2023:PHHC:155727

137 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CR-5038-2022 (O&M)
Date of decision: 05.12.2023

Tejpal Saini

....Petitioner

Versus

Poonam and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Shubham Thakur, Advocate for the petitioner

Mr. Rakesh Kumar, Advocate for the respondents

<u>ANIL KSHETARPAL, J (Oral)</u>

1. In this revision petition, the petitioner has challenged the correctness of the order passed by the trial court in an application filed under Section 33 of the Indian Stamp Act, 1899. The trial court has ordered the impounding of the agreement to sell on the ground that it is not sufficiently stamped. The court has held that the agreement to sell has to be stamped like a conveyance deed and the plaintiff (petitioner) is liable to pay an amount equivalent to 10 times of the deficient stamp duty as penalty.

2. On 01.12.2023, the following order was passed by this Court:-

> "*The learned counsel representing the petitioner while relying upon the judgment passed in* ***<u>CR-1931-2017, titled as 'Narinder Kapoor and others Vs. Inderjit (since deceased) through his legal heirs and others, decided on 12.02.2020</u>****, submits that the stamp duty shall be*

> *payable as per column No.3 of entry No.23 attached to the Indian Stamp Act, 1899. He further submits that the amount of stamp duty shall be payable on the amount paid at the time of agreement and not on the entire sale consideration.*
>
> *Sh. Rakesh Kumar, Advocate, prays for some time to study the judgment.*
>
> *List on 05.12.2023, in the urgent list.*
>
> *No further request, written or oral, for an adjournment shall be entertained."*

3. Learned counsel representing the respondent very fairly admits that in view of the judgment passed in **Narinder Kapoor's case (supra),** the impugned order is liable to be set aside as at this stage, the stamp duty is payable only on the amount paid under the agreement to sell and not on the total sale consideration.

4. Moreover, the trial court has directed the plaintiff to pay an amount equivalent to 10 times of the insufficient stamp duty, as penalty. The Supreme Court in **Trustees of H.C.Dhanda Trust vs. State of Madhya Pradesh and others 2020 AIR (SC) 4349,** has held that the authority of the court while impounding the document has the discretion to penalize the defaulting party to the extent of an amount equivalent to 10 times of the penalty. However, it is not necessary that in each and every case, the penalty equivalent to the 10 times of the deficient stamp duty is payable.

5. In this case, there is no material to record a finding that the plaintiff intentionally made an attempt to defraud the State

revenue. It appears that the agreement to sell was not sufficiently stamped due to the lack of knowledge of the amendment.

6. Keeping in view the aforesaid facts, the petitioner is directed to pay an amount equivalent to the deficient stamp duty, as penalty.

7. Disposed of, accordingly.

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

05.12.2023 **(ANIL KSHETARPAL)**
rekha **JUDGE**
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No