(2012) 04 AHC CK 0129

In the Allahabad High Court

Case No : Writ Petition No. 1828 (M/S) of 2012

Rohit Anand Jaiswal and Another — APPELLANT

Vs

Deputy Commissioner Stamps, Lucknowand Another — RESPONDENT

Date of Decision : 12-04-2012

Acts Referred:

Stamp Act, 1899 — Section 33, 47A

Citation : (2012) 04 AHC CK 0129

Hon'ble Judges : Satish Chandra, J

Final Decision : Allowed

Judgement

Dr. Satish Chandra,J.

Sri Hemant Kumar Misra, learned counsel for the petitioners submits that the petitioner got a licence for the model shop at Sujanpura Road, Lucknow for excise year 20082009 and the same was run as a model shop for the period 01.04.2008 to 31.03.2009.

For the purpose, the premises was required and the petitioner has entered into agreement with Sri Raj Kumar Avrol and Sri Sushil Kumar Avrol (the owner of the premises) to have the premises on lease rent. The petitioner was expected that his licence will be renewed from time to time and at least for a period of five years. So, he executed the lease deed for the period of five years. Accordingly, the opposite party i.e. Additional District Magistrate, Trans Gomti, Lucknow has observed in his order that the lease deed requires the Stamps for the period of five years. Finally, vide impugned order dated 10.03.2010 passed under section 33/47A of Indian Stamps Act, he found the deficiency of stamps and made a demand of Rs.1,79,900/. The authority concerned has also imposed the equal amount as penalty. Against the said order, the petitioner has filed the appeal, which was dismissed by the impugned order dated 16.02.2012.

With this back ground, learned counsel for the petitioner submits that though the arrangement was made for five years in expectation for renewal of the licence, but the same was not renewed. Actually, the premises was used only for one year and later on, it was vacated and not in possession of the petitioner. So, he is not entitled for the additional stamps duty.

On the other hand, Miss Madhulima Bhargava, learned standing counsel justified the impugned order by stating that lease agreement was for five years. So, the petitioner is entitled to pay the stamp duty for five years.

After hearing both the parties and on perusal of record, it is evident that the premises in question i.e. Plot No.72, Sujanpura Road, Lucknow was taken on lease rent by the petitioner from the owners initially for five years with the expectation that his licence will be renewed from time to time. The said lease deed is simply attested by notary, but without paying any stamp duty. It is not a registered deed as required by law.

Needless to mention that if any lease agreement is for more than one year, then it is required to be registered. But in the instant case, the document in question was not registered and simply attested by notary. So, I am of the view that the document was used for more than 11 months, hence, it is required to be registered and stamp duty will have to be paid accordingly. The premises was used only for one year and not for five years as the licence was only for one excise year and it was never renewed and after one year the premises was vacated. So, the liability for remaining four years, if any, is between the land owner and tenant i.e. petitioner. The excise department has nothing to do with it in the absence of any licence.

In view of above, I direct the opposite parties to charge the stamp duty only for one year for which the premises was used as per law. Hence, I set aside the impugned orders and direct the opposite parties to pass the fresh order in the light of above discussion.

Accordingly, the petition is allowed.

