IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18603 of 2014

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Urmila Devi @ Urmila Singh W/o Sri Baban Singh R/o Village Paharia, P.S. Bhagwanpur, District Kaimur Bhabhua.

... ... Petitioner/s

Versus

1. The State of Bihar
2. Commissioner, Patna Division, Patna.
3. Collector, Kaimur Bhabhua.
4. Sunil Kumar Singh S/o Sri Kuer Singh
5. Tarun Kumar Singh Son of Sri Laxmi Singh Both R/o Village and P.O. Ekhlaspur, P.S. Bhabhua, District Kaimur Bhabhua.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Rewti Kant Raman, Adv.
For the Respondent/s	:	Mr.Ravish Chandra, AC to SC-6

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date : 31-07-2024

1. The present writ petition has been filed seeking the following relief(s):-

> "*1. That this application is for issuance of writ /order for quashing the order dated 28.2.12 passed by the Commissioner, Patna Division, Patna in Stamp Appeal No.77/04 by which he has asked the petitioner to deposit the stamp duty, which has been valued by the Collector, as is contained in Annexure- 5 and also the order dated 31.8.04 passed by the Collector, Kaimur in Registration Case no. 12/2003-04, by which he has fixed the valuation of the disputed land amounting to Rs. 6,25,000/- and asked the petitioner to deposit stamp duty of Rs. 60,800/-,*

the amount of deficit stamp duty, as is contained in Annexure 4."

2. At the outset, the learned counsel for the parties are in agreement that the issue involved in the present writ petition is covered by the law laid down by a learned Division Bench of this Court, vide Judgment dated 16.08.2016, passed in ***L.P.A. No.815 of 2015 (The State of Bihar & Ors. vs. Anand Bhushan & Anr.)***, relevant portion whereof is reproduced hereinbelow:-

"*The order dated 08.01.2015 passed by the learned Single Bench is the subject matter of challenge in the present Letters Patent Appeal. The learned Single Bench set aside the order passed by the Commissioner on 14.02.2013 holding that the respondent no. 1 has to deposit 50% of the deficit amount of stamp duty before his appeal can be entertained. The learned Single Bench held that the condition of deposit of 50% of the deficit amount of stamp duty is applicable if the Collector suo motu returns a finding that the instrument is deficient in stamp duty but if the Registering Officer has found that the instrument is insufficiently stamped then the condition of deposit of 50% of the deficit amount of stamp duty on the instrument does not arise.*

A perusal of Section 47-A as inserted by Bihar Finance Act, 2008 shows that sub-section (6) contemplates that before filing an appeal under sub-section (4), the aggrieved party shall deposit 50% amount of the payable as deficient stamp duty. The provision under sub-section (4) provides that any person aggrieved by an order of the Collector under sub-section (3) may appeal to the Commissioner concerned. The order under sub-Section (3) is passed by the Collector suo motu within two years from the date of registration of instrument.

The order passed under Sub-Section 2 of Section 47A of the Act is not such an order which warrants deposit of 50% of the deficient stamp duty.

In the present case, the Collector has not exercised suo motu jurisdiction after registration of the instrument but it was the Registering Authority who at the time of registration of the document found that the instrument is undervalued. Therefore, the reference was made under sub-section (1) of Section 47-A of the Act. Such proceedings lead to an order under sub-section (2) of Section 47-A of the Act and such provision does not contemplate pre-deposit of 50% deficient stamp duty."

3. Now coming to the present case, it is apparent that the appeal filed by the petitioner, before the learned Commissioner, Patna Division, Patna, bearing Stamp Appeal Case No.77 of 2004, arises out of an order dated 31.08.2004, passed by the Collector, Kaimur (Bhabhua) in Registration Case No.12 of 2003-04, that is in a proceeding arising out of reference made under Section 47-A(2) of the Indian Stamp Act, 1899, hence admittedly, the per-condition of deposit of any amount much less 50 % of the deficit amount of stamp duty would not be attracted in the present case, inasmuch as the provisions contained under Section 47-A of the Act, 1899 do not contemplate pre-deposit of any amount of deficit stamp duty, for the purposes of filling appeal in such a situation. In fact the present case is squarely covered by the judgment passed by the learned Division Bench of this court in the case of ***Anand Bhushan*** (supra).

4. Having regard to the facts and circumstances of the case, as also for the foregoing reasons, this Court finds that the impugned order dated 28.02.2012, passed by the Commissioner, Patna Division, Patna, in Stamp Appeal Case No.77 of 2004, is contrary to law, hence is quashed and the matter is remanded back to him to adjudicate the lis on merits,

without insisting for pre-deposit of any amount of the deficit stamp duty.

5. The writ petition stands allowed to the aforesaid extent.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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