2023:PHHC:100981

133 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-5072-2022 (O&M)
Date of decision: 03.08.2023

Sandeep Kumar and others

..Petitioners

Versus

Chandigarh Overseas Pvt. Ltd and others

.Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Anish Setia, Advocate for the petitioners
Mr. Gourav Jangra, Advocate for
Mr. Partap Singh, Advocate for respondent no.4

ANIL KSHETARPAL, J (Oral)

1. The petitioners herein have filed the suit for specific performance of the agreement to sell dated 21.07.2008. The agreement to sell evidences delivery of possession. As per the amendment applicable to the State of Punjab, such agreement is required to be stamped in accordance therewith. During the pendency of the suit, an application was filed by the plaintiffs to prepare him to make good the deficiency, which was allowed, on 12.05.2022. Accordingly, the deficiency in stamp duty was made good and the agreement to sell was admitted in evidence as Ex.P-40. However, when the case was at the stage of final arguments, the court passed the impugned order directing the plaintiff to pay the deficient stamp duty alongwith a penalty equivalent to 10 times of the actual stamp duty.

2. The correctness of the aforesaid order has been challenged in this revision petition. Learned counsel representing the petitioners contends that once the document was admitted in evidence, Section 36 of

the Indian Stamp Act, 1899 (hereinafter referred to as 'the 1899 Act') bars the same court from doubting the correctness of the stamp duty once it has been admitted in evidence. He submits that the plaintiff voluntarily filed application to make good the stamp duty which was allowed vide order dated 12.05.2022. Hence, the impugned order is not sustainable.

3. On the other hand, learned counsel representing respondent no.4 submits that the High Court should not interfere with the impugned order.

4. This Court has considered the submissions made by the learned counsel representing the parties. Section 36 of the 1899 Act is extracted as under:-

> "***36. Admission of instrument where not to be questioned.***—*Where an instrument has been admitted in evidence, such admission shall not, except as provided in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not duly stamped."*

5. It is evident that Section 36 debars the court from calling in question, any instrument, which has been admitted in evidence on account of deficiency in the stamp duty. The trial court has overlooked Section 36 of the 1899 Act.

6. In any case, it is not mandatory that the deficiency in stamp duty must be recovered alongwith penalty equivalent to 10 times of the actual stamp duty. Reliance in this regard can be placed on the judgment

rendered in '**Trustees of H.C.Dhanda Trust vs. State of Madhya Pradesh and others 2020 (9) SCC 510.**

7. In view of the aforesaid facts, the impugned order is set aside. The trial court is requested to decide the suit.

8. The Revision Petition stands allowed.

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

03.08.2023 **(ANIL KSHETARPAL)**
rekha **JUDGE**
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No