



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-4256-2024(O&M)

Date of Decision: August 05, 2024

Mahakali Sidhpeeth Mandir

...Petitioner

Versus

Pawan Kumar and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Vikas Bali, Advocate
for the petitioner.

Mr.Aayush Gupta, Advocate
for the caveators/respondents.

ARCHANA PURI, J.

The present revision petition has been filed by the petitioner-plaintiff, thereby seeking reduction of the amount of penalty imposed by learned trial Court to the extent of ten times of the deficiency of the stamp duty, as ordered in the impugned order dated 05.04.2024 (Annexure P-9).

The facts germane, as culled out from the paperbook, are as follows:-

That, initially, the petitioner-plaintiff had filed a suit for seeking specific performance of an agreement to sell dated 16.07.2015. When the case was at the stage of evidence of the petitioner-plaintiff, an application was filed for impounding the agreement to sell, in view of insufficient stamp

**CR-4256-2024****-2-**

on the agreement to sell.

In the application, it was averred that at the time of preparing for the evidence, the agreement to sell in question was handed over to the counsel, who had apprised, the petitioner-plaintiff that said agreement to sell is under stamped, as in the year 2015, the stamp duty for execution of agreement to sell was fixed for Rs.2000/- by the State Government. As agreement to sell was scribed on under value stamp paper worth Rs.500/-, which is insufficient and thus, the petitioner-plaintiff wanted to make the deficiency good, on the agreement to sell. In these circumstances, the application was filed.

However, in reply, the application was resisted and it was asserted that if the petitioner-plaintiff had not paid the deficiency in stamp amount, therefore, it is required to pay ten times penalty amounting to Rs.18,09,500/-, within a time to be granted by the Court.

After hearing learned counsel for the parties, vide impugned order, learned trial Court had held the petitioner-plaintiff to pay the deficiency of stamp duty, along with ten times penalty, within a period of three months from the date of order.

Feeling aggrieved, the petitioner-plaintiff filed the present revision petition.

The caveators/respondents made appearance through counsel.

Learned counsel for the parties heard.

Learned counsel for the petitioner-plaintiff has submitted that there was no intention to avoid payment of stamp duty. However, the



CR-4256-2024

-3-

petitioner was ignorant of the amendment in the Stamp Act, which required the fixation of the Stamp Duty on the sale consideration. In these circumstances, it is pleaded that the imposition of penalty of ten times, on the original amount, is harsh and has made a request for reduction of the same.

To substantiate his submission, learned counsel for the petitioner-plaintiff has placed reliance upon '*Amit Kumar vs. Neha Bhatia and others, 2022(3) Law Herald 2472*' and '*Trustees of H.C. Dhanda Trust vs. State of Madhya Pradesh and others, 2020 (9) SCC 510*'.

The Hon'ble Supreme Court in *Trustees of H.C. Dhanda Trust case (supra)*, held that the imposition of penalty to the extent of ten times deficiency in the stamp duty, is not mandatory and discretion lies with the competent authority. Beneficial reference, in this regard, is made to paragraph No.17 and 18 of the said judgment, which is reproduced, as herein given:-

"17. The amount of penalty thus can be an amount not exceeding ten times. The expression "an amount not exceeding ten times" is preceded by expression "if he thinks fit". The statutory scheme, thus, vests the discretion to the Collector to impose the penalty amount not exceeding ten times. Whenever statute transfers discretion to an authority the discretion is to be exercised in furtherance of objects of the enactment. The discretion is to be exercised not on whims or fancies rather the discretion is to be exercised on rational basis in a fair manner. The amount of penalty not exceeding ten times is not an amount to be imposed as a matter of force. Neither imposition of penalty of ten times under Section 40 (1) (b) is automatic nor can be mechanically imposed. The concept of imposition of penalty of ten times of a sum equal to ten times of the proper duty or deficiency thereof has occurred in other provisions of the Act as well. We may refer to Section 35 (a) in this context which is as follows:



35. Instruments not duly stamped inadmissible in evidence, etc.-No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:

Provided that-

(a) any such instrument shall be admitted in evidence on payment of the 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 of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

(b)"

18. It is relevant to notice that Section 35 contemplates that when ten times the amount of the proper duty of or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion is required to be deposited. Under Section 39 Collector is empowered to refund penalty. As noticed above under Section 35 (a) there is no option except to pay sum equal to ten times of such duty or deficient portion but Section 39 empowers the Collector to refund any portion of the penalty in excess of five rupees which is expressed in following words: "if he thinks fit refund any portion of the penalty in excess of five rupees which has been paid in respect of such instrument."

Even, reference is made to decision rendered by the Coordinate Bench of this Court in **Amit Kumar's case (supra)**, wherein also, it was observed that the imposition of penalty to the extent of ten times, is not mandatory and discretion lies with the authority.

However, learned counsel for the respondents submits that the aforesaid case law is distinguishable from the facts of the present case as there is nothing, as such, coming on record, with regard to the petitioner-



plaintiff having no intention to avoid payment of the stamp duty. However, the submission, so made, is bereft of merits.

It is necessary to note that it was at the stage of recording of the evidence that an application, of its own, was filed by the petitioner-plaintiff for impounding of the agreement to sell and seeking time to make good the deficiency of stamp duty. Even though, the petitioner-plaintiff may not have specifically stated about not knowing about the amendment carried by the State of Punjab, with respect to the payment of stamp duty, but however, from the conduct of the petitioner-plaintiff of filing the application, it is evident that there was no malafide intention, on the part of the petitioner-plaintiff to avoid payment of the stamp duty or that he tried to cause loss to the revenue.

In fact, it is evident that the parties entered into agreement to sell, without having knowledge of the amendment carried out by the State of Punjab. In the given circumstances, the petitioner-plaintiff shall be liable to pay the deficient stamp duty, along with equivalent amount of penalty, within a period of 30 days from today onwards.

In view of the aforesaid observations, the present revision petition stands allowed.

August 05, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No