(2021) 11 DEL CK 0017

In the Delhi High Court

Case No : Civil Writ Petition No. 886 Of 2021

M/S. Indsao Construction Pvt. Ltd. APPELLANT

Vs

Collector Of Stamp/ Sub-Divisional Magistrate RESPONDENT

Date of Decision : 08-11-2021

Acts Referred:

Citation : (2021) 11 DEL CK 0017

Hon'ble Judges : Rekha Palli, J

Bench : Single Bench

Advocate : Prashant Kumar Mittal, Anuj Aggarwal, Vikrant Chawla, Ayushi Bansal, Vishesh Jagga

Judgement

Rekha Palli, J

1. Even though, despite opportunity, no counter affidavit has been filed; the matter is taken up for disposal with the consent of the parties.

2. The brief facts, leading to the filing of the present petition, are that an Arbitral Award, pertaining to a dispute between the petitioner company and M/s Baroda House NRGE CGHS, came to be passed on 11.10.2013. The Award was made on a non-judicial stamp paper of Rs.1,000/- with directions to the petitioner to have the amount of stamp duty payable thereon adjudicated by the Collector of Stamps.

3. Consequently, on 07.11.2013, the petitioner filed an application before the respondent/Sub Divisional Magistrate, Dwarka for adjudication of stamp duty on the Arbitral Award. The said application came to decided vide the impugned order on 03.01.2020, whereunder the respondent has held that the petitioner was liable to pay stamp duty @ 2% on the awarded amount. While passing the impugned order, the respondent has placed reliance on a decision dated 03.02.2010 of a Co-ordinate Bench in OMP No. 78/2003 titled "Eider Pwi Paging Limited & Eider Pwi Communications Ltd. v. Union of India".

4. In support of the petition, Mr. Mittal, learned counsel for the petitioner submits that the impugned order is wholly perverse as while determining the payable stamp duty, the respondent has erroneously applied the provisions of Clause (a) of Article 12 of Schedule-1A, as amended vide the Indian Stamp (Delhi Amendment) Act, 2001 to the petitioner's case as against Clause (b) under which the petitioner's case was covered. The Award in question is, admittedly, for an amount more than Rs.1,000/- and therefore, the respondent has erred in applying Clause (a) of Article 12, without appreciating the fact that Clause (a) would be only applicable in a case where the amount under the Award does not exceed Rs.1,000/-. He, therefore, contends that the petitioner was liable to pay the stamp duty only @0.1% in terms of Clause (b) of Article 12 of Schedule-1A of the Act.

5. Learned counsel for the respondent is not in a position to dispute either the fact that the Award is for a value of more than Rs.1,000/- or that Clause (b) of Article 12 is applicable to such cases where the Award is for a sum exceeding Rs.1,000/-.

6. Even though, learned counsel for the respondent has not disputed the petitioner's plea that Clause (b) of Article 12 would be applicable to the present case, for the sake of clarity, the said provision is reproduced hereinbelow:

Sch./ Art.

Description of Instrument

Proper Stamp Duty

12.

Award, that is to say any decision in writing by an arbitrator or umpire, not being an award directing a partition on a reference made otherwise than by an order of this Court in the course of a suit, --

(a)Where the amount or value of the property to which the award relates are set forth in such award does not exceed Rs.1,000.

(b)If it exceeds Rs.1,000 but does not exceed Rs.5,000 and for every additional Rs.1,000 or part thereof in excess of Rs.5,000.

The same duty as a Bond (No.15) for such amount.

One rupee for every one thousand of the value of the property to which the award relates.

7. From a perusal of the aforesaid provision, there can really be no dispute to the fact that as per Article 12 of Schedule-1A, as amended vide the Indian Stamp (Delhi Amendment) Act, 2001 w.e.f. 28.03.2001, when an Arbitral Award exceeds the value of Rs.1,000/-, the stamp duty on the Award is payable only in terms of Clause (b) thereof; and Clause (a) would be applicable only when the Award does not exceed the value of Rs.1,000/-.

8. Moreover, the reliance placed by the respondent on a decision of the Co-ordinate Bench in OMP No. 78/2003 titled "Eider Pwi Paging Limited & Eider Pwi Communications Ltd. v. Union of India" is also wholly misplaced. It appears that the said decision has been applied mechanically, without even appreciating the fact that the issue raised in the said decision was not regarding as to which Clause of Article 12 would be applicable in a case where the Award is of a value of more than Rs.1,000/-.

9. At this stage, the petitioner also points out that the respondent has erroneously determined the payable stamp duty by applying Clause (a) on the basis of an internal circular issued by the Govt. of India, NCT of Delhi, directing all SDMs to calculate the stamp duty payable on Arbitral Awards @ 2%. He submits that though a copy of the said circular is not available with the petitioner, appropriate directions be issued to the respondent to correctly apply Clause (b) of Article 12 in all such cases where the Award exceeds the value of Rs.1,000/-.

10. I, therefore, have no hesitation in setting aside the impugned order and accepting the petitioner's plea that it was liable to pay stamp duty only at @0.1% on the awarded amount, in accordance with Clause (b) of Article 12, Schedule 1-A.

11. The matter is, therefore, remanded back to the respondent for determining the stamp duty in accordance with the observations made hereinabove.

12. However, before concluding, this Court is constrained to express its anguish in the lethargic manner in which the petitioner's application has been dealt with by the respondent. The record shows that application for adjudication of stamp duty was preferred by the petitioner way back on 07.11.2013, to decide which, the respondent took more than six years vide its impugned order, which too, as already held hereinabove, is contrary to the plain language of Article 12 of Schedule 1-A itself. The respondent is, therefore, directed to determine the stamp duty payable by the petitioner on the Award dated 11.10.2013, within two weeks from the receipt of this order.

13. A copy of this order be sent to the Chief Secretary, Govt. of NCT of Delhi for information and appropriate action, so that other similarly placed persons do not have to approach this Court on account of erroneous determination of stamp duty.

