OD-10

APOT/218/2025
IA NO: GA/1/2025

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

SUFIA KHATOON
VS
ASIF ALI

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE
And
The Hon'ble JUSTICE OM NARAYAN RAI
Date : August 13, 2025

Appearance:
Mr. Arif Ali, Adv.
Mr. Sarban Bhattacharjee, Adv.
Ms. N. S. Alam, Adv.
..for the appellant

Ms. Swati Agarwal, Adv.
Mr. C. S. Saha, Adv.
..for the respondent

Dictated by Arijit Banerjee, J.

The Court : Since the point involved is very short and simple one, by consent of the parties, the appeal and the connected application are taken up together for hearing.

The order dated July 28, 2025, passed by a Learned Judge of this Court in CS/283/2011, is under challenge in this appeal at the instance of the plaintiff. The order is a short one and reproduced hereunder:

> *"By an order dated 30th April, 2025, it was observed that Exhibit-A is an agreement for sale. For insufficient stamp, it was impounded and sent to the Collector for doing the needful in terms of the Indian Stamp Act, 1899. The report of*

> *the Collector is received wherein it is stated that the market value of the said property is Rs.66,37,680/-, total registration fee payable is Rs.66,377/- and stamp duty payable is Rs.2,38,261/-.*
> *In terms of the report of the Collector, the plaintiff shall take necessary steps to pay the registration fee and stamp duty.*
> *Let this matter stand adjourned till 25th August, 2025."*

The document in question, i.e., Exhibit-A, which was impounded for being insufficiently stamped, is an agreement for sale of the suit property. The plaintiff says that on the basis of that agreement for sale, the defendant was put in possession of the suit property. She says that she does not wish to rely on Exhibit-A. Hence, she cannot be compelled to pay the stamp duty.

Learned advocate for the respondent/defendant says that examination-in-chief and cross-examination was conducted on the basis of the concerned document. At this stage, the plaintiff cannot say that she shall not rely on the said document. Hence, the plaintiff must pay the requisite stamp duty. The defendant wishes to rely on the agreement for sale.

If the agreement for sale was insufficiently stamped, the same was liable to be and has been impounded by the Court in terms of the provisions of the Stamp Act, 1899. If the plaintiff wishes to take advantage of the document in question, she must pay the requisite stamp duty as assessed by the Collector. However, if the plaintiff says that she would not rely on the document, she cannot be compelled to pay the stamp duty. She would then be precluded from relying on that document.

Hence, we are unable to sustain the order under appeal. In any event, no question of payment of registration fee can arise. Even the stamp duty, which the plaintiff has been directed to pay by the Learned Single Judge, is not mandatorily payable by her so long she does not wish to rely on that document.

In this connection, Ground III of the Memorandum of Appeal may be noted, which is to the effect:

> *"III. FOR THAT the Learned Single Judge failed to appreciate that the plaintiff has submitted that she shall proceed with the suit without Exhibit-A since the contents of that agreement have already been admitted in the pleading and witness action."*

If the defendant wishes to rely on the concerned document, nothing stops the defendant, who is a party to the agreement for sale, to regularise the document by paying applicable stamp duty. The defendant will be entitled to do so. Even then, the plaintiff will not be entitled to rely on the document except for collateral purposes.

The appeal and the connected application stand disposed of accordingly.

(ARIJIT BANERJEE, J.)

(OM NARAYAN RAI, J.)

bp.