08.12.2025
Ct. No. 06
Sl. No.61
skg

C.O. No. 2719 of 2025

Barid Baran Roy
Vs.
Gopal Banerjee & Ors.

Mr. Gopal Chandra Ghosh,
Mr. Rajkrishna Mondal,
.....for the petitioner

Mr. Partha Pratim Roy,
Mr. Anindya Bose,
Ms. Cardina Roy,
Ms. Raina Das,

...for the opposite party no.14

1. This revisional application arises out of an order dated 2nd April, 2025 passed by the learned Civil Judge (Sr. Div.) 5th Court at Alipore in Title Suit no. 181 of 2012.

2. By the order impugned the learned Court refused to accept the show cause filed by the petitioner and dismissed the suit for non-compliance of the order of the court for depositing the stamp duty as assessed by the collector. The document was impounded when evidence was adduced by P.W.1.

3. The petitioner drew the attention of the court to an information received under the Right to Information Act which would, inter alia, indicate that the stamp duty was assessed at the market rate and not at the rate prevailing at the time of execution of the document. According to Mr. Ghosh, the trial Judge

ought not to have dismissed the suit for non-compliance, specially because a review application was pending before the learned co-ordinate bench from the order passed in C.O. 3413 of 2024.

4. Mr. Ghosh submits that until the review is heard, the learned court ought to have adjourned the suit and allowed the petitioner to avail of the remedy vested upon the petitioner by the Code of Civil Procedure.

5. Mr. Partha Pratim Roy, learned advocate for the opposite party no. 14 submits that the issue had been finally put to rest by two co-ordinate benches and as such, the court did not commit any jurisdictional error in dismissing the suit for non-compliance of the courts' order, i.e., the order by which the petitioner was directed to deposit the deficit stamp duty that was assessed by the collector on the request of the court.

6. Heard the learned advocate for the respective parties. It appears that during evidence of P.W.1, an agreement dated October 17, 2004 was tendered. In view of the objection raised by the defendants with regard to the admissibility of the instrument for want of proper stamp duty, the agreement was impounded and sent to the collector for assessment of the proper stamp duty.

7. The collector assessed the stamp duty and a report was filed before the learned trial judge. As per the

report, the valuation of the property which was the subject matter of the instrument was assessed at Rs.5,39,70,865/- and the stamp duty payable was assessed at Rs.31,35,111/-. The purchaser of the property was directed to pay the deficit stamp. The learned court accepted the said report by an order dated January 22, 2019. Being aggrieved by the order dated January 22, 2019, the petitioner approached this court by filing C.O. 2047 of 2019. The revisional application was dismissed by the co-ordinate Bench by an order dated August 11, 2021. The co-ordinate bench recorded as follows:

"*Learned counsel for the petitioner places reliance upon a co-ordinate Bench judgment of this court, rendered in Bidhan Nirman Pvt. Ltd. vs. State of West Bengal, reported at 2013 (5) CHN 6, in support of the proposition that the market value of the subject property cannot be determined arbitrarily without mentioning the methods/basis of such determination and without granting an opportunity of hearing to all the interested parties. Hence, it is further contended by the petitioner, the impugned order is vitiated by contravention of the proposition laid down in the said report.*

A perusal of Section 33 of the 1899 Act clearly shows that, as rightly contended on behalf of the opposite parties, the provision does not contemplate segregation *of any portion covered by the agreement, in respect of which the claim of specific performance or other reliefs has been restricted in the plaint, for the purpose of impoundment. The contemplation of the said section encompasses the document, sought to be relied on, as a whole and, as such, the argument of the petitioner, that the petitioner is liable to deposit stamp duty only for the portion of the subject property regarding which relief has been sought in the suit, does not hold water.*

That apart, in the event the petitioner has any grievance against such assessment by the Collector, ample recourse is available to the petitioner for seeking refund of the amount under Sections 44 and 45 of the 1899 Act itself. Although the petitioner sought to rely on Section 47A of the 1899 Act (as amended in West Bengal) in support of the proposition that the authorities specified under sub-section (3) thereof can only determine the market value after giving the parties concerned an opportunity of being heard, does not hold good in the present case, since Section 47A(1) contemplates a situation where the Registering Officer, under the Registration Act, 1908, while registering any instrument (including an agreement), has reason to believe that the market value of the property has not been duly set forth in the instrument, such Officer shall take appropriate 5

2021:CHC-AS:23208 steps within the purview of the said section for assessment of the market value.

Such a situation has not arisen in the present case, since the Collector assessed the market value on the request of the civil court and there was no option left before the court itself but to accept such assessment as it is, within the contemplation of Sections 33 and 35 of the 1899 Act.

Hence, the ratio laid down in the cited report does not apply to the present case."

8. His Lordship was of the view that the Civil Court had no other option but to accept the assessment as the collector had assessed the market value on the request of the civil court. The contention of the petitioner that the authority should have given a hearing to the petitioner before such assessment, was not accepted by the learned co-ordinate bench. The order was carried in appeal by a Special Leave Petition to the Supreme Court. The said SLP was dismissed. Thus, the order attained finality inter se between the parties.

9. Thereafter, the petitioner filed an application before the learned trial judge for a direction upon the authority to reassess the stamp duty of the impounded document.

10. The defendant no.14 filed an application for a direction upon the petitioner to deposit the stamp duty assessed by the collector.

11. The petitioner's contention was that, pursuant to information received under the Right to Information Act, 2005, the petitioner came to know that the stamp duty was assessed on the basis of the market value of the property as on the current date, although, the statute prescribed that the market value had to be ascertained the date of execution of the instrument. Instead of appreciating such legal position, the learned trial judge mechanically dismissed the application under Section 151 of the Code of Civil Procedure. This order was challenged before the learned co-ordinate bench by vide C.O. 3413 of 2024. The learned co-ordinate bench, upon considering the rival contention of the parties, came to the finding that the determination of the market value by the collector ought to have been challenged by an attack in a proper procedure which was not done. The certain co-ordinate bench had observed that, in the event the petitioner had any grievance against the assessment of the collector, ample recourse was available to the petitioner for refund of the amount under Section 44 and 45 of the 1899 Act itself. The decision of the co-ordinate bench that the civil court had no option but

to accept the assessment made by the collector had attained finality and was binding. The revisional application was dismissed. When the co-ordinate bench returned the finding that the assessment of the market value made by the collector could not be interfered with by the court, the further challenge to the assessment by another revisional application was also turned down.

12. Under such circumstances, this court is bound the observations by the co-ordinate benches which held that the assessment of the collector was final as the trial court had no other option but to accept such valuation/assessment. The decision of the trial judge in dismissing the application under Section 151 of the Code of Civil Procedure filed by the petitioner, was not found to be either illegal or irregular. The fact that the petitioner came to learn about the error in the assessment would amount to reopening of the assessment. The co-ordinate bench held thus, in C.O. 3413 of 2024.

13. Under such circumstances His Lordship was of the view that the decision of the co-ordinate bench in C.O. 2047 of 2019 would operate as res judicata and the petitioner would be precluded from raising any challenge to the assessment made by the collector.

14. Thereafter, the petitioner filed an answer to the show cause, inter alia, stating the reason as to why the suit should not be dismissed for non-compliance i.e. pendency of a review application on the basis of a legal proposition of law that the assessment was wrongly made, contrary to the statute. Such discovery was a subsequent cause of action.

15. In my view, the court did not commit any jurisdictional error as admittedly the stamp duty assessed by the collector had attained finality in the views of two co-ordinate benches. The remedy of the petitioner against the alleged incorrect assessment by a statutory authority would be before the appropriate forum, before which the correctness of a decision of a statutory authority will be decided and may be set aside if found to be contrary to law. The petitioner is always at liberty to avail of such remedy.

16. Thus, the order impugned is not interfered with. However, the petitioner is at liberty to deposit the stamp duty as assessed without prejudice to the issues raised in the review application or that may be raised before the appropriate forum. If such deposit is made, then the learned court shall restore the suit upon recording compliance and proceed thereafter. In the event the petitioner is successful in getting the assessment by a statutory authority set aside and

reduced, the petitioner shall be entitled to get a refund of the excess amount.

17. The revisional application is accordingly disposed of.
18. There shall be no order as to costs.
19. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)