IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-3291-2016 (O&M)
Date of decision:26.09.2023
Reserved on: 20.09.2023

M/s Saini Motors and others

..Petitioners

Versus

M/s L.R Builders Pvt. Ltd.

.Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Sumeet Mahajan, Sr. Advocate with
Mr. Saksham Mahajan, Advocate
Ms. Rabani Atri, Advocate
Ms. Suhani Jain, Advocate
and Ms. Aman Rani, Advocate for the petitioners

Mr. Harshit Sethi, Advocate
Mr. Rajul Mahajan, Advocate
Mr. Akash Verma, Advocate
and Mr. Prateek Sodhi, Advocate
for the respondent

ANIL KSHETARPAL, J

1. The correctness of the order passed by the learned Arbitrator, on 28th January, 2016, is assailed in this revision petition. The dismissal of the petitioners' application for impounding the original agreement to sell dated 16 July, 2007, under Section 33 and 35 of the Indian Stamp Act, 1899 (hereinafter referred to as the '1899 Act') is challenged in this revision petition filed under Article 227 of the Constitution of India.

2. Though learned counsel representing the parties have addressed the Court elaborately with regard to the maintainability of the

present revision petition, however, in the peculiar facts and circumstances of the present case, this Court proceeds to decide the case on merits.

3. In the State of Punjab certain amendments have been made in the 1899 Act by passing the Indian Stamp (Punjab) Amendment Act, 2001 notified on 21st December, 2001. Thereafter, even entry No. 23 was amended by the Stamp Act (Punjab Amendment) Act, 2007 with effect from 25th January, 2008. The aforesaid amendments are extracted as under:-

> *"**Sub-Section 10 of Section 2:-***
> ***(10) "Conveyance"-** "Conveyance" includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule I or by Schedule 1-A [or by (Schedule 1-B or] Schedule 1-C], as the case may be;*

SCHEDULE 1-A:-

Entry No.5:-

5	*AGREEMENT OF MEMORANDUM OF AN AGREEMENT-]*	
	(a) if relating to the sale of a bill of exchange;	*Twenty-five rupees.*
	(b) if relating to the sale of a Government security or share in an incorporated company or other body corporate;	*Five rupees for every ten thousand or part thereof, of the value of the security or share.*
	(c) if relating to the sale of immovable property	*Three hundred rupees*
	(cc) in the case of agreement to sell followed by or evidencing delivery of possession of the immovable property agreed to be sold;]	*The same duty as is leviable under column 2 of entry No.23 of this schedule, subject to the adjustment of duty chargeable at the time of execution of conveyance made in pursuance of such agreement; and*

	(d) if not otherwise provided for	*Fifteen rupees*
	Exemption *Agreement or memorandum of agreement-* *(a) for or relating to the sale of goods or merchandise exclusively, not being a note or memorandum chargeable under No.43:* *(b) made in the form of tenders to the Central Government for or relating to, any loan;* *AGREEMENT TO LEASE – See Lease No. (35)*	

<u>Entry No.23:-</u>

23	**CONVEYANCE** as defined in Section 2(10) not being a transfer charged or exempted under No.62.	**Where conveyance amounts to sale of immovable property**	**Other conveyances**
	1	**2**	**3**
	where the value or amount of the consideration for such conveyance as set forth therein does not exceed Rs.50	Two rupees and fifty paise	Two rupees
	Where it exceeds Rs.50, but does not exceed Rs.100	Five rupees	Three rupees
	Where it exceeds Rs.100, but does not exceed Rs.200	Ten rupees	Six rupees
	Where it exceeds Rs.200, but does not exceed Rs.300	Fifteen rupees	Nine rupees
	Where it exceeds Rs.300, but does not exceed Rs.400	Twenty rupees	Twelve rupees
	Where it exceeds Rs.400, but does not exceed Rs.500	Twenty five rupees	Fifteen rupees
	Where it exceeds Rs.500, but does not exceed Rs.600	Thirty rupees	Eighteen rupees
	Where it exceeds Rs.600, but does not exceed Rs.700	Thirty five rupees	Twenty one rupees
	Where it exceeds Rs.700, but does not exceed Rs.800	Forty rupees	Twenty four rupees
	Where it exceeds Rs.800, but does not exceed Rs.900	Forty five rupees	Twenty seven rupees
	Where it exceeds Rs.900, but does not exceed Rs.1000	Fifty rupees	Thirty rupees
	And for every Rs.500 or part thereof in excess of Rs.1000	Twenty five rupees	Fifteen rupees
	Exemption Assignment of copyright under the		

	Copyright Act, 1957, Section 18 Co-Partnership-Deed – See Partnership (No.46)		

4. In substance, the question that arises for adjudication is with respect to the stage of chargeability of the stamp duty on the agreement to sell executed between the parties on 16 July, 2007.

5. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed. The petitioner (Saini Motors) is a partnership firm. The firm has taken a loan from the State Bank of India. There was a total liability of Rupees 15, 25,45,877.02 as on 31.10.2004. The tripartite agreement was executed between Saini Motors, M/s LR Builders Private Limited and the State Bank of India on 3rd January, 2007. In the aforesaid tripartite settlement, the Bank was given the proposal of settling the dues under the one time settlement scheme. The relevant clauses for the decision of this revision petition reads as under:-

> "*4(d) That upon grant of approval to the OTS by the competent authority in the Bank and appropriation of Rs.2,00,00,000/- (Rupees Two crores only) in the loan account of M/s Saini Motors, "the owners" and "the Bank"* ***shall hand over the custody of the said property to "the Builder" for development purposes*** *only with no right for possession of the land. However, the legal possession shall remain with "the Bank" till all the dues of "the Bank" are cleared. Further, "the Bank" shall be at liberty to take back the custody of the said property, if it comes to the conclusion for whatever reason that "the Project" is being delayed unnecessarily and its dues are not being cleared as per agreed terms (supra). That at the same time, "the Owners" shall also execute irrevocable General Power of Attorney/Deed, and other documents, thereby authorizing "the Builder" to sell/transfer the Builders allocation in the newly*

> *constructed multi storeyed complex and multiplex screens subject to the charge of the Bank. Such documents or authority shall be executed expeditiously to ensure that the agreed time schedules under these presents are not disturbed or altered.*
>
> *5. That "the Owners" agree in accordance with the terms & conditions, herein recorded to place at the complete disposal of "the Builder" and authorizes "the Bank" hereby to give custody of the said property immediately upon approval of the OTS by the competent authority in the Bank and appropriation of Rs.2,00,00,000/- (Rupees two crores only) in the a/c of M/s Saini Motors with all the powers and authority as may be considered necessary by the Builder for construction of the proposed multi storied commercial complex and multiplex screens."*

6. Thereafter, on 16th July, 2007 an agreement was signed between the Saini Motors and M/s L.R Builders. The relevant part of the aforesaid agreement is extracted as under:-

> "*Whereas the Owners namely M/s Saini Motors, a partnership firm described herein is the sole an absolute owners of land measuring 5,343 sq. yards bearing municipal numbers B-29-24, GT Road, Sherpur Chowk Ludhiana, Punjab comprised in Khewat No.126/157 Killa No. 28/15/1 as per Jamabandi for the year 1984-85 represented by various sale deeds, situated at Mauja Sherpur Khurd, Tehsil & District Ludhiana, and 4805 sq. yards of which is mortgaged to the State Bank of India against credit facilities availed from the said Bank in the name of M/s Saini Motors, presently in legal possession of the bank but in actual custody of the purchaser and bounded as under (the remaining 538 sq. yards being in physical possession of the builders)"*
>
> *xxxx*
>
> *LAND measuring 5,343 sq. yards (with building structures, fixtures constructed thereon or affixed thereto) bearing municipal numbers B-29-24, GT Road Sherpur Chowk, Ludhiana, Punjab, comprised in Khewat no. 126/ 157 Killa No.28/15/1 as per Jamabandi for the year 1984-85 represented by various sale deeds, situated at Mauja Sherpur Khurd, Tehisl & District Ludhiana, 4805 sq. yards of which is mortgaged to the State Bank of India against credit*

facilitates availed from the said Bank in the name of M/s Saini Motors, presently in legal possession of the Bank but in actual custody of the Builder and bounded as under, the remaining 538 sq. yards is in physical possession of the Builder."

7. Heard the learned counsel representing the parties at length and with their able assistance perused the paper book. Learned counsel representing the parties have also filed their written note of submissions reiterating their oral submissions.

8. Learned senior counsel representing the petitioner has sent a written note of his submissions. The relevant extract of the same reads as under:-

> *"2. Whether entry 5(cc) of the Schedule 1-A of Punjab Amendment contemplates possession being delivered both, before as well as after the execution of agreement to sell?*
> *Clause 5 (cc) of Schedule 1-A of Punjab Amendment for the facility of understanding can be split as under:*
> *1. In the case of the agreement to sell followed by delivery of possession of immoveable property agreed to be sold, would take in its sweep situation where possession is delivered after the execution of agreement to sell. The expression "followed by delivery of possession" would envisage agreement to sell being executed first and the same is followed by delivery of possession in that chronological order. Any meaning otherwise than that would necessarily violate the plain meaning of the expression agreement to sell "followed by".*
> *ii. "In the case of agreement to sell evidencing delivery of possession of immovable property agreed to be sold" would refer to possession being delivered before the execution of the agreement to sell. There can be no evidence of a fact which does not pre-exist of the said evidence. Agreement to sell evidencing delivery of possession of immovable property can exist only if the possession of the immoveable property has already been delivered before the execution of agreement to sell.*
> *Thus entry 5(cc) covers both the eventualities i.e. delivery of possession before the execution of agreement to sell as well as delivery of possession*

after the execution of agreement to sell. It is only if possession has already been delivered before the execution of agreement to sell that expression "in the case of agreement to sell evidencing delivery of possession gets satisfied as has been done in the agreement to sell dated 16.07.2007 and consequently clause 5 (cc) of Schedule 1-A of Punjab Amendment would be very much applicable and attract the same stamp duty as leviable on the conveyance deed in entry 23.

3. That the expression "evidencing delivery of possession" as enshrined in clause 5 (cc) has been categorically discussed by the Hon'ble Andra Pradesh High Court in Mandati Srinivas Vs. Gatla Raji Reddy & others, 2014 SCC Online AP 1515 (copy enclosed), wherein it has been held that "if the document contains evidence of delivery of possession by a recital in that behalf, that is sufficient. Such delivery of possession can be prior to the date of agreement and need not be under the agreement. Therefore it would follow that a agreement containing specific recital of delivery of possession or indicating delivery of possession even in the past is liable for stamp duty as a sale."

Thus, it is crystal clear that a court/Arbitral Tribunal impounding an agreement to sell on account of it being insufficiently stamped is to only to see whether in such agreement is there a recital evidencing delivery of possession. Once the evidence qua delivery of possession is clear from the recitals in the agreement to sell, the said agreement is liable to be impounded if stamp duty is not affixed on the agreement to sell as if it were a conveyance deed.

4. Whether the entry 5 (cc) of Punjab Amendment of Schedule 1-A envisages requirement similar to envisaged in the Explanation appended to Article 23 of Schedule 1-A of the Madhya Pradesh Stamp Act as substituted by Section of the Act 22 of 1990 as reproduced in Para 14 of the Judgment Omparkash Vs. Laxminarayan, (2014) 1 SCC 618?

i. Close examination of language of Entry 5 (cc) would reveal that actually there is no difference between the aforesaid Madhya Pradesh Amendment including explanation appended to Article 23 of Schedule 1-A and the Punjab Amendment as both envisage levy of stamp duty on the agreement to sell irrespective of the fact as to whether the delivery of possession has been made before or after the agreement to sell. In the amendment of both the states the object is the same namely prevention of evasion of

Stamp Duty as agreement to sell followed by delivery of possession or evidencing delivery of possession actually amounts to the same being a conveyance deed and therefore attract the mandatory provision of levy of stamp duty as prescribed for conveyance deed. Thus, clause 5 (cc) of the Punjab Amendment is squarely covered by Omprakash's case (supra).

ii. Thus, a large number of judgments rendered by this Hon'ble Court on Stamp Act following Omprakash's case (supra) including Judgment rendered in CR No. 3048 of 2021 titled as Bikram Singh Vs. Charanjit Singh (Judgment No. 11), have been correctly decided.

5. Whether there is any difference between the expressions 'custody of land' and 'possession of land?

The expression 'possession of land' and 'custody of land' refers to the same status in law and there is no difference between the two. A person in 'custody' of the property is bound to be in possession of the same. The expression used in the agreement to sell dated 16.07.2007 (Annexure P-7) is "property is in legal possession of the bank but in actual custody of the purchaser" (emphasis supplied), proves the fact that the claimant/respondent is in actual physical possession of the suit land. The word 'actual' points towards de-facto/physical possession of the respondent of the area measuring 4805 sq. Yards. The expression 'custody of property squarely meets the requirement of entry 5 (cc) of Schedule 1-A of the Punjab Amendment of the Indian Stamp Act 1899 which provides that agreement to sell 'evidencing delivery of possession' of immovable property agreed to be sold would attract the stamp duty as is leviable under column 2 of entry 23 of the Schedule meant for the conveyance deeds. The agreement to sell in question is therefore liable to be impounded as the same is insufficiently as stamp duty of Rs. 200/- only has been affixed and not as envisaged in entry 23.

6. What is the significance of mentioning of possession of 538 sa. yards being delivered to the builder in the agreement to sell in addition of land measuring 4805 sq, yards?

It is worth noticing that in the agreement to sell dated 16.07.2007 there is a clear mention regarding the remaining 538 sq. Yards being "in the possession" of the builder/purchaser. Neither aforesaid 538 sq. yards were ever pledged to the bank nor there is any reference of the same in the tripartite agreement. The possession of the said land being also with builders/respondents so recorded in the agreement to *sell dated 16.07.2007 the same would be squarely covered by clause 5 (cc) as evidence of delivery of possession. On that count also the agreement to sell in question would attract the same stamp duty as that leviable on the conveyance deed as envisaged in entry 23.*

7. Whether impugned order is capricious and non-speaking?

The impugned order neither takes notice of recital regarding possession mentioned in the earlier part of the agreement to sell dated 16.07.2007 nor as mentioned in the Schedule of the property, nor there is any discussion whatsoever as to why clause 5 (cc) of the Schedule 1-A is not applicable to agreement to sell in question. In the absence of any discussion whatsoever, on the recital regarding possession in the agreement to sell in question the impugned order is patently illegal, capricious, non- speaking and violative of ratio laid down in Omprakash's case (supra) and therefore liable to be set aside.

8. Whether judgment rendered by Hon'ble Supreme Court of India in the case of SBP & CO. is attracted in the present case?

i. The judgment rendered in the case of SBP & CO vs. Patel Engineering Ltd. (2005) 8 SCC 8, is not at all attracted as the same has been clarified by Hon'ble Supreme Court of India subsequent judgments namely Punjab Agro Industries Corporation Ltd. Vs. Kewal Singh (2008) 10 SCC 128 and Deep Industries Ltd. Vs. Oil and Natural Gas Corp. Ltd. & another (2020) 15 SCC 706, in which it is categorically held that if the aggrieved party is left with no remedy, a petition under Article 226/227 is very much maintainable and one does not have to wait till award is passed in the Arbitration proceedings.

ii. No judgment dealing with Stamp Act has been cited by the respondents which prohibits the challenge by filing Petition under section 226/227 of the Constitution of India to a document/agreement to sell being allowed to be admitted in evidence in violation of Section 33 & 35 read with Section 36 of the Stamp Act 1899.

9. Whether Sections 33, 35 & 36 of the Indian Stamp Act, 1899 are mandatary in nature?

That Sections 33, 35 & 36 of the Indian Stamp Act, 1899 are mandatory provisions of law promulgated by the legislature in order to protect revenue of the State. The aforesaid Sections cast a duty upon every Court i.e. a person having by law authority to receive evidence (also every Arbitrator who is a person *having by consent of parties, authority to receive evidence) before whom a unregistered instrument chargeable with duty is produced, to examine the instrument in order to ascertain whether it is duly stamped. If the court comes to the conclusion that the instrument is not duly stamped it has to impound the document. A co-joint reading of the said provisions make it abundantly clear that it is mandatory for every court including an Arbitrator to protect revenue by impounding such an agreement to sell on account of the said document being insufficiently stamped. The Hon'ble Supreme Court of India in SMS T. P. Ltd. Vs. Chandmari T. Company Pvt. Ltd., 2011 (14) SCC 66 (judgment No. 8 in compendium) has crystalise the aforesaid proposition of law in para 20. The aforesaid provision of law has been upheld by law by Hon'ble Supreme Court of India in Garware Wall Ropes Ltd. Vs. Coastal Marine Constructions & Engineer Ltd., 2019 (9) SCC 209 and now also in the case titled as N.N. Global Marcantile Private Limited Vs. Indo Unique Flame Ltd. & others, 2023 SCC OnLine 495. Therefore, in the present case impounding of the agreement to sell, being a mandatary requirement in the eyes of law the same was liable to be done by the Arbitrator and for his failure to do so the impugned order is liable to be set aside.*

10. Whether respondents/claimants came in possession of the suit land after execution of tripartite agreement dated 03.01.2007 and agreement to sell dated 16.07.2007?

After the execution of tripartite agreement dated 03.01.2007 and agreement to sell dated 16.07.2007 the possession of the property in question was delivered to the claimant. The claimant being in possession of the property had demolished the existing structure (the largest Maruti dealership in northern India with constructed buildings of more than one Lac sq. ft.). The respondent/claimant in Para No. 16 of the claim petition have themselves admitted that it came in possession of suit land after the aforesaid agreements The admission of the claimant in the claim petition for ready reference is as under:

"14. That after the tripartite agreement dated 03.01.2007 and agreement to sell dated 16.07.2007, the claimants had taken the custody of suit property and had started development work by demolishing the old existing structure.........

Even the ld. Arbitrator in the impugned order has returned the finding that claimant is in possession of the suit property.

11. Whether ld. Arbitrator could leave the issue with regards to admissibility of agreement to sell due to it being insufficiently stamped, to be decided at a later stage?

i. The contention of the respondent that the Ld. Arbitrator has left the issue with regard to admissibility of agreement to sell dated 16.07.2007 due to it being insufficiently stamped to be decided at a later stage and therefore the said issue is still open, is contrary to the mandatory provision of Section 36 and the law laid down by Hon'ble Supreme Court in AIR 1961 SC 1655 (Judgment No. 5 in the compilation) and approved by Hon'ble Supreme Court of India in (2006) 11 SCC 331 (Judgement No. 9 in the compilation) and also relied upon by this Hon'ble Court in CR No. 513 of 2013 (2013 SCC Online P&H 21166 (judgment No. 6 in compilation). Thus, the objection raised by petitioner that agreement to sell in question is required to be impounded and is not admissible in evidence, it being insufficiently stamped, is required to be decided at the time of tendering the same in evidence and not at the time of the conclusion of the trial/arbitration proceeding.

ii. Furthermore, neither impugned order is appealable under Section 37 of the Arbitration and Conciliation Act nor the objection with regard to admissibility of Agreement to Sell dated 16.07.2007 due to insufficiency of stamp duty, can be challenged under Section 34. Objection to admissibility of agreement to sell in evidence for want of sufficient stamp duty cannot be decided at the end of arbitration proceedings even by the arbitrator nor the same can be challenged later by the petitioner/defendant, in view of the bar contained in Section 36 of the Stamp Act. Moreover, Arbitration award can be challenged under Section 34 only on limited grounds as specified in Section 34 of the Arbitration Act. The argument that the impugned order keeps alive the objection of petition with regard to admissibility of the documents for insufficiency of stamp and impounding under Section 35 & 33 respectively to be decided at the later/final stage is not only wholly erroneous but misleading in view of the settled position of law and liable to be rejected."

9. On the other hand, the learned counsel representing the respondent has also filed his written submissions, the operative part whereof reads as under:-

"Arguments raised by the petitioner

6. The arguments raised by the petitioner on 13.12.2022 may be broadly summarized as under:-

a. Present petition is maintainable since the petitioner is remediless to ventilate its grievances. In this regard, petitioner sought to distinguish the Constitution Bench judgment in S.B.P. & Co. Vs. M/s Patel Engineering Ltd., (2005) 8 SCC 618 by relying upon subsequent judgments by benches of smaller strength in Punjab Agro Industries Corporation Ltd. vs. Kewal Singh Dhillon (2008) 10 SCC 128,Deep Industries Ltd. v. ONGC, (2020) 15 SCC 706, Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd., (2022) 1 SCC 75

b. Further submitted that if the objection as to under stamping of the Agreement in question is not decided now, Petitioner would be precluded to raise this objection at a later stage;

c. Provisions of Section 33, 35, 36 of Stamp Act, 1899 obligate the Court concerned to impound a document, if the same is under stamped;

d. Petitioner placed heavy reliance upon the judgment of the Hon'ble Supreme Court in Om Prakash Vs. Laxminarayan (2014) 1 SCC 618 & submitted that only recitals contained in the subject document are required to be seen in relation to possession;

e. Placing further reliance upon Om Prakash's case, Petitioner further submitted that in view of the interpretation accorded to the 'Explanation inserted in Stamp (Madhya Pradesh Second Amendment) Act, 1990 therein, the present Agreement to Sell would also attract stamp duty equivalent to a conveyance deed;

f. To support its case on merits, Petitioner placed reliance upon judgments of co-ordinate benches of this Hon'ble Court in Bikram Singh v. Charanjit Singh, CR-3048-2021 decided on 08.04.2022 Narinder Kapoor v. Inderjit, CR-1931-2017 & CR-3172-2018 decided on 12.02.2020 which stand reversed / overruled by SC in Vijay Kumar Goyal (Supra).

ARGUMENTS RAISED BY THE RESPONDENT

The arguments raised by the Respondent on 13.12.2022 may be broadly summarized as under:-

a. Present revision petition challenging an order dated 28.01.2016 passed by the Arbitrator dismissing

Petitioner's Application to Impound the Agreement is not maintainable inter-alia in view of the Constitution Bench judgment of the Hon'ble Supreme Court in M/s SBP. & Co. vs. M/s Patel Engineering Ltd., (2005) 8 SCC 618 Para 44, 45, 46(vi)];

b. Arbitration & Conciliation Act, 1996 is a special law &a complete code in itself providing for remedies of appeal, objections etc. As per the Act, any order (not being an Award) passed by an Arbitral Tribunal on any application cannot be challenged by way of a revision petition (except when Appealable u/S 37 of the Act) &the only legal recourse available is to await the Final Award & raise objections in terms of Sec. 34 of the Arbitration Act;

c. De hors & without prejudice to the objection of non-maintainability, in the facts of this case, no Stamp Duty would be applicable in as much as the present Agreement to Sell dt 16.7.2007 (executed pursuant to OTS with the Bank under SARFAESI Act, 2002)is not a 'conveyance' as no possession has been handed over to the Respondent under the said Agreement;

d. Even as per unequivocal recitals contained in Agreement to Sell dated 16.7.2007 r/w Tripartite Agreement dated 03.01.2007, no possession has been handed over to the Respondent as it was categorically mentioned in the Agreement to Sell itself that the property is "presently in legal possession of the bank whereas in the Tripartite Agreement it was clarified that "Delivery of custody of the property to the builder for construction shall not be deemed to be delivery of possession..."

e. Even on merits, Respondent's case squarely covered by the judgment of the Hon'ble Supreme Court in Vijay Kumar Goyal (Dead) Thr. Lr. Vs. Neena Rani & Others. Civil Appeal No. 6538 of 2022 decided on 16.09.2022 reported as 2022 SCC OnLine SC 1237 which deals with similar recitals & interprets provisions of Stamp Act applicable in Punjab; VIJAYTA

f. All judgments relied upon by Petitioner rendered by co-ordinate benches of this Hon'ble Court are per incuriam as they follow either Om Prakash's or Avinash Kumar Chauhan's judgment(s) which interpret Madhya Pradesh's Stamp Act, the provisions whereof are contrary to Punjab's Stamp Act. Moreover, the judgment relied upon by Petitioner in Narinder Kapoor v. Inderjit CR-1931-2017&CR-3172-2018 decided on 12.02.2020 has expressly been *overruled by the Hon'ble SC in Vijay Kumar Goyal's case.*

g. Even otherwise, Petitioner is not aggrieved by anything &no prejudice is being caused to the Petitioner with regard to any deficit of any stamp duty& no action has been taken by stamp authorities;

h. Despite having cheated &taken undue benefit of Rs. 17 crores from the Respondent almost 14 years back, the Petitioner is enjoying the fruits of his misdeeds& delaying the proceedings on frivolous pretexts of 'Stamp Duty' which is not benefitting the Petitioner in any way.

PRESENT REVISION PETITION WHOLLY MISCONCEIVED &NOT MAINTAINABLE

Present revision petition against an order passed by Arbitral Tribunal deciding an interim application is not maintainable under any circumstances & is an abuse of the process of law being in the teeth of the object & scope of the Arbitration & Conciliation Act, 1996. In this regard, Section 5 of Arbitration Act reads as under:-

"5. Extent of judicial intervention- Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part."

Respondent categorically submits that the present revision petition is wholly misconceived & is not maintainable in view of the settled position of law as laid down by a Constitution Bench of the Hon'ble Supreme Court in M/s S.B.P. & Co. vs. M/s Patel Engineering Ltd., (2005) 8 SCC 618 thereby holding that against an order passed by an Arbitrator on any application, no revision/writ petition is maintainable before a High Court & the only remedy available with the aggrieved party is to await the outcome & final award of the Arbitration so as to ventilate its grievances, if any. In SBP's case (supra), it was held by the Constitution Bench as under:-

"44. It is seen that some High Courts have proceeded on the basis that any order passed by an arbitral tribunal during arbitration, would be capable of being challenged under Article 226 or 227 of the Constitution of India. We see no warrant for such an approach. Section 37 makes certain orders of the arbitral tribunal appealable. Under Section 34, the aggrieved party has an avenue for ventilating his grievances against the award including any in-between orders that might have been passed by the arbitral tribunal acting under Section 16 of the Act.

The party aggrieved by any order of the arbitral tribunal unless has a right of appeal under Section 37 of the Act, has to wait until the award is passed by the Tribunal. This appears to be the scheme of the Act. The arbitral tribunal is after all, the creature of a contract between the parties, the arbitration agreement, even though if the occasion arises, the Chief Justice may constitute it based on the contract between the parties. But that would not alter the status of the arbitral tribunal. It will still be a forum chosen by the parties by agreement. We, therefore, disapprove of the stand adopted by some of the High Courts that any order passed by the arbitral tribunal is capable of being corrected by the High Court under Article 226 or 227 of the Constitution of India. Such an intervention by the High Courts is not permissible.

45. The object of minimising judicial intervention while the matter is in the process of being arbitrated upon, will certainly be defeated if the High Court could be approached under Article 227 of the Constitution of India or under Article 226 of the Constitution of India against every order made by the arbitral tribunal. Therefore, it is necessary to indicate that once the arbitration has commenced in the arbitral tribunal, parties have to wait until the award is pronounced unless, of course, a right of appeal is available to them under Section 37 of the Act even at an earlier stage.

46. We, therefore, sum up our conclusions as follows:

(vi) Once the matter reaches the arbitral tribunal or the sole arbitrator, the High Court would not interfere with orders passed by the arbitrator or the arbitral tribunal during the course of the arbitration proceedings and the parties could approach the court only in terms of Section 37 of the Act or in terms of Section 34 of the Act."

Following the settled law, in "Easy Trip Planners Ltd. vs.One97 Communications Ltd CM(M) 707/2022 decided on 25.07.2022" the Hon'ble Delhi High Court dismissed a revision petition filed against an order of a three-member Arbitral Tribunal on the ground of maintainability &held:-

"1. A learned three-member Arbitral Tribunal has, in arbitral proceedings between the parties of which it is in seisin, passed an interlocutory order on 18th June 2022, rejecting an application filed by the petitioner under Order VII Rule 14 of the Code of Civil Procedure, 1908, to bring on record additional documents.

2. This petition, under Article 227 of the Constitution of India, assails the said order.
3. To my mind, the present petition is not maintainable, in view of the following enunciation of the law, to be found in paras 45 and 46 of the report in SBP & Co. v. Patel Engineering Ltd...
...There is no equivocation, whatsoever, in the exposition of the legal position by the Supreme Court, in the afore-extracted passages. The Court can be approached against an interim order in arbitral proceedings only if the order is appealable under Section 37 of the Arbitration and Conciliation Act, 1996 ("the 1996 Act). In all other cases, the litigant who deems himself aggrieved, has to await the conclusion of the arbitral proceedings and rendition of award therein."

Pertinently, in Easy Trip Planner's case as well, a similar argument was raised by the Petitioner therein (as is being raised by the Petitioner in the present case) thereby misinterpreting the ratio laid down in SBP's case(supra) however, the said argument was rejected in Para 14-19 thereof. That apart, the judgment in Bhaven Construction v. Executive Engineer Sardar Sarovar Narmada Nigam Ltd. (2022) 1 SCC 75 which was cited by Petitioner to dilute the ratio of SBP (supra) was also distinguished in all respects & it was held that there is no equivocation whatsoever in the exposition of the legal position by the Supreme Court in SBP (supra) that revision is not maintainable.
11. Even Punjab Agro Industries Corporation Ltd. vs. Kewal Singh Dhillon (2008) 10 SCC 128 cited by Petitioner is completely inapplicable & is in an entirely different context. Punjab Agro related to appointment of Arbitrator & did not arise from a revision petition filed directly against an order passed by the Arbitrarily Tribunal like the present case. Hence, no reliance can be placed on it.
ARGUMENT OF PETITIONER BEING RENDERED REMEDILESS IS HOPELESSLY MISCONCEIVED AS THE IMPUGNED ORDER WELL REASONED & LIABLE TO BE UPHELD
12. Argument of petitioner being rendered 'remediless' to maintain the present revision petition is hopelessly misconceived. The legislature has fully secured the rights of a litigant undergoing arbitration who can take all such objections/pleas in case he wishes to challenge the Final Award in terms of Section 34 of Arbitration Act. However, the Petitioner has directly

come to this Hon'ble Court by way of a 'leapfrog' petition bypassing the statutory mandate only to delay the proceedings.

The conclusion drawn by the learned Arbitrator in the impugned order is perfectly valid, legally justified & does not suffer from any infirmity which is liable to be interfered with. Although, the Learned Arbitrator had expressly clarified during the course of proceedings that the issue with regard to alleged under stamping shall be decided at the time of pronouncing final award however, the Petitioner filed a misconceived application & unnecessarily invited an order only to delay the proceedings. Even then, the learned Arbitrator acted in a justified manner &did not foreclose the rights of the Petitioner & decided the issue in favour of the Respondent only for the purpose of the disposing of the application on repeated insistence of the Petitioner. The relevant observations, rightly made by the learned Arbitrator in the impugned order deserve to be reproduced as under:-

"Before concluding, it is made clear that whatever has been stated or discussed hereinabove is only for the limited purpose of disposing of the application filed by the respondents and nothing stated herein above should be taken as an expression of my views on the merits of any of the issues that arise between the parties including issues No.6

Hence, the rights & contentions of the Petitioner were well taken care of by the learned Arbitrator In the impugned order & no interference is warranted to the impugned order. Needless to say that the plea of the Petitioner being rendered 'remediless' is false & hopelessly misconceived.

Issue No.6 & 23 framed by the Sole Arbitrator in the main arbitration proceedings reads as under:-

6. Whether the claimant is in actual physical possession of the property in dispute and, if not, to what effect? OPR

23. Whether the agreement dated 16.7.2007 is inadmissible being unregistered and under stamped? If so, its effect? OPR

Hence, the issued raised by the Petitioner in the subject Application before the Arbitrator was misconceived as it directly impinged upon the final adjudication of Issues No. 6& 23 framed by Arbitrator which were the very heart & soul of the claim petition in the Arbitration itself. In fact, the Petitioner tried to get the main issues of the arbitration decided circuitously by way of an Interim *application so as to take the proceedings to a higher court & waste time. Needless to say that the impugned proceedings have been initiated only to create roadblocks &scuttle the issues framed by the Arbitrator in an indirect manner. Thus, the Petitioner deserves no relief from this Hon'ble Court.*

ON MERITS

OM PRAKASH'S JUDGMENT COMPLETELY INAPPLICABLE & RELIANCE PLACED BY THE PETITIONER THEREUPON IS ABSOLUTELY MISCONCEIVED

17. The judgment relied upon by the Petitioner namely, Om Prakash Vs. Laxminarayan (2014) 1 SCC 618 which interprets provisions of Madhya Pradesh's Stamp Act (which are different & contrary to Punjab Stamp Act) is completely inapplicable in the present factual scenario. The judgment in Om Prakash's case follows an earlier judgment in Avinash Kumar Chauhan vs. Vijay Krishna Mishra (2009) 2 SCC 532, which again was a case pertaining to Madhya Pradesh's Stamp Act which is different than relevant law applicable in Punjab. That apart, the judgment in Om Prakash's case arose from a final order of a Civil Court & not an interim order of an Arbitral Tribunal.

18. The relevant provisions Punjab & Madhya Pradesh's Stamp Act are as under:

Punjab	*Madhya Pradesh*
Entry No.5 (cc) of Schedule 1-A of Schedule II applicable under the State of Punjab, Column No.2 of Entry No.23 of Schedule 1-A	*Explanation appended to Article 23 of Scheduled 1-A of Stamp (Madhya Pradesh Second Amendment) Act, 1990 to the Stamp Act, 1899*
5. Agreement of memorandum of an agreement *(cc) in the case of agreement to sell followed by or evidencing delivery of possession of the immovable property agreed to be sold*	*Explanation:- for the purpose of this article where in the case of agreement to sell immovable property, the possession of any immovable property is transferred to the purchaser before execution or after execution of such agreement without executing the conveyance in respect thereof then such agreement to sell shall be deemed to be a conveyance and stamp duty thereon shall be leviable accordingly.*

A bare perusal of the above contradictory provisions applicable in Punjab & Madhya Pradesh respectively lead to an inevitable conclusion that in Madhya Pradesh, irrespective of whether possession is handed over before execution or after execution of agreement *to sell, the same shall be deemed to be a 'conveyance' & stamp duty thereon shall be leviable. However, in Punjab, the situation is quite different as unless the agreement to sell is followed by or evidencing delivery of possession, the same cannot be treated as a 'conveyance & no stamp duty is leviable. In Punjab, in case, possession is handed over prior to execution of Agreement, then no stamp duty is leviable. Moreover, the expression "followed by or evidencing delivery of possession" has been interpreted by the Hon'ble SC in Vijay Kumar Goyal (Dead) Vs. Neena Rani 2022 SCC OnLine SC 1237.*

Thus, in view of an ocean of a difference between the applicable law in Punjab & Madhya Pradesh, the judgments rendered by co-ordinate benches of this Hon'ble Court including Bikram Singh v. Charanjit Singh, CR-3048-2021 decided on 08.04.2022 & Narinder Kapoor v. Inderjit, CR-1931-2017 & CR-3172-2018 Decided on 12.02.2020 following the judgments interpreting provisions of Madhya Pradesh's Stamp Act are per incuriam and are overruled in Vijay Kumar Goyal's case.

Similarly, the judgments of the Hon'ble Supreme Court in Om Prakash Vs. Laxminarayan (2014) 1 SCC 618 & Avinash Kumar Chauhan vs. Vijay Krishna Mishra (2009) 2 SCC 532 interpreting provisions of Stamp (Madhya Pradesh Second Amendment) Act, 1990 to the Stamp Act, 1899 are inapplicable to the present case arising out of Punjab where a different law apples.

22. As per facts of the present case, the possession remains with bank, taken over under SARFAEST Act in the year 2005, also recorded in order dated 27.09.2013 passed by the Hon'ble Supreme Court of India in Arbitration Case No. 89 of 2011. Also the Hon'ble High Court vide order dated 11.02.2014 passed in Cr. Misc. Nos M-12103 of 2012 (O&M) etc also records that the SBI has the legal possession of the land.

23. Hence, the submissions of the Petitioner relying upon Om Prakash's case have no legs to stand.

FACTS OF PRESENT CASE CLEARLY HIGHLIGHT THAT NO POSSESSION WAS HANDED OVER TO THE RESPONDENT

24 A unique circumstance in the present case is that the present Agreement has been entered into in pursuance of the action initiated by the Bank under SARFAESI Act (exempt from Stamp Duty) where under, an OTS was entered into between the Bank, Petitioner & Respondent& accordingly, Tripertite

Agreement dated 03.01.2007 was executed, the relevant recitals whereof are as under:-

4.(d) That upon grant of approval to the OTS by the competent authority in the Bank and appropriate of Rs. 2,00,00,000/- (Rupees Two crores only) in the loan account of M/s Saini Motors, "the Owners" and "the Bank" shall hand over the custody of the said property to "the Builder" for development purposes only with no right for possession of the land. However, legal possession shall remain with "the Bank" till all the dues of "the Bank" are cleared. Further, "the Bank" shall be at liberty to take back the custody of the said property, if it comes to the conclusion, for whatever reason that "the Project" is being delayed unnecessarily and its dues are not being cleared as per the agreed terms (supra)...

24. That "the Bank" hereby admit and confirm this transaction and in token thereof the bank has signed this agreement. However, "the Bank" is at its discretion to take a decision to take back the custody of the property from the builder at any point of time and "the Builder" & "the Owner" cannot move to any court of law against the Bank. Delivery of custody of the property to the builder for construction shall not be deemed to be delivery of possession.…

Subsequently, as directed by the Bank being in possession under SARFAESI Act, Agreement to Sell dated 16.07.2007 was entered into, the relevant recital whereof is as under:-

"Whereas the Owners namely M/s Saini Motors, a partnership firm described herein in the sole and absolute owners of land...

which is mortgaged to the State Bank of India against credit facilities availed from the said Bank in the name of M/s Saini Motors, presently in legal possession of the bank but in actual custody of the purchaser....

Indubitably, 'possession was never handed over to the Respondent at any point of time & only 'custody for the purpose of construction was handed over at the time of OTS I.e. 03.01.2007 which is much before 16.07.2007.Assuming for the sake of argument that 'custody amounts to possession (although it is expressly provided that custody shall not amount to possession), even the said Custody was handed over to the Respondent around 03.01.2007 much prior to execution of Agreement to Sell dated 16.07.2007 (although it is vehemently denied that possession was given), even then, the possession is not 'followed by the Agreement to Sell. Therefore, by no stretch of *imagination can it be said that the Agreement to Sell is a conveyance thereby attracting Stamp Duty.*

RESPONDENT FULLY COVERED BY THE JUDGMENT IN VIJAY KUMAR GOYAL'S CASE

27. De hors the non-maintainability, even the facts of the present case are clearly in favour of the Respondent& against the Petitioner. An identical issue arose before the Hon'ble Supreme Court in Vijay Kumar Goyal (Dead) Thr. Lr. Vs. Neena Rani & Ors. Civil Appeal No. 6538 of 2022 decided on 16.09.2022 reported as 2022 SCC OnLine SC 1237, wherein it was held as under:-

"1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Punjab and Haryana at Chandigarh in Civil Revision Petition No. CR- 3172 of 2018 by which the High Court has dismissed the said revision application preferred by the appellant herein and has confirmed the order passed by the Trial Court directing the appellant-original plaintiff to pay the deficient stamp duty alongwith the penalty, the original plaintiff has preferred the present appeal.

2. That the appellant herein has instituted civil Suit before the Trial Court for specific performance of the Memorandum of Agreement dated 24.02.1996 and the agreement to sell dated 14.05.2011 with regard to the suit land. In the said suit, the Trial Court passed an order directing the original plaintiff appellant to pay the deficient stamp duty as leviable under Sub column No. 2 of Column No. 2 of Entry no. 23 of Schedule 1-A by observing that as per Schedule 1 A. Entry No. 5 with respect to Memorandum of Agreement or agreement to sell followed by or evidencing delivery of possession of the immovable property agreed to be sold, the stamp duty shall be leviable under Sub column No. 2 of Column No. 2 of Entry No. 23 of Schedule 1-A as amended by the State of Punjab.

3. Feeling aggrieved and dissatisfied with the order passed by the Trial Court ordering the deficient stamp duty alongwith the penalty to be paid, the original plaintiff-appellant preferred the Civil Revision Potion No. CR 3172 2018 before the High Court by the impugned judgment and order, the High Court has dismissed the said revision petition, which has given rise to the present appeal

4. Though served, none has appeared on behalf of the respondents.

5. We have heard learned counsel appearing on behalf of the appellant. We have considered and gone *through the Memorandum of Agreement dated 24.02.1996 and the agreement to sell dated 14.05.2011 of which the specific performance has been sought.*

6. Having gone through the said arguments, it can be seen that the possession has not been delivered under the said agreements. In these agreements, it is specifically mentioned that the possession of the disputed land in question was already with the appellant Vijay Kumar, In the Memorandum of Agreement dated 24.02.1996, it is mentioned that "the above said land is already with my brother Vijay Kumar and after today, my brother, Vijay Kumar has become the owner in possession of the above land like me In the agreement to sell dated 14.05.2011, in paragraph 2, it is stated the possession of the above land is already with party no. 2 and the party no.2 is having possession of the same today also" Thus, it cannot be said that the possession of the land in question was delivered through under the said agreements of which the specific performance is sought. In that view of the matter, Entry no 5 of Schedule 1-A of the Indian Stamp Act as amended by the State of Punjab shall not be applicable As per Entry No. 5 (cc) of Schedule 1-A applicable under the State of Punjab, in the case of agreement to sell followed by or evidencing delivery of possession of the immovable property agreed to be sold, the stamp duty is leviable under Column No 2 Entry No. 23 of Schedule 1-A. As observed hereinabove, the plaintiff was already in possession prior to the execution of the aforesaid agreements as per the recitals in the aforesaid two agreements. It is to be noted that even the plaintiff has also not sought the possession in the suit filed by him and has in fact sought the permanent injunction restraining the defendants from interfering in the peaceful possession of the plaintiff and from dispossessing or causing to dispossess the plaintiff from the suit property.

7. In view of the above and for the reasons stated above, the order passed by the High Court and that of the Trial Court directing the appellant-original plaintiff to pay the deficient stamp duty with penalty applying Sub-column No. 2 of Column No. 2 of Entry No. 23 of Schedule 1-A as amended by the State of Punjab is unsustainable and the same deserves to be quashed and set aside

8. In view of the above and for the reasons stated above, the present appeal succeeds The impugned judgment and order passed by the High Court *dismissing the Civil Revision Petition No. CR-3172 of 2018 and the order passed by the Trial Court directing the appellant-original plaintiff to pay the deficient stamp duty along with the penalty are hereby quashed and set aside*

28. As is evident, in Vijay Kumar Goyal's case (a case from Punjab arising from this Hon'ble Court), possession of the property was handed over to the Plaintiff therein, prior to the execution of the Agreement to Sell & therefore, the Honble SC held that possession has not been delivered under the said agreements. As even as per the recitals, "possession of the disputed land in question was already with the appellant" Hence, it was held that since possession is already with the plaintiff the same is not "followed by or evidencing delivery of possession" as Entry No. 5 (cc) of Schedule 1-A & therefore, no stamp duty was required. Hence, the order directing payment of duty was set aside.

Vijay Kumar Goyal's case leaves no manner of doubt that Respondent is fully covered by the ratio enunciated therein & by no stretch of imagination could it be said that Agreement to Sell dt. 16.7.2007 is a conveyance which would attract Stamp Duty as per Sub-column No. 2 of Column No. 2 of Entry No. 23 of Schedule 1-A as amended by the State of Punjab since no possession has been handed over to the Respondent by virtue of/under such an Agreement to Sell dated 16.7.2007

PRESENT REVISION PETITION DEFEATING THE VERY PURPOSE OF ARBITRATION

Section 29-A (1) of the Arbitration Act clearly provides that "The award in matters other than International commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under sub-section (4) of Section 23" Prior to its amendment in 2019, Section 29-A (1) read as "The award shall be made within a period of twelve months from the date the arbitral tribunal enters upon the reference However, despite the strict mandate of the Act that the entire arbitration proceedings have to be concluded within 1 year, the present arbitration proceedings have remained pending for almost 10 years due to the roadblocks created by the petitioner who has been successful in placing delaying tactic thereby frustrating, obviating, derailing & scuttling the entire process & purpose of arbitration

Despite the present petition being out rightly not maintainable in view of a Constitution Bench

Judgment in SBP (supra), the same has unfortunately remained pending for the last more than 6 years along with a stay in favour of the Petitioner. Sadly, despite the interim order having lapsed on account of non-extension thereof as per the ratio laid down in Asian Resurfacing of Road Agency Pvt. Ltd. vs. CBI (2018) 16 SCC 299, the said interim order is being misconstrued by the Petitioner to stall the pending Arbitration proceedings. In this regard, Respondent has even filed detailed application(s) bearing CM 4744 of 2022 & CM 17055 of 2022 & has approached the Hon'ble SC.

33.It is worth highlighting that the present case depicts an unfortunate state of affairs wherein, the Petitioner who has secured an ex-parte order of stay of arbitration proceedings way back on 09.05.2016 has been successful in delaying the proceedings dragging on the same for the last more than 6½ years thereby frustrating the very purpose of arbitration. Resultantly, the arbitration proceedings which was ordered by this Hon'ble Court way back on 27.09.2013 remain pending for the last almost 10 years whereas, the statutory mandate of the Arbitration & Conciliation Act, 1996 contemplates conclusion of the entire arbitration within a year at max.

34 Although the arbitration proceedings had commenced in the year 2013 however, the Petitioner herein left no stone unturned & made all possible efforts to somehow scuttle, frustrate, obviate, delay & derail the arbitration proceedings. As a matter of fact, the Petitioner created all possible roadblocks to stall the proceedings & several dilatory tactics were deployed by the Petitioner one after the other & accordingly, the matter was delayed & dragged along for several years while the Respondent has been made to suffer heavy monetary losses. Despite having paid Rs. 17 crores approx, the property in question has still not come to the Respondent.

35. During the pendency of the arbitration proceedings, Justice N.K. Sodhi, learned Sole Arbitrator had unfortunately passed away on 28th December, 2021 & Arb No. 180 of 2022 had to be filed by the respondent wherein, vide order dated 22.07.2022, this Hon'ble Court was pleased to appoint Hon'ble Mr. Justice (Retd.) Ajay Tewari to substitute as an arbitrator. However, proceedings before the substituted arbitrator have also not commenced on account of the present matter.

> *A plethora of decisions have been rendered by the Hon'ble Supreme Court highlighting that the salient object of Arbitration & Conciliation Act, 1996 is fair, speedy & inexpensive adjudication of commercial disputes by Arbitral Tribunal & unnecessary delays defeat & frustrate the very purpose of the Act. Therefore, the Arbitration needs to be expedited by this Hon'ble Court."*

10. Before analysing the arguments of the learned counsel representing the parties, it becomes imperative for the Court to carefully read the statutory provisions. In fact, this amendment carried out by the Punjab Govt. in the 1899 Act, is pursuant to the amendment in the Indian Registration Act, 1908 and the Transfer of Property Act, 1882, inserted by Registration and Other related laws Amendment Act, 2001 which came into force with effect from 24th September, 2001. By the aforesaid amendment, Section 17 (1-A) in the Registration Act, 1908 was added which makes the agreement to sell with respect to a property compulsory registrable for the purpose of Section 53-A of the Transfer of Property Act, 1882.

11. On a careful reading of Section 2(10) of the 1899 Act, it is evident that the word conveyance includes a sale deed or every instrument by which the property is transferred. The definition of the word conveyance starts with word "includes".

12. As per Section 54 of the Transfer of Property Act, the contract for sale or agreement to sell does not by itself create any interest, charge, on such property.

13. Now the Court proceeds to analyse entry 5 (cc) in the Schedule 1-A of the 1899 Act. It is evident that the agreement to sell followed by or evidencing delivery of possession of immovable property

agreed to be sold has been made chargeable with the stamp duty as provided in column (2) of entry 23 of the Schedule subject to the adjustment of the duty chargeable at the time of execution of the conveyance made in pursuance of such agreement. In other words, it is provided that if in the agreement to sell it is recited that the possession has been delivered or shall be delivered after a few days, it is necessary to pay the stamp duty as is leviable under column 2 of the entry No. 23 of the Schedule. It is evident that for the purpose of entry 23, the Punjab Government has divided column no.2 into two parts, which have been re-numbered as 2 and 3. In column 2, the rate of the stamp duty has been provided where the conveyance amounts to the sale of immovable property. Whereas column No. 3 prescribes rates for other conveyance deeds which include those agreements to sell in which delivery of possession has been made or promised to be made within a short time.

14. On analysing the facts of the present case, it is evident that under clause 4(d) of the tripartite agreement the Builder (respondent herein) was delivered possession of the property of the agreement to sell. It is evident that the Bank handed over the custody of the property to the Builder while observing that such custody is being handed over for the development purposes only with no right for possession. Clause 5 of the tripartite agreement provides that the owners also agree with the same position.

15. On a careful reading of the relevant part of the agreement to sell dated 16 July, 2007, it is evident that the previous possession of the Builder is acknowledged, however, it is nowhere provided that the

possession is being delivered under the agreement or shall be delivered in the near future. The '1899 Act' is a fiscal statute. Any conveyance deed that amounts to the transfer of the property, the stamp duty is payable at a prescribed rate. By the amendment, the only difference which has been made is to advance the stage of payment with respect to some part of the stamp duty at the time of the execution of the agreement to sell which shall be adjusted subsequently at the time of the execution of the conveyance deed. Thus, by way of amendment the stage at which some part of the stamp duty is payable has been advanced to the date of agreement to sell in certain eventualities. This is the substance of the amendment.

16. Section 35 of the '1899 Act' mandates that if any instrument chargeable with duty is sought to be produced in evidence, the same shall not be admitted in evidence by any person who is authorized by law or consent of the parties, to receive the document as evidence unless such document is duly stamped. Proviso to Section 35 of the '1899 Act' provides that the opportunity will be given to make up such duty with penalty of Rs. 5/- or when 10 times of the amount of proper duty or deficient portion thereof exceeds Rs. 5/-. Section 36 of the '1899 Act' lays down that once an instrument has been admitted in evidence, such admission shall not be called in question except as provided under Section 61 of the '1899 Act' at any stage of the suit or proceedings on the ground that the instrument has not been duly stamped.

17. Thus, it is evident that penalty to the extent of amount equivalent to 10 times of the deficient stamp duty is leviable, however, it

depends upon the discretion of the authorised person, authority or Court before whom the said document is produced. The penalty of the amount equivalent to 10 times is not mandatory. It wholly depends upon the discretion of the Court. Reference in this regard can be placed at **Trustees of H.C.Dhanda Trust vs. State of Madhya Pradesh and others 2020 AIR (SC) 4349.**

18. Now the Court proceeds to analyse the arguments of the learned counsel representing the petitioner. The first argument put forth by the learned counsel with respect to clause (i) is not in question. If the delivery of possession is before the agreement to sell, the statute has not used the word before the agreement to sell as is the position in the amendment made by State of Madhya Pradesh in the '1899 Act'. In the written note of the submissions, learned counsel representing the respondent has compared the provisions of the Punjab and Madhya Pradesh Stamp Act, in the context of entry No. 5(cc) and explanation added to Article 23 of the Schedule 1-A as applicable in the State of Madhya Pradesh. In the Amendment Act of State of Madhya Pradesh the expression that is used is 'before execution' or after execution of the agreement to sell. However, in the Amendment Act of the State of Punjab, the Legislature did not use the word before or proceeds the execution of the agreement to sell. Hence, the judgments relied upon by the learned counsel representing the petitioner in **Om Prakash versus Laxminarayan (2014) 1 SCC 618 and Avinash Kumar Chauhan vs Vijay Kumar Mishra (2009) 2 SCC 532** are not applicable as in the aforesaid cases, the interpretation of explanation added to Article 23 of

the Schedule as applicable in the area of the State of Madhya Pradesh was the subject matter of interpretation. It is well settled that a fiscal statute is required to be construed strictly and an attempt must be made to interpret the statute by taking the language employed on its face value. The literal interpretation of entry 5 (cc), leaves no doubt that the statute never intended to include those agreements in which the intended purchaser has already been delivered possession. In other words, if the delivery of possession antecedes the agreement to sell, the stamp duty under entry 5 (cc) read with Article 23 shall not be applicable.

19. Learned counsel representing the petitioner also relies upon the judgment passed in **Mandati Srinivas 's case (supra)**. This Court has carefully read the aforesaid judgment. In that case, the Court held that though it is recited in the agreement to sell that the possession of the property was delivered but in fact, the possession was not delivered. Moreover, the relevant amendment made by the Andhra Pradesh Amendment Act has not been reproduced in order to analyze the statutory provision. Hence, the argument of the learned counsel that delivery of possession even in the past is sufficient to attract the applicability of Article 23 of the Schedule.

20. The next argument of the learned senior counsel representing the petitioner has no substance because entry 5(cc) of the Punjab Amendment Act and explanation appended to Article 23 of Schedule 1-A of Madhya Pradesh Stamp Act are different and not similarly worded. This Court has also carefully read the judgment passed by co-ordinate Bench in **Vikram Singh's case (supra)** It is

evident that the attention of the Court in **Vikram Singh's case (supra)** was not drawn to the amendment in entry No. 5 (cc)and Article 23 of the Schedule. The Court examined Section 35 of the 1899 Act and the judgment passed by the Supreme Court in **Avinash Kumar Chauhan's case (supra).** Hence, the aforesaid judgment cannot be considered to be laying down law to the effect that even when the possession has been delivered before the execution of the agreement to sell, the stamp duty is payable. Rather on a careful reading of para 5, it is evident that the Court analysed that there is a recital in the agreement to sell that the possession has been already delivered to the intended purchaser on the date the agreement to sell was executed. Hence, it is not a case where prospective vendee was already in possession. As regards the next argument in the considered view of the Court, there is no difference between the expression custody of the land and possession of the land in the context of the present case. For the purpose of stamp duty, the actual physical possession of the property is important.

21. With reference to the next argument of significance of reciting delivery of possession of 533 square yards, it may be noticed that the agreement to sell itself recites that 4805 square yards land was in possession of the Bank, which, in turn, has been delivered to the Builder whereas, the Builder is already in possession of 538 square yards. So, in other words even 538 square yards were already in possession of the Builder.

22. The next submission of the learned counsel has no substance as the learned Arbitrator has passed an interlocutory order

while examining the contention of the learned counsel representing the parties. Hence, it would not be appropriate for the court to style such order as capricious and non speaking. With reference to the next argument of the counsel with regard to the maintainability of the revision petition, this Court has opted to refrain itself from examining the matter, particularly, when it is the petitioner who is attempting to establish that the revision petition is maintainable whereas on the other hand, it is the case of the respondent that no revision petition is maintainable.

23. The next argument of the learned counsel with regard to interpretation of Section 33, 35 and 36 of the 1899 Act, it may be noticed that the aforesaid argument would not arise in the present case as it has been found that the stamp duty under Article 23-A is not applicable to the agreement to sell in question. The next argument of the learned counsel also does not have any substance as in this revision petition the order which has been challenged relates to the request of the petitioner to impound the agreement to sell dated 16 July 2007, but the Arbitrator refused to do so. Hence, it would not be relevant to decide as to when the respondent came in possession of the property. The last argument of the learned counsel also has no substance as Arbitrator while passing the impugned order has decided that question. However, it has been observed that this shall not be treated as an expression of the views on the merits of an issue that arises between the parties including issue no.6. Thus, the Arbitrator did not defer the decision on merits.

24. It may be noted here that **Vijay Kumar Goyal's case (supra),** the Supreme Court drew the aforesaid distinction while

concluding that the stamp duty is not payable if the intended purchaser was already in possession of the property before the execution of the agreement to sell.

25. Keeping in view the aforesaid discussion, finding no merit, the present revision petition is dismissed.

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

26.09.2023 **(ANIL KSHETARPAL)**
rekha **JUDGE**
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No