Others**. He further contended that under the unamended Civil Procedure Code, Order XLIII Rule 1(h) provided for preferring appeal against an order under Order XVI rule 20 of the Code but said provision has since been repealed, this revisional application before this court is not maintainable. He further contended that on 21.9.2015, the court below impounded the document and marked the document X for identification and forwarded the document to the collector for necessary action as per Stamp Act. Subsequently, on 02.4.16, noticing plaintiff's reluctance, court below issued reminder to plaintiff with further direction to inform the court about development by 2.5.2016. Thereafter on requisition, the collector submitted his report and on the basis of the said report, the court below vide order dated 12.7.2016 had passed the order directing the petitioner to pay Rs. 4,86,820/- within 15 days of the order. The petitioner herein did not comply the said order dated 12.7.2016 and even when the matter was taken up on 22.8.2016, he again made an application seeking further time for the said deposit. Accordingly, petitioner was avoiding to make payment on flimsy ground and was trying to prolong the case and as such the court below was justified in passing the

impugned order and the order impugned does not call for interference.

I have considered the submissions made by both the parties. on perusal of the record, it appears that vide order dated 12.7.2016, the court below directed the petitioner herein to deposit the deficit stamp duty on the basis of report sent by the collector dated 30th May, 2016 fixing the matter for compliance on 28.7.2016. It appears from the adjournment application dated 28.7.2016 that on 26.7.2016 plaintiff's Advocate went to the office of the District Registration cell and prayed for extension of time and he was verbally intimated that further time for depositing stamp was granted. Subsequently, the matter was taken up for hearing on 22.8.2016 and it appears that the plaintiff on that day again filed one application contending that the plaintiff is out of station and he would return after 23.8.2023 and as such he sought for an accommodation.

However, the learned court below was of the view that the ground taken by the plaintiff in filing deficit stamp duty is flimsy ground having not supported by document and plaintiff is prolonging the case and as such the court below has invoked power under the provision of Order XVI rule 20 of the Code and was pleased to dismiss the suit under the said provision.

Having considered the facts and circumstances of the case and that the learned counsel appearing for the

petitioner expressed petitioner's willingness to deposit the stamp duty before the court below within a short span of time, C.O. 3842 of 2016 is disposed of with a direction upon the petitioner to deposit the deficit stamp duty within a period of 15 days from the date of communication of the order. On such deposit, the order impugned shall stand set aside and the court will proceeded with the suit in accordance with law. In absence of making such deposit within the foresaid stipulated period, the order impugned shall stand affirmed.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)