**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(113) **CR No. 39 of 2023 (O&M)**
Date of Decision : 06.01.2023

Hira Lal (since deceased) through his Lrs.
...Petitioners

Versus

Satnam Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sharad Mehra, Advocate for the petitioners.

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Harsimran Singh Sethi J. (Oral)

CM-115-CII-2023

Application is allowed, as prayed for.

CR-39-2023

The present petition has been filed challenging the order dated 06.12.2022 (Annexure :P-1) passed by Civil Judge (Jr. Divn.), Amritsar by which the application filed by the petitioner (since deceased) so as to make up the deficiency in the stamp duty with regard to the agreement to sell dated 20.12.2012 (Annexure P-8), which is being relied by the respondent-plaintiff, has been rejected.

Learned counsel appearing on behalf of the petitioners submits that the respondent-plaintiff, Satnam Singh had filed a civil suit for specific performance qua the agreement to sell dated 20.10.2012 (Annexure P-8) with regard to the property bearing House No. 963-9 having the area measuring 50 sq. yards approximately. Learned counsel submits that the said agreement to sell for which the sufficient stamp duty has not been paid, cannot be taken into account and, therefore, till the stamp duty is sufficiently made good by the respondent-plaintiff, the proceedings qua the civil suit filed by the respondent-plaintiff be not undertaken.

Learned counsel for the petitioners argues that keeping in view the Civil Revision No. 6149 of 2016 filed by the petitioner (since deceased), which was decided on 02.12.2019, the respondent-plaintiff is not only liable to make the deficient stamp duty but is also liable to deposit the penalty thereupon so as to make him eligible for raising a claim for specific performance of the said agreement to sell dated 20.10.2012. Learned counsel for the petitioners submits that this Court while passing order in CR No. 6149 of 2016 had recorded that as the respondent-plaintiff is ready to deposit the required stamp duty along with the penalty, the respondent-plaintiff was under obligation to deposit the stamp duty along with the penalty and as no penalty has been paid by the respondent-plaintiff while making good the stamp duty, the trial Court cannot proceed with the suit filed by the respondent-plaintiff for specific performance of the agreement to sell dated 20.10.2012.

Learned counsel for the petitioners further submits that the said aspect has been totally ignored by the lower Court while passing the impugned order dated 06.12.2022 (Annexure P-1) in respect of the application filed by the petitioners seeking the making of deficiency in the stamp duty payable upon the agreement to sell dated 20.10.2012.

I have heard learned counsel for the petitioners and have gone through the record with his able assistance.

The stamp duty on a document is payable to the authorities concerned i.e. the Collector of the concerned area. Nothing has been produced before this Court that the stamp duty paid by the respondent-plaintiff is not in accordance with law or is deficient in any manner even as of now. Learned counsel for the petitioners conceded that either before filing of the application concerned or even thereafter, no report has been received from the Collector of the concerned area that the stamp duty on the agreement to sell dated 20.12.2012 is still deficient as per the law or the facts of the present case. In the absence of any such objection being taken by the Collector with regard to the stamp duty, the allegation of the petitioners that the stamp duty paid by the respondent-plaintiff is insufficient, cannot be believed.

Further, it has come on record that after the passing of the order by this Court in CR No. 6149 of 2016 where the respondent-plaintiff had undertaken to make up the requisite stamp duty on the agreement to sell dated 20.10.2012, he has already made up the deficiency, which has been recorded in the impugned order hence, once the deficiency of the stamp duty has already been made good by the respondent-plaintiff, the present prayer of the petitioners that the deficiency in the stamp duty is still to be made up by the respondent-plaintiff, cannot be accepted.

The argument, which has been raised by the learned counsel for the petitioners, is that even while making good the stamp duty, the respondent-plaintiff was required to pay the penalty, which he has not paid. The said grievance cannot be raised by the petitioners for the reason that it is for the Collector to ascertain whether in the facts and circumstances of a present case, while making up required stamp duty on a document, a penalty is liable to be imposed or not. In the present case, no record has been produced before this Court even as of today that the stamp duty, which has been paid by the respondent-plaintiff after the decision of CR No. 6149 of 2016, the same is still deficient in any manner. The imposition of penalty is within the jurisdiction of the Collector and the petitioners do not have a right to claim that the same should have been deposited by the respondent-plaintiff without there being any order from the Collector concerned to the said effect.

Keeping in view the above, no ground is made out to interference by this Court in the present petition.

Dismissed.

January 06, 2023 **(HARSIMRAN SINGH SETHI)**
kanchan **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No