Sl. No.43

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
CIVIL APPELLATE JURISDICTION

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

M.A.T. 5 of 2025
with
CAN 1 of 2025

Benchmark Developers Private Limited
-Vs-
State of West Bengal & Ors.

For the Appellant	:	Mr. Ajay Singhal, Adv., Mr. Rahul Kedia, Adv.
For the State	:	Mr. Hirak Barman, Adv, Mr. Pradip Sarkar, Adv, Mr. Sandip Guha Roy, Adv.
Heard on	:	27.01.2025
Judgment on	:	27.01.2025

Joymalya Bagchi, J. :-

1. Appellant had entered into an agreement for sale of a property on 18.08.2010. In 2012, he instituted a suit being OC Suit No.1 of 2012 seeking specific performance of the agreement. The agreement being unregistered and insufficiently stamped, he made an application for impounding of the said agreement under Section 33 of the Indian Stamp

Act. By order dated 25.02.2016, civil court impounded the document and sent the same to the Collector to determine the stamp duty and file a report before the court.

2. Pursuant thereto, evaluation report dated 30.07.2018 was submitted wherein the chargeable duty was assessed on the market value prevailing as on 30.07.2018. Appellant unsucessfully assailed the evaluation report before the civil court and thereafter, challenged the order dated 04.11.2019 in a civil revision being CO 14 of 2020. The Civil Revision was dismissed on 02.12.2021 on the ground of existence of alternate appellate remedy. Appellant, however, did not avail of the appellate remedy but assailed the evaluation report afresh in the present writ proceeding.

3. The Hon'ble Single Judge, inter alia, keeping the issue of maintainability open directed the matter to be decided upon exchange of affidavits. The Hon'ble Judge also gave liberty to the appellant to get the agreement for sale registered on payment of requisite stamp duty and necessary fees based on current determination of land in question by 14.02.2025.

4. Learned Advocate contends chargeability of stamp duty ought to be based on the valuation assessed as on execution of the agreement i.e. 2010 and not at the current determination.

5. This issue as well as the issue of maintainability require to be decided by the First Court upon exchange of affidavits.

6. However, we clarify in the meantime it shall be open to the appellant to get the instrument registered upon payment of stamp duty and

necessary fees as per the impugned evaluation report dated 30.07.2018 subject to the result of the writ petition.

7. With this direction, appeal and the connected application are disposed of.

8. There shall be no order as to costs.

9. Photostat certified copy of this order, if applied for, be given the appearing parties on usual undertaking.

10. I agree.

(Gaurang Kanth, J.) **(Joymalya Bagchi, J.)**

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