(2017) 03 P&H CK 0019

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 13233 of 2015

Harvinder Pal Singla APPELLANT

Vs

State of Haryana RESPONDENT

Date of Decision : 07-03-2017

Acts Referred:
Stamp Act, 1899 — Section 47-A

Citation : (2017) 3 RCRCivil 386

Hon'ble Judges : Amit Rawal, J.

Bench : Single Bench

Advocate : Shoaib Khan, Advocate, for the Petitioner; Sandeep Singh Mann, Sr. DAG, Haryana, for the State

Final Decision : Allowed

Judgement

Amit Rawal, J. (Oral)—The petitioner is aggrieved of the impugned orders (Annexures P-1 and P-2) rendered by the Collector and the Commissioner directing for payment of the deficiency of the stamp duty and dismissing the appeal filed against thereto on the premise that as per the Collector rate in the year 2012 when the sale deed dated 26.9.2012 was presented, the petitioner was required to pay stamp duty of Rs. 17,23,152/- and since stamp duty of Rs. 4,57,000/- had been paid, the balance stamp duty liable to be paid was Rs. 12,26,152/-.

2. Mr. Shoaib Khan, learned counsel for the petitioner submits that the petitioner had entered into an agreement to sell dated 17.9.2006 with Mayawati Singla for purchase of House No.1172, Sector 7, Urban Estate, Panchkula, measuring 420 sq.meters, built up double storey and plot underneath for a total sale consideration of Rs. 71,00,000/- and a sum of Rs. 21,00,000/- had already been paid as earnest money and the date for execution of the sale deed was fixed as 28.11.2006. However, vendor did not come for execution of the sale deed, which necessitated the petitioner to file a civil suit, which has resulted into passing of judgment and decree dated 31.7.2012, whereby the following relief was granted

by the trial Court:-

"13. As a sequel to my findings on aforesaid issues, the suit of the plaintiff succeeds and same is hereby decreed with no order as to costs. The defendant is directed to execute the sale deed in terms of agreement to sell dated 17.9.2006 and get the same registered in favour of the plaintiff on receiving the balance sale consideration, within a period of two months. Decree sheet be prepared accordingly. Original documents be returned to its original owner subject to substitution of the same with attested copies, as per rules and file be consigned to the record room, after due compliance."

3. In regard to the aforementioned judgment and decree, the petitioner deposited the balance sale consideration and paid the stamp duty of Rs. 4,57,000/-, as indicated above. However, notice was received under Section 47-A of the Indian Stamp Act, 1899 to pay balance amount of Rs. 12,26,152/- as the Collector rate. He further submits that in case the vendor had actually performed her part of the agreement in the year 2006, there would not have any objection as the Collector rate was the one on which the stamp duty has been paid. In support of his contention, relies upon the judgment of the Hon''ble Supreme Court in M/s. Residents Welfare Association, Noida v. State of U.P. & Ors., 2009 (14) SCC 716.

4. On the contrary, Mr. Sandeep Singh Mann, Sr.DAG, Haryana has relied upon the ratio decidendi culled out in an unreported judgment rendered in Civil Appeal No.2226 of 2010 (arising out of SLP No.26684 of 2008) titled as State of Haryana v. Manoj Kumar, wherein an agreement dated 10.11.1999 to sell commercial plot measuring 788 sq.yards was executed by Smt. Manjula Gulati in favour of Manoj Kumar and the entire sale consideration paid, much less the actual possession was given, but the sale deed was not been executed till 9.2.2001. The suit was filed without impleading the State of Haryana as the respondent, which was promptly decreed on 9.2.2001. On the basis of the aforementioned findings, the Court said that the party cannot be allowed to get the sale deed executed at the rate prevailing at the time of entering into agreement but the market rate.

5. I have heard the learned counsel for the parties and appraised the paper book.

6. There is force in the submissions of the learned counsel for the petitioner and the submissions made on behalf of the State are not tenable in view of the facts and circumstances of the judgment cited (Annexure R-1), which shows that it was a judgment in percuriam, for, it was a kind of uncontested between the parties as the party perhaps wanted to avoid the stamp duty, whereas the decree dated 31.7.2012 (Annexure P-5) was a case, which was contested with vehemence. The Court ultimately decreed the suit on 31.7.2012. In my view, the authorities could not have directed the petitioner to pay stamp duty at the prevailing rate in 2012, for, the petitioner-plaintiff was prevented to get the sale deed executed in the year 2006 when the sale agreement was performed.

Aforementioned view of mine is reiterated from the ratio decidendi culled out in M/s. Residents Welfare Association, Noida''s case (supra), in paragraph 27, which reads as under:-

"27. Having decided the aforesaid questions raised in this case, we now proceed to deal with the question as to the date of determination of the consideration mentioned in the document. The respondents contended that the consideration mentioned should be the market value of the property on the date of execution of the deed and not on the date when the agreement to sell the land was executed. The appellants on the contrary argued that the relevant date in order to calculate the consideration would be the market value on the date when the agreement to transfer the land was entered and registered. We have heard the argument of the parties and referred to various cases dealing with this matter. In this regard, we would like to observe that there cannot be a straight-jacket formula devised for determining the same. It would depend on the various facts and circumstances of a particular case. In situations where the delay is caused on the part of a party intentionally while executing a deed after entering into an agreement of sale or lease as the case may be, the market value should be determined on the date when the deed is executed and not when an agreement to sale the property or lease the property had been registered. But in cases where a person is not at fault and the delay is caused due to the lessor as in this case, the market value should be determined on the date when the agreement to lease the property was entered. The lessee or the sub lessee should not suffer due to the inability of the lessor in handing over transfer memorandums as is required under the lease. For this, a reference can be made to the case of S.P. Padmavati v. State of Tamil Nadu & Others. [AIR 1997 Mad 296], which is similar to the present case and to which we are in respectful agreement where the property could not be registered due to no fault of the transferee and where the consideration was frozen earlier, as in the current case. The Madras High Court held that the relevant date for calculation of market value and the stamp duty is the date on which the consideration was frozen."

7. Resultantly, the orders under challenge are set-aside.

8. Writ petition stands allowed.

