126

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2882-2021 (O&M)
Date of decision : 14.01.2025

Ashok Malhotra …. Petitioner

Versus

Bant Singh ….Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

****

Present:- Mr. Akshay Jindal, Advocate and
Ms. Mannat Sibal, Advocate
for the petitioner.

Mr. D.S.Sobti, Advocate
for the respondent.

*****

PANKAJ JAIN, J.(ORAL)

1 Instant revision petition is directed against order dated 02.11.2021 (Annexure P-6) passed by Additional Civil Judge, Sr. Division Ludhiana whereby agreement to sell dated 13.05.2021 (Annexure P-1) propounded by the plaintiff has been ordered to be impounded. Plaintiff has been further directed to pay proper stamp duty leviable in accordance with the para 2 of Entry 23 incorporated in the Schedule 1-A appended with the Indian Stamp Act, 1899 as applicable to State of Punjab. He has been further ordered to pay penalty which is 10 times of the stamp fee.

2 Counsel for the petitioner submits that in fact there was no intention on part of the plaintiff to evade stamp duty and to cause loss to the

revenue. Agreement to sell was entered into without any knowledge of the amendment carried out by State of Punjab. He thus submits that if granted appropriate time the petitioner undertakes to make deficiency good.

3 He relies upon judgment passed in ***Amit Kumar Vs. Neha Bhatia & ors., 2023(1) PLR 343*** to submit that in similar circumstances this Court has granted a month's time to the plaintiff to make deficiency good.

4 Learned counsel for the respondent does not dispute that there is nothing on record to suggest any intent on part of the petitioner to evade stamp duty.

5 Supreme Court in the case of ***Trustees of H.C.Dhanda Trust vs. State of Madhya Pradesh and others' 2020 AIR (SC) 4349*** held that imposition of penalty to the extent of 10 times of deficiency in the stamp duty is not mandatory and the discretion lies with the authority. Relevant discussion is in para 17 and 18 of the judgment, which are extracted as under:-

> *"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.

18. 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;"

6 The aforesaid view has been followed by Coordinate Bench in ***Amit Kumar's case supra*** observing as under :-

"4. In the present case there is no material to show that the plaintiff intentionally tried to evade the payment of stamp duty or tried to cause loss to the revenue. Basically, the parties enter into an agreement to sell without having knowledge of the amendment carried out by the State of Punjab. The amount of the deficient stamp duty comes to Rs.6,00,000/- approximately. The plaintiff shall be liable to deposit the deficient stamp duty alongwith the equivalent amount as penalty.

5. With all these observations, the present petition is disposed of Let the deficient stamp duty be made good within a period of one month, from today."

7 In view of above, the petitioner is held liable to deposit deficient stamp duty along with equivalent amount of penalty. He is further granted time upto 31.03.2025 to make deficiency good and to pay penalty.

8 With the aforesaid modification in the impugned order dated 02.11.2021 (Annexure P-6) the present revision petition is disposed off.

(PANKAJ JAIN)
JUDGE

14.01.2025
Pooja Sharma-I

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No