(1998) 05 AHC CK 0010

In the Allahabad High Court

Case No : C.M.W.P. No. 16834 of 1998

Sabir Hussain and another — APPELLANT

Vs

State of U.P. and others — RESPONDENT

Date of Decision : 18-05-1998

Acts Referred:
Stamp Act, 1899 — Section 17, 29, 35, 37, 40

Citation : (1998) 3 AWC 2054 : (1999) 1 CivCC 302

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : Manoj Kumar Singh, for the Appellant;

Judgement

D. K. Seth, J.—In Original Suit No. 279 of 1993. the plaintiff sought for recovery of a sum of Rs. 27,000 pursuant to a bond executed by the defendant. The bond was sought to be admitted In evidence. Admittedly the bond was insufficiently stamped. The trial court by its order dated 30.5.1995 passed an order u/s 35 of the Indian Stamp Act requiring the plaintiff to pay the duty as well as penalty for the purpose of admission of document in evidence as provided in clause (a) of Section 35 of the said Act. A revision was preferred being Civil Revision No. 57 of 1995, against the said order. By an order dated 28.1.1998 passed by the learned Additional District Judge, IIIrd Court. Bareilly, the revision was dismissed and the order of the learned Additional Civil Judge. (Senior Division), IIIrd Court, Bareilly, was affirmed. It is this order which has since been challenged in this petition.

2. Mr. M. K. Singh, learned counsel for the petitioner submits that Section 29 requires the executant is to pay the stamp duty. Therefore, the plaintiff cannot be asked to pay the stamp duty. It is for the defendant being executant of the bond to pay the stamp duty in terms of Section 29 of the Act since according to Section 17 such stamp duty was to be payable at the time of execution of the instrument. He also refers to Section 44 of the said Act and submits that the same is not applicable in the present case since the defendant is party to the suit.

3. I have heard learned counsel for the petitioner at length.

4. The fact remains that it is the plaintiff who seeks the document to be admitted into evidence. The instrument is admittedly improperly stamped and accordingly the Court has decided the duty and the penalty to be paid for its being admitted into evidence by the plaintiff who is tendering the same for being admitted in evidence.

5. Sections 29 and 35 of the said Act operate on different fields. Section 17 requires payment of stamp duty at the time of execution of the deed. While Section 29 provides such payment of stamp duty by the executor. Thus it deals with a stage when the document is being executed and the liability of the duty to be paid. Whereas Section 35 requires payment of deficiency of duty and penalty by the person who tenders such document for being admitted into evidence. An instrument insufficiently stamped can only be admitted provided that deficiency in stamp duty and penalty are paid on the same. Section 35 has no manner of application in respect of the field covered by Section 17 and Section 29. Despite Sections 17 and 29 if instrument remains insufficiently stamped and the same sought to be tendered for being admitted into evidence. Section 35 comes into play requiring payment of deficiency of stamp duty as well as penalty. A person who is seeking the document to be admitted is required to pay such duty. Section 35 is not a stage for recovering such deficiency of stamp duty and penalty from the person who is required to pay under Sections 29 and 17. This situation is made clear by reason of existence of Section 44 which prescribes that if any duty or penalty has been paid under Sections 35, 37, 40 or 41, by any person in respect of an instrument, and by agreement or under the provisions of Section 29, or any other enactment in force at the time such instrument was executed, some other person was bound to bear the expense of providing the proper stamp for such instrument, the first mentioned person shall be entitled to recover from such person the amount of the duty or penalty so paid.

6. Therefore, thus it appears that the question sought to be argued by Mr. Singh, learned counsel for the petitioner has been fully taken care of u/s 44 of the said Act. As such the contention of Mr. Singh that the plaintiff cannot be asked to pay the deficiency in the stamp duty and penalty at the time for being admitted in evidence, on the other hand the defendant should be asked to pay the same cannot be sustained.

7. He has relied on the decision in the case of Doriaswami Gounder Vs. Revenue Divisional Officer, Coimbatore, , in support of his contention. But the said case is distinguishable on facts. Inasmuch as in the said case stamp duty and penalty was asked for from the person who has tendered the document for being admitted in evidence but the same amount was not sought to be recovered by reason of its being admitted as evidence u/s 35. Therefore, in the said case Section 35 and Section 44 does not come into play. The said decision cannot be attracted since it proceeds on the basis of compounding of the stamp duty which is otherwise payable by the person, who had executed the deed.

8. For alt these reasons, I am not inclined to interfere with the orders impugned. The writ petition fails and is accordingly dismissed.

9. However, there will be no order as to cost.

