IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

117

CR-4922-2018
Date of decision: 19.09.2023

SUKHWINDER SINGH **..Petitioner**

Versus

RAJINDER KAUR AND OTHERS **..Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ishan Gupta, Advocate
and Ms. Deepali, Advocate
for the petitioner.

Mr. Rajan Bansal, Advocate
for respondents.

ANIL KSHETARPAL, J(Oral)

1. Through this revision petition, the petitioner (defendant) assails the correctness of the order passed on 27.02.2018 by the Court of first instance. In substance, the dispute is with regard to the requirement of the plaintiff to pay deficient stamp duty as the agreement to sell was insufficiently stamped. The agreement to sell was scribed on a stamp paper worth Rs.100/-. The total sale consideration was Rs.40,00,000/-, out of which Rs.20,00,000/- were paid as an earnest money. It is recorded in the agreement to sell that the possession shall be handed over to the buyer (prospective purchaser). It is admitted by the respondents (plaintiffs) that the possession has been delivered. As per the amendment in Entry No.5 of Schedule 1-A of the Indian Stamp Act, 1899 (hereinafter referred to as the "1899 Act") as applicable to the State of Punjab, it has been provided that in the case of agreement to sell followed by or evidencing delivery of possession of immovable property agreed to be sold, the same duty as is

leviable under Column No.2 of Entry No.23 of this Schedule shall be payable subject to the adjustment of the duty chargeable at the time of execution of the conveyance deed. Entry No.23 has been divided into two separate parts while prescribing the rate of stamp duty where the conveyances amount to sale of immovable property, a different rate is prescribed, whereas, a different rate is prescribed for other conveyances.

2. The relevant amendment is extracted as under:-

> *"**<u>Sub-Section 10 of Section 2:-</u>***
> ***(10) "Conveyance"-** "Conveyance" includes a conveyance on sale and every instrument by which property, whether moveable 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;*

<u>SCHEDULE 1-A:-</u>

<u>Entry No.5:-</u>

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)*	

Entry No.23:-

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)		

Entry No.62:-

62	**TRANSFER** (whether with or without consideration)-	
	(a) of shares in an incorporated company or other body corporate;	As in Schedule I

	(b) of debentures, being marketable securities, whether the debenture is liable to duty or not, except debentures provided for by Section 8;	One-half of the duty payable on a debenture (No.27) for a consideration equal to the face amount of the debenture.
	(c) of any interest secured by a bond, mortgage-deed or policy of insurance;	The duty with which such bond, mortgaged deed or policy of insurance is chargeable subject to a maximum of five hundred rupees.
	(d) of any property under the Administrator General's Act, 1918, Section 25;	Fifty rupees
	(e) of any trust-property without consideration from one trustee to another trustee, or from a trustee to a beneficiary.	Fifty rupees
	Exemption Transfers by endorsement (a) of a bill of exchange, cheque or promissory note; (b) of a bill of lading, delivery, order, warrant for goods, or other mercantile document of title to goods; (c) of a policy of insurance; (d) of securities of the Central Government See also Section 8; and	
	[(f) by way of assignment of debt or securitization of loans.	0.1% of the amount, subject to a maximum of one lakh rupees.]

> *In Entry No.5, Clause CC was added by the Indian Stamp (Punjab Amendment) Act, 2001 notified on 21.12.2001. Entry No.23 was amended by the Indian Stamp (Punjab Amendment) Act, 2007 w.e.f. 25.01.2008.*

3. In fact, the liability to pay stamp duty on the agreement to sell which evidences delivery of possession or where agreement to sell is followed by delivery of possession has been examined in detail by this Court in ***Narinder Kapoor and others Vs. Inderjit (since deceased) through his legal heir and others, CR-1931-2017 and CR-3172-2018, decided on 12.02.2020***.

> *On careful reading of phraseology used in the definition of "Conveyance" as defined in Sub-Section 10 of Section 2, it become clear that the word conveyance includes a conveyance on sale and every instrument by which the property is transferred. The*

definition of the word 'conveyance' starts with word "includes", however, the significant word used subsequently is "transferred". User of the word "includes" means that such definition is ordinarily not exhaustive. As per Section 54 of the Transfer of Property Act, contract for sale or agreement to sell is not an instrument of transfer. Section 54 of the Transfer of Property Act, is extracted as under:-

> *"**54. "Sale" defined -** "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.*
>
> ***Sale how made -** Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.*
>
> *In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.*
>
> *Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.*
>
> ***Contract for sale -** A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property."*

Now, let us examine further amendments in Schedule 1-A. Entry No.5 is with respect to agreement of memorandum of an agreement. Clause CC of Entry No.5 clearly takes in its sweep agreement to sell followed by or evidencing delivery of possession of all the immovable property agreed to be sold. Thus, even if the agreement to sell followed by or evidencing delivery of possession of immovable property does not fall within the definition of the word 'conveyance', however, it would not be appropriate to hold that no stamp duty as is leviable under Column No.2 of Entry No.23 of this Schedule is payable. Column No.2 clearly specifies that an agreement to sell followed by or evidencing delivery of possession of immovable property shall be charged same duty as is leviable under Column No.2 of Entry No.23 of this Schedule. However, significance has also *to be given to the second part of the sentence which reads as "subject to adjustment of duty chargeable at the time of execution of the conveyance made in pursuance of such agreement". This second part is also to be kept in mind while interpreting the entries. However, this aspect would be discussed in the later part of this judgment, in view of the amendment in entry No.5 for the purpose of determining the amount of stamp duty payable.*

Now let us examine Entry No.23 which is with respect to the documents which are conveyance or deemed to be conveyance. Although, as noticed above, the agreement to sell followed by or evidencing delivery of possession does not fall in the definition of the word 'conveyance', however, in view of Entry No.5 for the purpose of stamp duty payable, Entry No.23 is applicable.

However, it is important to note that Column No.2 has been divided in two different sub-columns. Sub-Column No.1 of Column No.2 give the rate at which the stamp duty is payable where the conveyance amounts to sale of immovable property. In other words, the duty payable under Sub-Column No.1 of Column No.2 would be leviable only when the conveyance amounts to sale of property. An agreement to sell does not amounts to sale of immovable property. Thus, the stamp duty payable on agreement to sell followed by or evidencing delivery of possession would be regulated by Sub-Column No.2 of Column No.2. It needs to be clarified that stamp duty shall be payable on the amount paid/payable under the agreement to sell by the intended purchaser (vendee) to the intended seller (vendor) and not on the entire sale consideration. The reason is obvious, because of the language of Column No.2 with respect to Entry No.5. The duty which is to be charged at the time of entering into agreement to sell is subject to the adjustment of duty chargeable at the time of execution of the conveyance made in pursuance of such agreement. If the Court interprets that the same duty shall be charged as is leviable on the total sale consideration agreed to between the parties, the second part of Entry No.5 in Column No.2 would be rendered otiose. Legislature, in the considered view of this Court, never intended that the entire stamp duty as is payable on the conveyance deed, be recovered at the time of agreement to sell. Had this been the intention, then the second part in Column No.2 of Entry No.5, would not have in the statute.

> *Keeping in view the aforesaid facts, the question, which has been framed is answered in the manner that the agreement to sell followed by or evidencing delivery of possession of the immovable property agreed to be sold, shall be leviable with same stamp duty as is leviable under Sub Column No.2 of Column No.2 of Entry No.23 of Schedule 1-A as amended by State of Punjab."*

4. The trial Court has directed the plaintiff to make good the deficiency of Rs.1,900/-, which is not the correct position.

5. On one hand, the learned counsel representing the petitioner (defendant) submits that subsequently some additional payments as earnest money have been made apart from Rs.20,00,000/-, hence, the stamp duty is payable on the total amount paid.

6. On the other hand, the learned counsel representing the respondents submits that the agreement to sell is required to be stamped as per the amendment in the 1899 Act. The separate receipts for making additional payment, would not attract the stamp duty on the payment, which does not form part of the earnest money.

7. This Court has considered the submissions and analyzed the arguments of the learned counsel representing the parties.

8. The 1899 Act is a fiscal statute. It is required to be interpreted strictly. Clause 5(cc) provides for the requirement of affixing stamp duty on the agreement to sell followed by or evidencing delivery of possession. Hence, on the amount of subsequent/additional payments, the stamp duty is not required to be adjusted particularly when the amount paid at the time of execution of the agreement to sell is subject to adjustment of duty chargeable at the time of execution of the sale deed.

9. Keeping in view the aforesaid facts, the stamp duty is payable on the amount of Rs.20,00,000/-. The trial Court has erred in directing the plaintiff to pay stamp duty of Rs.1,900/-, which is the rate prescribed for agreement to sell, which does not evidence delivery of possession. The stamp duty is payable as per Column No.3 of Entry No.23.

10. As per Section 35 of the 1899 Act, the Court is entitled to direct penalty to the extent of 10 times of the amount equivalent to the deficient stamp duty. In this case, there is no allegation that an intentional attempt was made to defraud the government revenue. In ***Trustee of H.C. Dhanda Trust Vs. State of Madhya Pradesh and others, (2020) 9 SCC 510***, the Supreme Court has held that it is not mandatory to impose penalty equivalent to the 10 times of the deficient stamp duty.

11. In the facts and circumstances of the case, the ends of justice would be met if the respondents make good the deficiency in payment of the stamp duty along with the penalty equivalent to the amount of deficient stamp duty, within a period of one month, from today.

12. With these observations, the revision petition is disposed of.

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

September 19th, 2023 **(ANIL KSHETARPAL)**
Ay **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No