(2014) 08 AHC CK 0159

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 33595 of 2010

Sageer APPELLANT

Vs

State of U.P. RESPONDENT

Date of Decision : 01-08-2014

Acts Referred:

Citation : (2014) 9 ADJ 675 : (2014) 107 ALR 819

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : R.P.S. Chauhan, Advocate for the Appellant

Judgement

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Sudhir Agarwal, J.—Heard Sri R.P.S. Chauhan, Advocate for petitioner and learned Standing Counsel for the respondents. The questions up for consideration are, whether the lease deed dated 12.9.2006 provides for a lease of more than three years or it is a lease for less than 12 months and secondly, whether the authorities below are justified in determining the payability of stamp duty on the basis of circle rate instead of lease rent.

2. The record shows that shop in question was allotted to petitioner on a premium of Rs. 19,000/- and the monthly rent determined was Rs. 200/-. The agreement was executed between parties, i.e., petitioner and Nagar Palika Parishad on 12.9.2007. However, no period of lease has been mentioned therein.

3. Article 35, Schedule 1-B of Indian Stamp Act, 1899 (hereinafter referred to as the "Act, 1899") has been amended by U.P. Act No. 9 of 2001 w.e.f. 25.4.2001 by substitution of Clause (b) and (c) therein. Clause (a) is applicable to such leases where rent is fixed but no premium is paid or delivered. Admittedly that would not be applicable hereat. Clause (b) is applicable where a lease is granted for a fine or premium, or for money advanced or for where no rent is reserved. Even this clause is not applicable. Hence, Clause (c) is applicable in the present case, which reads as under:

4. Now the question is Article 35(c)(i) is applicable where the term of lease is not exceeding 30 years while clause (ii) is applicable where term of lease exceeds 30 years. In the present case, as such the lease document does not contain any period except that 10% monthly rent would be increased after five years. It is a lease without any definite term as is evident from Explanation (2), which reads as under:

"(2) A lease from month to month, or year to year, without any fixed period or one for a fixed period with a provision allowing the lessee to hold over thereafter for an indefinite term, shall be deemed, for the purposes of this Article, to be a lease not purporting to be for any definite term."

5. The mere fact that no term or period of lease is prescribed, I find it difficult to accept the view taken by authorities below that the document in question would be governed by Article 35(c)(ii).

6. In the case of any discrepancy or doubt in taxing statute the interpretation which is in favour of subject must be adopted. Taking clue therefrom, in my view, the petitioner would be liable to pay stamp duty under Article 35(c)(i). Applying the same the duty has to be calculated taking into account the amount or value of premium as payable on the lease. It is true that in the lease deed, as such, the amount of premium is not mentioned but it has come in the orders of authorities below that premium paid was Rs. 19,000/-, the stamp duty would be payable accordingly and not otherwise. In view of above, the writ petition is partly allowed. Impugned orders dated 19.12.2009 and 14.5.2010 are hereby quashed and the matter is remanded to Collector to find out the stamp duty payable and whether already paid by petitioner is sufficient or not. The Collector shall pass consequential order within a period of three months from today.

