Ct. No. 652

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C.O. 4185 of 2018

Sri Somendra Nath Roy & Anr.
–Versus-
Sri Narayan Basak

Ms. Sucharita Biswas
Mr. Partha Ghosh ...For the Petitioners

Mr. B.L. Sahoo
Ms. Chabi Chakraborty ...For the Opposite Party

This application under Article 227 has been preferred against the orders dated 1st March, 2016, 24th May, 2017 and 4th July, 2018 passed by the learned Civil Judge (Senior Division) at Siliguri in Title Suit No. 44 of 2013.

The case of the petitioners is that the opposite party / defendant is the owner of the suit property who entered into an agreement for sale of the suit property with the petitioners on 16th November, 2012. In spite of repeated request the opposite party / defendant had failed and neglected to execute the sale deed and register the same in favour of the petitioners violating the terms and conditions mentioned in the said agreement for sale dated 16th November, 2012. In the above background, petitioners / plaintiffs filed aforesaid suit for specific performance of agreement for sale.

On 1st March, 2016, one of the petitioners was examined as PW. 1 but the said agreement for sale dated 16th November, 2012 was not taken in evidence on the ground that the said document was not properly stamped.

Accordingly, the Court below impounded the said document vide impugned order dated 01.03.2016 and sent the same to the District Collector, Darjeeling for proper valuation fixing next date for filing report by the collector. The District Collector, Darjeeling had sent a report on 14th July, 2016. However Court below being dissatisfied with the said report directed District Collector to submit fresh report imposing ten times penalty vide other impugned order dated 24th May 2017.

The petitioners contended that the petitioners want to deposit the amount which the collector has reported to deposit but the learned Court below by the impugned order dated 24th May, 2017 refused to accept the said report and passed the aforesaid direction upon the Collector.

Ms. Sucharita Biswas, learned Counsel appearing on behalf of the petitioners further submits that under the provisions of Stamp Act, 1899, the Court below has no jurisdiction to make any direction upon the Collector for imposing 10 times penalty. Such order is palpably wrong and is not sustainable. She further submits that the assessment made by the Collector is acceptable and they are also willing to pay the said amount of penalty before the collector so that the document can be admitted in evidence during trial.

Mr. B.L. Sahoo, learned Counsel appearing on behalf of the opposite party submits that the order impugned does not call for any interference in view of the Section 35 of the Stamp Act, which clearly provides that in such cases where the document has been impounded, the Collector is bound to impose 10 times penalty and he has no option to decide penalty amount less than 10 times and as such the Court below was justified in not accepting the report and sending the same for making reassessment and for filing report afresh.

On a bare reading of the impugned order dated 01.03.2016, it is clear that the court below has impounded the instrument by exercising his power conferred under section 33 of the Act of 1899 and sent the same in original to the collector under section 38 (2) of the Act. In such cases collector has to exercise his power under section 40(1)(b) of the Act. Said provision under section 40(1)(b) makes it clear that the amount of penalty can be an amount not exceeding ten times and the expression "an amount not exceeding ten times" used in section 40(1)(b) is preceded by expression "if he thinks fit". Accordingly statutory scheme vests the discretion upon collector to impose the penalty amount not exceeding ten times. Neither imposition of penalty of ten times under section 40(1)(b) is automatic nor can be mechanically imposed. The discretion given to the collector by using the expression “if the thinks fit” gives ample latitude to the 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. The purpose of imposing penalty generally is a deterrence and not retribution. Imposition of the extreme penalty i.e. ten times as envisaged in section 35 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 maybe the relevant factors to arrive at a decision as to what should be the amount of penalty under section 40 (1) (b).

However, when court exercises power under section 38(1), read with section 33, the court can admit such instrument in evidence upon payment of penalty as provided by section 35 and the court who impounded the instrument is required to send to collector an authenticated copy of such instrument together with a certificate in writing stating the amount of duty and penalty levied in respect thereof and shall also send the amount to the collector under section 38(1) and section 35 of the Act specifies that in such cases quantum of the penalty can only be ten times. There is no provision under the Act., which authorizes court which is empowered to deal with evidence to either reduce the quantum of penalty after impounding the document or call upon the party to pay penalty less than what is specified in section 35(a). However the demand of duty and penalty by court under section 38(1) read with section 35 is provisional order and is liable to be altered and/or refunded by the procedure prescribed by section 39 and 40 and by subsequent sections. In short when the impounding of document has been made by court under section 33 read with section 38(1) court has no other alternative but to direct for deposit of ten times penalty under section 35(a) and court has no jurisdiction to reduce the quantum of penalty. Such discretion is lies with the collector only when the matter has been dealt with by the collector under section 38(2) read with section 40(1) (b).

In the present case, which is a suit for specific performance of contract, where court below sent agreement to the collector for valuation and assessment of stamp duty after impounding the instrument under section 33 read with section 38(2), court below has no jurisdiction to make any direction upon the collector to impose ten times penalty mechanically. On the contrary the collector has power to impose penalty at a lesser amount under section 40(1) (b) read with section 38(2) on consideration of relevant factors and he is not bound to impose ten times penalty as statues vests discretion only upon collector in this context.

In such view of the matter the Court below as overstepped its jurisdiction in making direction upon the District Collector, Darjeeling imposing 10 times penalty and to submit a fresh report in that regard. Thus, the Order No. 28 dated 1st March, 2016, Order No. 35 dated 24th May, 2017 and Order No. 39 dated 4th July, 2018 are hereby set aside.

The petitioners herein will be at liberty to deposit the penalty imposed by the District Collector, Darjeeling. The Court below will thereafter consider the issue of admitting the said document in evidence in accordance with law upon compliance with all necessary formalities.

The revisional application being C.O. 4185 of 2018 is accordingly allowed.

Urgent photostat certified copy of this order, if applied for, be supplied to the petitioner, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)