2023:PHHC:149264

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

CR-7022-2023 (O&M)
Date of decision: 22.11.2023

M/s Bhardwaj and Company
....Petitioner

Versus

Sarvesh Kumar Jindal and others
..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Sunny K Singla, Advocate for the petitioner

ANIL KSHETARPAL, J (Oral)

1. The prayer for impounding the agreement to sell on the ground that it is not sufficiently stamped, has been kept open by the trial court. The correctness of the aforesaid order is challenged by the petitioner/defendant by filing the revision petition.

2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed. In 2001, the State of Punjab amended the Indian Stamp Act, 1899. By the said amendment, the agreement to sell evidencing the delivery of possession was included in the definition of the conveyance deed and by amending entry no.23 of the Schedule, the stamp duty was made payable thereon. In substance, the liability to pay the stamp duty was advanced from the date of registration of the sale deed to the date of execution of the agreement to sell. The

liability to pay the stamp duty remains the same. Whatever stamp duty is paid at the time of the agreement to sell the same is liable to be adjusted towards the final stamp duty, that is payable at the time of registration. It is in that context that this Court has observed that the only stage of the payment of stamp duty to a certain extent has been shifted from the date of registration of the sale deed to the date of the execution of the agreement to sell.

3. In this case, it is recited in the agreement to sell that the possession of the property agreed to be sold has been delivered to the plaintiff, however, the plaintiff while filing the suit has claimed the relief of possession by way of the specific performance of the agreement to sell. It has been specifically pleaded by the plaintiff that he is not in the possession of the property. The defendant, while filing the written statement, has asserted that the possession has never been delivered to the plaintiff. In these circumstances, the delivery of possession, at the time of the agreement to sell, is itself in dispute. It is the case of the plaintiff as well as the defendant that there was no actual delivery of possession. In these circumstances, it would not be appropriate for the Court to impound the agreement to sell and direct the plaintiff to pay the stamp duty alongwith the penalty, particularly when the liability to pay the stamp duty itself is debatable.

4. Keeping in view the aforesaid facts, the trial court is directed to decide the suit.

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

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

22.11.2023 **(ANIL KSHETARPAL)**
rekha **JUDGE**
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No