213.

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-25225-2019
Date of Decision: 20.02.2023

GURMAIL KAUR AND ANOTHER .... Petitioners

Versus

STATE OF PUNJAB AND OTHERS .... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. G.S. Punia, Senior Advocate, with
Ms. Harveen Kaur, Advocate,
for the petitioners.

Mr. Deepanjay Sharma, DAG, Punjab.

JAISHREE THAKUR.J (Oral)

The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking a writ in the nature of certiorari for quashing letters dated 05.08.2019 and 23.07.2018, Annexures P-1 and P-2 respectively, whereby the application for refund of unutilized stamp papers has been rejected, with a further prayer for a writ in the nature of mandamus directing the respondents to refund the value of non-judicial stamp papers worth Rs.3,69,500/-, which have not been utilized.

Learned Senior Advocate appearing on behalf of the petitioners would contend that in fact the petitioners herein had purchased non-judicial stamp papers through e-stamping for execution of the sale deed jointly in their favour. However, the said stamp papers were never utilized since it was decided to get the sale deeds executed separately. The petitioners then purchased stamp paper over and above the papers that were already purchased. After the execution of the sale deed on additional stamp papers bought, the petitioners immediately applied for refund on the non-judicial stamp papers in the prescribed form on 16.05.2017 itself. However, for reasons best known, the amount has not been refunded. The petitioners also approached the Sub Divisional Magistrate, Sunam in this regard. The SDM, Sunam vide letter dated 31.05.2017, noted that the stamp papers amount to Rs.3,69,500/- had not been utilized and on that basis, made a recommendation for refunding the same. Learned Senior Advocate would argue that despite several communications addressed inter se the Sub Registrar and other authorities regarding the fact that the stamp papers had not been utilized, the application of the petitioners herein for refund has been rejected summarily without any cogent reasons being given. He would submit that the application for refund stands consigned by citing that as per the legal opinion obtained from the District Attorney, Sangrur, the condition of stamp papers is not fulfilled.

Notice of motion had been issued in the matter and despite several opportunities given, no reply has been filed as on date and, therefore, this matter is being taken up for consideration without any reply available on the record.

As per the correspondence available on record, annexed by the petitioners herein, the stamp papers that were purchased for executing the sale deed, have not been utilized for the said purpose. The petitioners herein applied for refund of the same on 16.05.2017, citing a reason that the agreement of sale stood cancelled. The impugned orders, Annexure P-1 and

P-2, give no reason as to why the request for refund has not been acceded to. No reply is forthcoming despite the fact that this matter has been pending in this Court since the year 2019.

The Indian Stamp Act, 1899 provides for allowance for spoiled stamps. Section 49 of the said Act is reproduced as under:-

> ***"49. Allowance for spoiled stamps.****—Subject to such rules as may be made by the State Government as to the evidence to be required, or the enquiry to be made, the Collector may, on application made within the period prescribed in section 50, and if he is satisfied as to the facts, make allowance for impressed stamps spoiled in the cases herein after mentioned, namely: —*
>
> *(a) the stamp on any paper inadvertently and undesignedly spoiled, obliterated or by error in writing or any other means rendered unfit for the purpose intended before any instrument written thereon is executed by any person;*
>
> *(b) the stamp on any document which is written out wholly or in part, but which is not signed or executed by any party thereto;*
>
> *(c) in the case of bills of exchange payable otherwise than on demand or promissory notes—*
>
> > *(1) the stamp on any such bill of exchange signed by or on behalf of the drawer which has not been accepted or made use of in any manner whatever or delivered out of his hands for any purpose other than by way of tender for acceptance: provided that the paper on which any such stamp is impressed, does not bear any signature intended as or for the acceptance of any bill of exchange to be afterwards written thereon:*

(2) the stamp on any promissory note signed by or on behalf of the maker which has not been made use of in any manner whatever or delivered out of his hands:

(3) the stamp used or intended to be used for any such bill of exchange or promissory note signed by, or on behalf of the drawer thereof, but which from any omission or error has been spoiled or rendered useless, although the same, being a bill of exchange may have been presented for acceptance or accepted or endorsed, or, being a promissory note, may have been delivered to the payee:

Provided that another completed and duly stamped bill of exchange or promissory note is produced identical in every particular, except in the correction of such omission or error as aforesaid, with the spoiled bill, or note;

(d) the stamp used for an instrument executed by any party thereto which—

(1) has been afterwards found to be absolutely void in law from the beginning:

(2) has been afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended:

(3) by reason of the death of any person by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, cannot be completed so as to effect the intended transaction in the form proposed:

(4) for want of the execution thereof by some material party, and his inability or refusal to sign

the same, is in fact incomplete and insufficient for the purpose for which it was intended:

(5) by reason of the refusal of any person to act under the same, or to advance any money intended to be thereby secured, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose:

(6) becomes useless in consequence of the transaction intended to be thereby effected being effected by some other instrument between the same parties and bearing a stamp of not less value:

(7) is deficient in value and the transaction intended to be thereby effected has been effected by some other instrument between the same parties and bearing a stamp of not less value:

(8) is inadvertently and undesignedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped:

Provided that, in the case of an executed instrument, no legal proceeding has been commenced in which the instrument could or would have been given or offered in evidence and that the instrument is given up to be cancelled.

Explanation.—The certificate of the Collector under section 32 that the full duty with which an instrument is chargeable, has been paid is an impressed stamp within the meaning of this section."

Section 54 of the Indian Stamp Act, 1899 allows for refund of stamp papers not used. Section 54 of the said Act reads as under:-

"54. Allowance for stamps not required for use. *— When any* *person is possessed of a stamp or stamps which have not been spoiled or rendered unfit or useless for the purpose intended, but for which he has no immediate use, the Collector shall repay to such person the value of such stamp or stamps in money, deducting [ten naye paise] for each rupee or portion of a rupee, upon such person delivering up the same to be cancelled, and proving to the Collector's satisfaction—*

(a) that such stamp or stamps were purchased by such person with a bona fide intention to use them; and

(b) that he has paid the full price thereof; and

(c) that they were so purchased within the period of six months next preceding the date on which they were so delivered:

Provided that, where the person is a licensed vendor of stamps, the Collector may, if he thinks fit, make the repayment of the sum actually paid by the vendor without any such deduction as aforesaid."

In the opinion of the Court, the authority while rejecting the claim of the petitioners for refund ought to pass a speaking order, which is totally lacking in the present case. The provisions of the Indian Stamp Act, 1899 allow for refund of costs of stamp papers which are spoiled as well as of unused stamp papers provided application has been made within time. It is expected of the authority concerned to take note of the relevant provisions of the said Act before deciding the issue.

The matter is accordingly remanded back to respondent No.3 to take a decision afresh keeping the provisions of the Indian Stamp Act, 1899 in mind. Let a speaking order be passed by respondent No.3 regarding whether or not the petitioners are entitled for refund as claimed by them keeping the aforesaid provisions in mind, within a period of four weeks on receipt of certified copy of this order.

Present petition stands disposed of in the above terms.

Needless to say, in case the petitioners are found entitled to the said refund, the same be ordered within a period of six weeks thereafter, along with interest @ 7% per annum.

(JAISHREE THAKUR)
JUDGE

20.02.2023
sanjeev

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No