
(2015) 09 RAJ CK 0120
In the Rajasthan High Court
Case No : Civil Writ Petition No. 11687/13

Gurpreet Singh

APPELLANT

Vs

The Rent Tribunal, Sri Ganganagar and Others

RESPONDENT

Date of Decision : 02-09-2015

Acts Referred:

Rajasthan Stamp Act, 1998 — Section 37, 39, 39(1), 42

Citation : AIR 2015 Raj 217

Hon'ble Judges : Sangeet Lodha, J.

Bench : Single Bench

Advocate : G.R. Goyal, for the Appellant

Final Decision : Allowed

Judgement

Sangeet Lodha, J.—This writ petition is directed against order dated 19.7.13 passed by the Rent Tribunal, Sri Ganganagar, whereby an application preferred by the petitioner for impounding a document for insufficiency of stamp and questioning the admissibility thereof in evidence, stands rejected.

2. The application has been rejected by the Rent Tribunal observing that the objection raised by the petitioner regarding admissibility of the document has already been decided while recording the evidence of the witness-Amardeep Singh (AW1). As a matter of fact, during the examination of the witness, the decision on objection raised by the petitioner questioning the admissibility of the document and praying for impounding thereof was deferred by the Rent Tribunal, observing that it is a legal question which may be determined at the time of final hearing in the matter.

3. Learned counsel appearing for the petitioner contended that question regarding the admissibility of the document in evidence has to be decided by the court as and when it is raised and therefore, its decision could not have been deferred by the Rent Tribunal. Learned counsel would submit that if a document is not sufficiently stamped, it is duty of the court to impound the document and

refer the same to the Collector for determination of stamp duty together with the penalty payable. Learned counsel submitted that by virtue of provisions of Section 39 of the Rajasthan Stamp Act, 1998 (for short "the Act"), the document chargeable to duty under the Act cannot be admitted in evidence for any purpose and thus, the order impugned passed by the Rent Tribunal, ignoring the mandatory provisions of the Act, is not sustainable in the eyes of law.

4. On the other hand, the counsel appearing for the respondents submitted that the determination of the question of admissibility of the document having been deferred by the Rent Tribunal during the course of cross examination of the witness, the application preferred by the petitioner questioning the admissibility of the document, has rightly been rejected by the Rent Tribunal.

5. I have considered the rival submissions and perused the material on record.

6. It is well settled that when a document is tendered in evidence by the party to the proceedings and an objection is raised by other party that the document is inadmissible in evidence being not sufficiently stamped or unregistered, it is obligatory upon the court to decide the objection raised in accordance with law and ordinarily, it should not be deferred till the final hearing of the matter. In this regard, the reliance may be placed on a decision of the Hon"ble Supreme court in the matter of R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami and V.P. Temple and Another, .

7. Coming to the question of inadmissibility of the document in evidence being not duly stamped, it is to be noticed that as per provisions of Section 37 of the Act, every person having by law or consent of the parties, authority to receive evidence and every person incharge of the public office except an officer of police, before whom any instrument chargeable to duty is produced and if it appears to him that such instrument is not duly stamped shall impound and refer the same to the Collector for the determination of the stamp duty together with the penalty payable. Thus, it is the duty of the court to impound the document not duly stamped and make a reference to the Collector for determination of the stamp duty and penalty payable, notwithstanding the fact that the party concerned has not expressed his readiness and willingness to pay the deficient stamp duty and penalty.

8. Further, Section 39 of the Act mandates that no instrument chargeable with a duty under the Act shall be admitted in evidence for any purpose by any persons having by law or consent of the parties authority to receive evidence shall be acted upon registered or authenticated by any such person or by any public officer unless such instrument is duly stamped. However, by virtue of proviso to Section 39 subject to all just exception, the instrument can be admitted in evidence on the payment of duty with which same is chargeable or in case of instrument insufficiently stamped, the amount required to make up such duty and a penalty of Rs. 100 or ten times of the amount of deficient portions thereof, whichever is higher.

9. Thus, in view of the provisions of Section 39(1) of the Act, a document not duly stamped cannot be admitted in evidence unless the duty with which same is chargeable or the deficient duty and the penalty as determined by the Collector (Stamp) under the provisions of Section 37 or in terms as provided by proviso to Section 39 , are duly paid.

10. Further, a conjoint reading of Section 39 & 42 of the Act, makes it abundantly clear that if the party producing the document in evidence is ready and willing to remit the amount of deficient stamp duty and penalty as provided by proviso to Section 39 of the Act, the document has to be admitted in evidence by the court and only an authenticated copy thereof alongwith a certificate in writing stating the amount of duty and penalty levied and such amount recovered is required to be sent to the Collector (Stamp). But, a document not duly stamped is not admissible in evidence even for collateral purpose.

11. In view of the discussion above, in the considered opinion of this court, the objection raised by the petitioner regarding admissibility of the document and the necessity to impound the same on account of it being not sufficiently stamped, needs to be decided by the Rent Tribunal at this stage.

12. In the result, the petition succeeds, it is hereby allowed. The order impugned passed by the Rent Tribunal, Sri Ganganagar refusing to decide the objection raised by the petitioner at this stage, is set aside. The Rent Tribunal is directed to decide the objection raised by the petitioner, after hearing both the parties, keeping in view the position of law discussed hereinabove. No order as to costs.