



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No.4174 of 2022

and

C.M.P.No.21838 of 2022

S.Thanikachalam

... Petitioner

Vs.

M.Perumal

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 22.09.2022, made in I.A.No.462 of 2022 in O.S.No.118 of 2016 on the file of the Court of the 1st Additional District and Sessions Judge, (FAC), Cuddalore.

For Petitioner : Mr.V.Radhakrishnan
Senior Counsel
For Mr.S.kadarkarai

For Respondent : Mr.D.Ravichander



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ORDER

The civil revision petition on hand has been instituted challenging the fair and decreetal order dated 22.09.2022 passed in I.A.No.462 of 2022 in O.S.No.118 of 2016.

2. The revision petitioner is the defendant and the respondent instituted a Suit for recovery of money.

3. The undisputed facts between the parties are that the documents namely Ex.A1 to Ex.A9 marked by the respondent / plaintiff in the Suit was allowed to be marked with objection by the revision petitioner / defendant. The trial is in progress and the evidence was closed.

4. Question arises, whether the order impugned passed in I.A.No.462 of 2022, permitting the respondent / plaintiff to cure the defective payment of stamp duty marked in the documents Ex.A1 to Ex.A9 with objection is in consonance with the provisions of the Indian Stamp Act, 1899 and the Code of Civil Procedure, 1908.



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5. The learned Senior Counsel appearing on behalf of the revision petitioner mainly contended that such a course adopted by the Trial Court is impermissible, in view of the fact that the documents are not admissible in evidence and more so, at the time of presentation. It is not in dispute that the documents Ex.A1 to Ex.A9 were marked with objections. While so, at later point of time, the Court cannot allow the respondent / plaintiff to cure the defects, which is incurable under the provisions of the Indian Stamp Act.

6. Curative procedures adopted by the order of the Trial Court caused greater prejudice to the revision petitioner / defendant in establishing their case, since those hand written receipts marked with objections may be taken as undue advantage by the respondent / plaintiff for the purpose of securing relief in the Suit.

7. In support of the contentions, the learned Senior Counsel appearing on behalf of the revision petitioner relied on the judgments of the Hon'ble Supreme Court of India in the case of ***Bipin Shantilal Panchal Vs. State of Gujarat and Another*** reported in ***[CDJ 2001 SC 119]***, wherein, the Apex Court observed in paragraph 14 that “*If the Court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can*



keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course”.

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8. Relying on the above observation made by the Apex Court, the learned Senior Counsel for the revision petitioner reiterated that in the present case, admittedly, the Stamps were not fixed by the respondent / plaintiff at the time of presentation of documents marked as Ex.A1 to Ex.A9. Thus, the said defect is impermissible and therefore, the order impugned is liable to be set aside.

9. In the case of ***Subramaniam Vs. Gunasundari*** reported in ***[(2007) 2 MLJ 241]***, the Madras High Court made an observation as follows:

“In the result, this Civil Revision Petition is allowed in apart and the order of the trial court modified. The trial court is directed to ascertain the stamp duty and penalty payable upon the disputed document, then call upon the party who wants to rely on those documents, to pay the stamp duty and penalty, and then on payment of stamp duty and penalty, admit the document in evidence, whether it for collateral



purpose or otherwise, which could be decided at the later stage while hearing the case as guided by the Apex Court in Bipin Shantilal Panchal v. State of Gujarat and Another (2001) 3 SCC 1. Consequently, connected MP is also dismissed. No costs.”

10. In the case of ***Dhanpat Vs. Sheo Ram*** reported in ***[(2020) 16 SCC 209]***, the Apex Court again reiterated the principles laid down in the case of ***Bipin Shantilal Panchal's*** case (cited *supra*) in paragraph 20, which reads as under:

“20. This Court in Bipin Shantilal Panchal v. State of Gujarat [Bipin Shantilal Panchal v. State of Gujarat, (2001) 3 SCC 1 : 2001 SCC (Cri) 417], deprecated the practice in respect of the admissibility of any material evidence, where the Court does not proceed further without passing order on such objection. It was held that all objections raised shall be decided by the Court at the final stage. The Court held as under : (SCC pp. 5-6, paras 14-15)

“14. When so recast, the practice which can be a better substitute is this : Whenever an objection is raised during evidence-taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a



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note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.)

15. The above procedure, if followed, will have two advantages. First is that the time in the trial court, during evidence-taking stage, would not be wasted on account of raising such objections and the court can continue to examine the witnesses. The witnesses need not wait for long hours, if not days. Second is that the superior court, when the same objection is recanvassed and reconsidered in appeal or revision against the final judgment of the trial



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court, can determine the correctness of the view taken by the trial court regarding that objection, without bothering to remit the case to the trial court again for fresh disposal. We may also point out that this measure would not cause any prejudice to the parties to the litigation and would not add to their misery or expenses.””

11. In view of the principles laid down in the aforementioned judgements, the order passed by the Trial Court is liable to be set aside as documents marked with objections without affixing stamp cannot be accepted as valid documents for the purpose of placing reliance by the respondent / plaintiff.

12. The learned counsel for the respondent objected the said contention by stating that the perception as projected by the revision petitioner is untenable, in view of the specific provisions of the Indian Stamp Act, 1899 which was referred by the Trial Court in its order.

13. Section 2(23) of the Indian Stamp Act, 1899 defines “receipts” as follows: “Receipts” includes any note, memorandum or writing:

(a) whereby any money, or any bill of exchange, cheque or



- promissory note is acknowledged to have been received, or
- (b) whereby any other moveable property is acknowledged to have been received in satisfaction of a debt, or
- (c) whereby any debt or demand, or any part of debt or demand, is acknowledged to have been satisfied or discharged, or
- (d) which signifies or imports any such acknowledgment, and whether the same is or is not signed with the name of any person;

Therefore, a hand written receipt is permissible and there is no impediment for marking those documents as Exs.A1 to Ex.A9.

14. Section 35 (b) of the Indian Stamp Act enumerates “*where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it*”.

15. In view of Section 35 (b) of the Indian Stamp Act, the respondent / plaintiff is entitled to cure the defect in not fixing the stamp at the time of presentation of the documents, which are marked as Ex.A1 to Ex.A9. The



Court ought to have insisted the plaintiff to affix stamp at the time of presentation of the documents and in the present case, it happened on account of an error, which is cured and there is no infirmity in respect of the order passed by the Trial Court. More so, the respondent / plaintiff filed an Interlocutory Application expressing his willingness to affix stamps, so as to validate the evidentiary value of the documents, which are marked as Ex.A1 To Ex.A9.

16. The learned counsel for the respondent drew the attention of this Court with reference to the proviso to Section 61 of the Indian Stamp Act, so as to establish that non-payment of stamp is of an issue between the person, who failed to affix the stamp and the Court and the State and the revision petitioner cannot be considered as an aggrieved person. Thus, the contentions made by the revision petitioner is untenable.

17. It is relevant to look into the spirit of Section 61 of the Indian Stamp Act, which reads as under:

“Section 61- Revision of certain decisions of Courts regarding the sufficiency of stamps-

(1) When any Court in the exercise of its civil or revenue jurisdiction or any Criminal Court in any proceeding



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under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (V of 1898), makes any order admitting any instrument in evidence as duly stamped or as not requiring a stamp, or upon payment of duty and a penalty under Section 35, the Court to which appeals lie from, or references are made by, such first-mentioned Court may, of its own motion or on the application of the Collector, take such order into consideration.

- (2) If such Court, after such consideration, is of opinion that such instrument should not have been admitted in evidence without the payment of duty and penalty under Section 35, or without the payment of a higher duty and penalty than those paid it may record a declaration to that effect, and determine the amount of duty with which such instrument is chargeable, and may require any person in whose possession or power such instrument then is, to produce the same, and may impound the same when produced.
- (3) When any declaration has been recorded under Sub-Section (2), the Court recording the same shall send a copy thereof to the Collector, and where the instrument to which it relates has been impounded or is otherwise in the possession of such Court, shall also send him such instrument.
- (4) The Collector may thereupon, notwithstanding anything contained in the order admitting such instrument in



evidence, or in any certificate granted under Section 42, or in Section 43, prosecute any person for any offence against the Stamp-Law which the Collector considers him to have committed in respect of such instrument:

Provided that.-

- (a) no such prosecution shall be instituted where the amount (including duty and penalty) which, according to the determination of such Court, was payable in respect of the instrument under Section 35, is paid to the Collector, unless he thinks that the offence was committed with an intention of evading payment of the proper duty;
- (b) except for the purposes of such prosecution, no declaration made under this Section shall affect the validity of any order admitting any instrument in evidence, or of any certificate granted under Section 42.”

18. As per the above provision any order admitting any instrument in evidence as duly stamped or as not requiring a stamp, or upon payment of duty and a penalty under Section 35, the Court to which appeals lie from, or references are made by, such first-mentioned Court may, of its own motion or on the application of the Collector, take such order into consideration.

19. In the present case, the Court has not done the same in its own



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motion. In other words, Collector may file an application, claiming stamp duty or recovery of stamp duty. However, the revision petitioner / defendant has no *locus standi* to take undue advantage of the non-fixation of stamp duty by the respondent / plaintiff for the purpose of establishing his case in the Suit and thus, the revision petition is to be rejected.

20. In support of the contentions, the learned counsel for the respondent relied on the very same judgment relied by the learned Senior Counsel for the petitioner, in the case of ***Bipin Shantilal Panchal*** (cited *supra*) and in the very same order, the Court made an observation that “However, we make it clear that if the objections relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed”.

21. In the case of ***Sri Rathnavarmaraja Vs. Smt.Vimla*** reported in ***[AIR 1962 Supreme Court 1299]***, the Apex Court made an observation, which reads as follows:

*2.The Court Fees Act was enacted to collect revenue
for the benefit of the State and not to arm a contesting party*



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with a weapon of defence to obstruct the trial of an action. By recognising that the defendant was entitled to contest the valuation of the properties in dispute as if it were a matter in issue between him and the plaintiff and by entertaining petitions preferred by the defendant to the High Court in exercise of its revisional jurisdiction against the order adjudging court fee payable on the plaint, all progress in the suit for the trial of the dispute on the merits has been effectively frustrated for nearly five years. We fail to appreciate what grievance the defendant can make by seeking to invoke the revisional jurisdiction of the High Court on the question whether the plaintiff has paid adequate court fee on his plaint. Whether proper court fee is paid on a plaint is primarily a question between the plaintiff and the State. How by an order relating to the adequacy of the court fee paid by the plaintiff, the defendant may feel aggrieved, it is difficult to appreciate. Again, the jurisdiction in revision exercised by the High Court under Section 115 of the Code of Civil Procedure is strictly conditioned by clauses (a) to (c) thereof and may be invoked on the ground of refusal to exercise jurisdiction vested in the Subordinate Court or assumption of jurisdiction which the court does not possess or on the ground that the court has acted illegally or with material irregularity in the exercise of its jurisdiction. The defendant who may believe and even honestly that



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proper court fee has not been paid by the plaintiff has still no right to move the superior courts by appeal or in revision against the order adjudging payment of court fee payable on the plaint. But counsel for the defendant says that by Act 14 of 1955 enacted by the Madras Legislature which applied to the suit in question, the defendant has been invested with a right not only to contest in the trial court the issue whether adequate court fee has been paid by the plaintiff, but also to move the High Court in revision if an order contrary to his submission is passed by the court. Reliance in support of that contention is placed upon sub-section (2) of Section 12. That sub-section, insofar as it is material, provides:

“Any defendant may, by his written statement filed before the first hearing of the suit or before evidence is recorded on the merits of the claim plead that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient. All questions arising on such pleas shall be heard and decided before evidence is recorded affecting such defendant, on the merits of the claim. If the court decides that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient, the court shall fix a date before which the plaint shall be amended in accordance with the court's decision and the



deficit fee shall be paid....”

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22. Relying on the above judgment, the learned counsel for the respondent reiterated that *“High Court in exercise of its revisional jurisdiction against the order adjudging the court-fee payable on the plaint, all progress in the Suit for the trial of the dispute on the merits has been effectively frustrated for nearly five years”*. *“.....The defendants, who may believe and even honestly that proper court-fee has not been paid by the plaintiff has still no right to move the superior courts by appeal or in revision against the order adjudging payment of court-fee payable on the plaint”*. *“.....The anxiety of the Legislature to collect court-fee due from the litigant is manifest from the detailed provisions made in Ch.III of the Act, but those provisions do not arm the defendant with a weapon of technicality to obstruct the progress of the Suit by approaching the High Court in revision against an order determining the Court-fee payable. In our view, the High Court grievously erred in entertaining revision applications on questions of court-fee at the instance of the defendant, when no question of jurisdiction was involved.”*



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23. Relying on the above observations of the Apex Court, the learned counsel for the respondent reiterated that non-payment of stamp duty is between the Court and the plaintiff in the present case and no way connected with the defendants and therefore, the objections raised by the defendants are untenable.

24. Considering the arguments as per Section 2(23) “receipts” includes hand written receipts and therefore, there is no impediment for the parties to mark the hand written receipts, which is otherwise permissible under law.

25. Let us examine the scope of Section 35 (b) of the Act, where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of penalty of one rupee by the person tendering it. Therefore, there is no impediment for the respondent / plaintiff for marking hand written receipts at the time of presentation. However, the Court ought to have insisted the plaintiff to pay the stamp duty during the relevant point of time, which was not done admittedly. However, at the time of trial, the



respondent / plaintiff found that the stamp duty was not paid, which is required under the provisions of the Indian Stamp Act and filed an Interlocutory Application, seeking permission to affix the stamp, enabling him to validate the evidentiary value of the documents marked as Ex.A1 To Ex.A9. The Trial Court allowed the Interlocutory Application and cured the defects in order to overcome the technical objections raised in this regard.

26. In the case of ***Bipin Shantilal Panchal*** (cited *supra*), the Apex Court distinguished the circumstances regarding non-payment of stamp duty under the Indian Stamp Act and other documents, which all are inadmissible. Careful reading of the observations made in paragraph 14 of the ***Bipin Shantilal Panchal's case***, it is stated that “Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections are to be decided at the last stage in the final judgment. If the Court finds at the final stage that the objections so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration”. Therefore, marking of the documents with objections would not be a factor.



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27. However, the Hon'ble Supreme Court of India drew a distinction in respect of the payment of stamp duty by stating that "However, we make it clear that if the objection relates to deficiency of stamp duty of a document the Court has to decide the objection before the proceeding further". Thus, Apex Court thought fit that the documents need not be rejected merely on account of the non-payment of stamp duty, which is otherwise required under the provisions of the Indian Stamp Act, and curable.

28. The technical ground raised regarding the non-payment of stamp duty mistakenly cannot deprive any person from establishing his case on merits and in accordance with law. The revision petitioner in the present case need not be allowed to take advantage from and out of such mistake for the purpose of defending his case. Admittedly, the documents were marked with objections and thus, the error in not affixing the stamp duty would not provide any ground for the purpose of revision petitioner to deny opportunity to the respondent to establish his case through such documents. However, the objections so raised by the revision petitioner can be considered for the purpose of considering evidentiary value of such documents, but the non-payment of stamp duty is a curable defect and thus, curation would not cause any prejudice to either of the parties. Thus, the



interpretation of the Hon'ble Supreme Court of India in the case of **Bipin Shantilal Panchal** (cited *supra*) goes in favour of the respondent / plaintiff in the present case.

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29. Pertinently, Section 61 of the Indian Stamp Act defines that the Court to which appeals lies from , or reference are made by, such first mentioned Court may, of its own motion or on the application of the Collector, take such order into consideration. Therefore, issue in this regard cannot be raised by opposite party and it is to be raised by the Courts on its own motion or on an application filed by the Collector in order to protect the revenue of the 'State'. Thus, the revision petitioner / defendants cannot be construed as an 'aggrieved person' in respect of non-payment of the stamp duty in the documents, which was said to be marked with the objections as Ex.A1 to Ex.A9, in the present case.

30. Further, the said position is emphasised by the Apex Court in the case of **Sri Rathnavarmaraja Vs.Smt.Vimla** (cited *supra*), wherein, the Hon'ble Supreme Court of India held that "The defendant who may believe and even honestly that proper Court fee has not been paid by the plaintiff has still no right to move the Superior Courts by appeal or in revision against



the order adjudging payment of court fee payable on the plaint”. Therefore, the right of the opposite party in the Suit was determined by the Apex Court with regard to the reasons of technical defects to their advantage.

31. Considering the totality of the facts, circumstances and the principles considered in the judgments (cited *supra*), the documents Ex.A1 to Ex.A9 were rightly marked with objections as per Section 35(b) of the Indian Stamp Act. However, the Trial Court, by way of omission, has not insisted the respondent / plaintiff to pay the stamp duty under the Indian Stamp Act. Such a mistake or error cannot be a ground for the revision petitioner to take undue advantage and establish his case by depriving the opportunity of either side to establish their case through such documents. In the present case, the hand written receipts, which all are permissible under the provisions of the Act. Thus, the opportunity available to the respondent in this regard need not be denied on account of certain mistake or otherwise.

32. This being the principles to be followed, this Court do not find any infirmity or perversity in respect of the order passed by the Trial Court allowing the respondent / plaintiff to pay stamp fee in respect of the



documents marked as Ex.A1 to Ex.A9.

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33. Accordingly, the final and decreetal order dated 22.09.2022 passed in I.A.No.462 of 2022 stands confirmed and consequently, the Civil Revision Petition in C.R.P.No.4174 of 2022 is dismissed. No costs. Connected miscellaneous petition is closed.

31.01.2023

Jeni

Index : Yes

Neutral Citation : Yes

Speaking order

To

The Judge,
I Additional District and Sessions Court
Cuddalore



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S.M.SUBRAMANIAM, J.

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