(2010) 05 AHC CK 0066

In the Allahabad High Court

Case No : C.M.W.P. No. 27540 of 2010

Nanhe Lal Verma — APPELLANT

Vs

Commissioner and Others — RESPONDENT

Date of Decision : 18-05-2010

Acts Referred:
Stamp Act, 1899 — Section 47A, 56, 56(1A)

Citation : (2010) 05 AHC CK 0066

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Advocate : H.P. Mishra and Vinod Kumar Srivastava, for the Appellant;

Judgement

Pankaj Mithal, J.—Heard Sri H.P. Mishra, learned Counsel for the Petitioner and learned standing counsel.

2. In proceedings u/s 47A of the Indian Stamp Act, 1899 vide order dated 13.1.2010, deficiency in payment of stamp duty has been determined and a penalty of Rs. 10,000 has been imposed with the direction to pay the deficiency with interest @ 1.5%. This order has been assailed by the Petitioner by filing an appeal u/s 56 of the Act before the Commissioner of the Division. At the time the appeal was filed the Petitioner deposited 1/3 of the deficiency in stamp duty so determined and an interim order was passed on 25.2.2010 staying the operation of the impugned order dated 13.1.2010 for a period of one month.

3. The appeal was heard on 22.3.2010 by the Commissioner, but before final order could be pronounced, the Commissioner was transferred. Thereafter the appeal was heard by the successor Commissioner on 26.4.2010 and order has again been reserved.

4. Learned standing counsel on obtaining instructions has informed that no final order as on date has been pronounced.

5. The Petitioner in the present writ petition is aggrieved by the proceedings

initiated for realisation of the balance deficient stamp duty on completion of hearing awaiting delivery of the order which has been reserved earlier on 22.3.2010 and again on 26.4.2010.

6. The learned standing counsel has submitted that under the 2nd proviso to Section 56 (1A) of the Act, the stay order, if any, granted by the higher authority remains in operation only for a period of one month unless the security for the remaining amount is furnished. Since the Petitioner has not furnished the security, the recovery of the balance amount has been initiated.

7. Section 56 of the Act provides for a statutory remedy of an appeal to the Chief Controlling Revenue Authority and at the same time authorizes the Chief Controlling Revenue Authority to exercise the revisional power. The power exercisable by the Chief Revenue Authority has been delegated to the subordinate authorities according to the valuation.

8. The aforesaid provision further envisages that unless proof of payment of 1/3rd of the disputed amount is furnished no application for grant of stay or recovery of the disputed amount shall be entertained by the appellate/revisional authority. It is in pursuance of the above provision that the Petitioner deposited 1/3rd of the disputed amount whereupon an order of stay of the balance amount was passed for a period of 30 days.

9. The second proviso to Section 56 (1A) of the Act envisages that a stay order granted by the appellate authority shall operate for 30 days only unless adequate security for the payment of outstanding amount is furnished.

10. The aforesaid provision is of a general nature which is applicable where the appeal remains pending for consideration without any hearing. The object is to ensure that the stay order granted is not misused and continued so as to avoid hearing of the appeal on merits and in turn the payment of the balance deficit stamp duty. However, the said proviso would not be applicable where the appeal has been heard within 30 days of the grant of the interim order but the order reserved upon hearing has not been delivered as in such a situation it cannot be said that the Appellant is avoiding hearing in order to get the benefit of the interim order extended. The delay in delivering of the order cannot be attributed to the Appellant and therefore, he cannot be made to suffer so as to treat the stay order to have come to an end on the expiry of 30 days.

11. It is settled legal position that where statutory appeal is admitted for hearing on merits and the Appellant is likely to be visited by civil consequences, it is always proper and justifiable to grant interim protection pending the appeal. Applying the aforesaid analogy, I consider it to be more reasonable that the interim protection granted at the time of entertaining the appeal be allowed to continue till the order is delivered where the appeal has been heard on merits within 30 days of the grant of the stay order.

12. Accordingly, I am of the view that the second proviso to Section 56 (1A) of

the Act would not affect the stay order in appeal and limit its life to 30 days only when within the aforesaid period the hearing of the appeal has been completed and the order reserved has been delivered. The said interim stay not having expired on the date of hearing would continue till the delivery/pronouncement of the final order.

13. In this view of the matter I consider it just and proper that no recovery of any balance amount of deficiency in stamp duty be made from the Petitioner till the order in appeal is pronounced by the appellate authority which I expect would be pronounced at the earliest.

The writ petition is disposed of accordingly with the above direction.

