(2013) 01 AHC CK 0410

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No''s. 32656 and 32657 of 1998

M/s. H.M.F. Carpets Pvt. Ltd. APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 09-01-2013

Acts Referred:
Transfer of Property Act, 1882 — Section 54

Citation : (2013) 5 ADJ 493 : (2013) 98 ALR 175 : (2013) 118 RD 728

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Advocate : R.C. Yadav, Ajay Kumar Singh, Ashish Kumar Singh, R.K. Pandey and Pradeep Chandra, for the Appellant;

Final Decision : Allowed

Judgement

S.U. Khan, J.—Heard learned counsel for the petitioner and learned standing counsel for respondents.

Writ Petition No. 32565 of 1998:

M/s. Anooma Cycle Industry Pvt. Ltd. had taken some loan from U.P. Financial Corporation (U.P.F.C.), which was not returned within time. The total amount alongwith interest was Rs. 8,41,000/-. For realisation of the said loan, U.P.F.C. sold the immovable property of M/s. Anooma Cycle Industry Pvt. Ltd. through auction to the petitioner. Property was sold for Rs. 15,65,000/- on 25.3.1991. Payment of Rs. 8,41,000/- was immediately made and remaining amount was to be paid in equal installments as provided in the sale-deed. By virtue of definition of sale as given in Section 54 of Transfer of Property Act, this was quite permissible (price part paid and part promised). The sale dated 25.3.1991 was impounded and the case was registered in the form of Stamp Case No. 704 of 1993, State v. M/s. H.M.F.C. Pvt. Ltd. The case was decided on 26.12.1996 by Assistant Commissioner, Stamp, Bulandshahar. Assistant Commissioner held that there was deficiency of Rs. 2,21,650/- in stamp duty. Against the said order, petitioner filed Stamp Revision No. 61 of 1997-98, which was decided by C.C.R.A./Board of Revenue, Allahabad alongwith Stamp Revision No. 62 of 1997-98. The revisions were dismissed on 25.8.1998 hence this writ petition. The Assistant Commissioner and the C.C.R.A. held that the real market value of the property was Rs. 15,65,000/- plus Rs. 8,41,000/-, total Rs. 24,06,000/-. On what basis this addition was made is not at all understandable. The amount of Rs. 8,41,000/- payable to seller U.P.F.C. for the realisation of which the property was sold was not payable by the petitioner. The defaulter debtor was M/s. Anooma Cycle Industry Pvt. Ltd. Probably the U.P.F.C. was more particular about its own dues hence it realised the amount of loan of Rs. 8,41,000/- and permitted the petitioner auction purchaser to deposit rest of the amount in installments. However, by no stretch of imagination the said amount could be added to the sale consideration. Petitioner did not owe any amount to U.P.F.C. prior to purchase of the property.

2. If a defaulter borrower owes Rs. 1 crore to U.P.F.C. and has got only a small house of about Rs. 10 lacs and U.P.F.C. sells the said house to realise at least part of its dues for Rs. 10 lacs then on the basis of the formula adopted by the Courts below stamp duty would be payable on Rs. 1 crore and ten lacs.

3. Accordingly, writ petition is allowed. Both the impugned orders are set aside. The amount which was deposited by the petitioner under interim order shall be returned to it within three months from the date of production of a certified copy of this order failing which since after the three months, interest @ Rs. 1.5% per month shall be payable thereupon.

Writ Petition No. 32657 of 1998:

4. The facts of this case are also similar. The first order was passed by Assistant Commissioner, Stamp, Buland Shahar on 26.12.1996 in Case No. 710 of 1996 determining the deficiency of Rs. 73750/- in the stamp duty on the sale-deed dated 1.1.1992. Against the order passed by the Assistant Commissioner, Revision No. 62 was filed which was dismissed by C.C.R.A. alongwith Revision No. 61 which related to the deed which was subjudice in the earlier writ petition, hence this writ petition. The property was sold by the U.P.F.C. to the petitioner through auction. The defaulter borrower was M/s. Ratan Pulp and paper products. Total amount of loan and interest was Rs. 3 lacs. Property was sold for Rs. 10,50,000/-. Here also, the amount of Rs. 3 lacs was added to the sale consideration of Rs. 10,50,000/-.

Accordingly, this writ petition is also allowed. Both the impugned orders are set aside. The amount which was deposited by the petitioner shall be returned to it within three months from the date of production of a certified copy of this order failing which 1.5% per month shall be payable thereupon since after the three months period.

