IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.12.2024

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THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

A.No.5389 of 2024
in
C.S.No.193 of 2022

Asiamed Hospital Private Ltd.,
Represented by its Authorized Signatory,
Dr.Madan Mohan, Flat 101, Entco Govardhan
Apartment, 3rd Avenue, Indira Nagar,
Chennai 600 020. .. Applicant/defendant

/versus/

Ferdous Hotels Private Ltd.,
No.286, T.T.K.Road, Alwarpet,
Chennai 600 018.
Rep.by its Director,
G.Natarajan .. Respondent/Plaintiff

Application has been filed under Order XIV, Rule 8 of O.S. Rules read with Section 33 and 38 of the Indian Stamp Act, praying to impound (viz.,) the Memorandum of Understanding dated 29.08.2018 marked as Exhibit A1 and send the same to the District Collector, Chennai District, Chennai, Collectorate, Rajaji Salai, Fourth Floor, 62, Beach Road, George Town, Chennai for deciding the deficit stamp duty and the quantum of penalty payable by the respondent/plaintiff.

For Applicant :Mr.K.R.Ramesh Kumar

For Respondent :Mr.P.Shiva

ORDER

Application is filed under Order XIV, Rule 8 of OS Rules read with Section 33 and 38 of the Indian Stamp Act, praying to impound (viz.,) the Memorandum of Understanding, dated 29.08.2018 marked as Exhibit.A1 on the ground that the said document is not duly stamped as per the Indian Stamp Act.

2. The learned counsel appearing for the applicant/defendant would submit that the MoU, which is marked as Ex.A1 is between the applicant

and the respondent in respect of the sale of property measuring to an extent about 10 grounds of land together with the constructed area of 118750 sq.ft. building as basement plus 9 floors. The MoU was reduced into writing in twenty rupees stamp papers. Whereas, the sale consideration shown in the document is One hundred and Thirty Crores. Therefore, the document, which is not duly stamped has been introduced in the Court proceedings. The said document is liable to be impounded as per the Indian Stamp Act. Since the Court has not impounded the document, the present application is filed.

3. The learned counsel appearing for the respondent/plaintiff would submit that the MoU relied by the plaintiff is only for collateral purpose and the same is admitted in evidence without any objection. Therefore, under Section 36 of the Indian Stamp Act, when an instrument was admitted in evidence, such admission shall not be called upon and questioned at later stage for not duly stamped. He would further submit that the judicial pronouncement of this Court also endorsed the view that the instrument,

which is not duly stamped, once admitted in evidence for collateral, it need not be impounded. It is to be noted that admitting a document in a court proceeding for the sake of appreciating the evidence is different from collecting the stamp duty. No doubt, Section 36, the scheme of Indian Stamp Act as it is termed would clearly indicate that the instrument not duly stamped, is inadmissible in evidence, provided it shall be admitted in evidence for payment of stamp duty with which the same is chargeable, or in the case of any instrument insufficiently stamped, of the amount required to make up such duty together with a penalty has to be collected (Section 35). Succeeding provision Section 36 says that once an instrument is admitted in evidence, it cannot be questioned on the ground that the instrument not duly been stamped. Therefore, Section 36 has to be read with Section 35 and it cannot be read in isolation. So, when there is an instrument produced with insufficient stamp, whether it is objected or not, the said document has to be validated by collecting the deficit stamp duty along with penalty. Section 33 deals with the procedures for impounding the instrument and Section 34 deals with the instrument not duly stamped.

4. The reading of the Section clearly shows that the authority who receive the instrument which is not duly stamped and in his opinion, the instrument is chargeable of that duty he should refer the instrument to the Collector.

5. In this case, admittedly, the document which is marked as Ex.A1 captioned as “Memorandum of Understanding” in respect of sale of immovable property worth about Rs.130 cores is not duly stamped. It is now admitted in evidence and in the custody of the Court. The deficit stamp duty and penalty is the right of the State to be collected and that cannot be deprived on the ground that the document is admitted in evidence. It is to be impounded and can be validated on payment of deficit Stamp duty. Penalty can also be imposed by the adjudicating authority. Hence, this application is allowed. The document viz., memorandum of Understanding dated 29.08.2018 marked as Ex.A1 is impounded.

6. The Registrar (Judicial) is directed to send the document to the Collector, Chennai District for adjudication and collect the deficit stamp duty with penalty. On payment of such deficit stamp duty and penalty, the document shall get validated.

11.12.2024

Index:yes/no
Speaking order/non speaking order
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DR.G.JAYACHANDRAN,J.

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