135 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-7054-2023 (O&M)
Date of decision: 20.03.2024

Siraj Din

....Petitioner

Versus

Gulam Hussain

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

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

ANIL KSHETARPAL, J (Oral)

1. This is the plaintiff's revision petition to assail the correctness of the order directing him to pay the deficient stamp duty alongwith penalty, which is equivalent to 10 times of the deficiency.

2. The sole respondent, despite receipt of notice, has failed to enter the appearance. The plaintiff has filed a suit for the specific performance of the agreement to sell dated 01.12.2010, which is a total payment agreement for Rs.60,41,250/-. In other words, the entire sale consideration has been paid and the agreement to sell evidences delivery of possession of the immovable property agreed to be sold.

3. Learned counsel representing the petitioner submits that as of now the plaintiff has not produced the copy of the agreement to sell as he will produce it only when he lead his evidence.

4. This Court has considered the submissions made by the learned counsel representing the petitioner.

5. In fact, the issue of deficiency of stamp duty has been examined in detail in CR-1931-2017 (**Narinder Kapoor vs. Inderjit (since deceased) through his legal heir)** and connected case decided on 12.02.2020, after noticing that there was State amendment in the Indian Stamp Act, 1899 and the stamp duty is payable on the agreement to sell evidences delivery of possession at the rate specified in column no.3 of entry no.23. The aforesaid amendment was notified w.e.f 25.01.2008. At the time of the agreement to sell, the stamp duty is payable as per sub-column no.2 or column no.3.

6. In **Trustees of H.C.Dhanda Trust vs. State of Madhya Pradesh and others' 2020 AIR (SC) 4349**, the Supreme Court while interpreting Section 35 read with Section 40 of the Stamp Act, 1899, has held that imposition of penalty to the extent of 10 times of deficiency in the stamp duty is not mandatory and it depends upon the discretion based upon the subjective satisfaction of the court or the authority.

7. In fact, this amendment is coming to the notice of the parties recently. There are no allegations that the plaintiff has made any attempt to evade the payment of proper stamp duty. In substance, the amendment has resulted in advancing the stage of payment of stamp duty.

8. This aspect has been examined in **M/s Saini Motors and others vs. M/s L.R Builders Pvt. Ltd** (CR-3291-2016 decided on 26.09.2023) In this case, in order to avoid filing of the multiple revision petitions, in the interest of justice, the following order was passed:-

i) as and when the plaintiff produces the original agreement to sell, he shall be liable to make good the deficiency in the payment of the stamp duty in accordance with the provisions made in the 1899 Act.

ii) he shall also be required to pay penalty of Rs.1,00,000/-. If the plaintiff deposits the aforesaid amount, the court will proceed to decide the suit.

9. Disposed of.

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

20.03.2024 **(ANIL KSHETARPAL)**
rekha **JUDGE**
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No