2023:PHHC:128281

134+279IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RA-CR-94-2022 (O&M)
in CR-7923-2019
Date of decision: 04.10.2023

JOGINDER SINGH SINCE DECEASED THROUGH HIS LRS

....Petitioner

Versus

LABH SINGH

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Vishal Aggarwal, Advocate for the review applicant

Mr. Aayush Gupta, Advocate for the respondent

ANIL KSHETARPAL, J (Oral)

CM-18475-CII-2023

1. Allowed as prayed for.

CM-12113-CII-2022

2. For the reasons stated in the application, delay of 114 days in filing the review application, is condoned.

3. CM stands allowed.

CM-12114-CII-2022

4. Allowed as prayed for, subject to all the just exceptions. The legal representatives of the deceased petitioner, as mentioned in para 2 of the application, are permitted to be brought on record, for the purpose of prosecuting the present review application.

5. Amended memo of parties is taken on record.

<u>Review application</u>

6. The review applicant before this Court is the plaintiff in a pending suit for specific performance of the agreement to sell. When the agreement to sell evidencing delivery of possession was produced before the trial court, the same was impounded as it was not sufficiently stamped. The trial court directed the plaintiff to make good the deficiency alongwith the penalty equivalent to the 10 times of the amount of the deficient stamp duty. The revision petition filed by the petitioner to challenge the same was dismissed by this Court by a short order dated 20.04.2022, which reads as under:-

> "*1. The trial Court, after noticing the amendment in the Indian Stamp Act, 1899, carried out by the Punjab Government, impounded the agreement to sell while directing the plaintiff to pay penalty along with the deficient stamp duty. This matter has been examined by the Court in* ***Narinder Kapoor v. Inderjit (since deceased) through his legal heir (Civil Revision No. 1931 of 2017, decided on 12.02.2020).***
>
> *2. In view of the above, no ground is made out to interfere. Hence, the present revision petition is dismissed.*"

7. The plaintiff has filed the application with a prayer that the imposition of penalty to the extent of 10 times of the deficiency in the stamp duty is not mandatory and the discretion lies with the authority. He relies upon the judgment passed by the Supreme Court in **Trustees of H.C.Dhanda Trust vs. State of Madhya Pradesh and others 2020 AIR (SC) 4349.**

8. On the other hand, the learned counsel representing the respondent, while vehemently opposing the application, submits that it is not permissible for the Court to review the previous order only on the ground that the judgment of the Supreme Court has not been noticed.

9. This Court has considered the submission. In this case, on account of recent amendment made by the State of Punjab in the Stamp Act, 1899, the deficiency to the extent of Rs.4,16,000/- has been found by the Court. There is no material to prove that there was any intentional attempt to rob the State revenue on the part of the plaintiff. The quantum of punishment is a discretion of the Court. The effect of the amendment was examined in ***Narinder Kapoor v. Inderjit (since deceased) through his legal heir (Civil Revision No. 1931 of 2017)*** on 12.02.2020. Moreover, the amount of stamp duty as well as the amount of penalty is payable to the State Exchequer and not to the respondent.

10. By way of the amendment only the stage at which the stamp duty is payable is advanced to the date of the agreement to sell that is the sum and substance of the amendment. Ultimately, at the time of registration of the sale deed, the amount of stamp duty paid at the time of the agreement to sell is liable to be adjusted.

11. At this stage, the learned counsel representing the respondent contends that there is an intention on the part of the plaintiff to defraud the public revenue. However, there is no material to that effect. At the cost of repetition, it may be noted that by amendment in the Stamp Act only the stage at which the stamp duty is payable is advanced from the date of sale deed to the date of the agreement to sell.

12. Keeping in view the aforesaid facts, the review application is allowed. The order dated 20.04.2022 shall stand modified and the plaintiff is made liable to make good the deficiency in the stamp duty alongwith the penalty of the amount equivalent to the deficiency of the stamp duty within a period of 10 days.

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

04.10.2023 **(ANIL KSHETARPAL)**
rekha **JUDGE**
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No