(2011) 09 CHH CK 0022

In the Chhattisgarh High Court

Case No : Writ Petition (Art. 227) No. 7257 of 2010

Shyamu Nishad and Another APPELLANT

Vs

Rajendra Surana and Others RESPONDENT

Date of Decision : 09-09-2011

Acts Referred:
Constitution of India, 1950 — Article 227
Stamp Act, 1899 — Section 31, 32, 32(3)

Citation : AIR 2012 Chh 18 : (2012) 1 MPHT 18

Hon'ble Judges : T.P. Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Hon''ble Mr. T.P. Sharma, J.—By filing this writ petition under Article 227 of the Constitution of India, the petitioners have challenged legality and propriety of the order dated 11-10-2010 passed by the 9th Additional District Judge, Raipur in Civil Suit No. 16-A/2009 whereby the application for impounding the documents insufficiently stamped before receiving the same in evidence, filed on behalf of the petitioners herein/defendant Nos. 2 and 4, has been dismissed.

2. I have heard learned Counsel for the parties, perused the order impugned, copy of the plaint, copies of the documents, copy of order of the Collector of Stamps, Raipur and the endorsement made by the Collector of Stamps u/s 32 of the Indian Stamp Act, 1899 (for short ''the Act'').

3. Learned Counsel for the petitioners submits that as per undisputed facts of the case, the agreement is executed on 25-3-2008 and respondent No. 1 has applied for adjudication u/s 31 of the Act on or after 1-8-2008 to the Collector of Stamps, Raipur competent to adjudicate such matter. Thereafter, respondent No. 1 has paid deficiency of stamps required to be paid, i.e., Rs. 95,515/-on or after 22-8-2008 then the Collector of Stamps has issued certificate u/s 32 of the Act relating to sufficiency of stamps. Learned Counsel further submits that respondent No. 1 has filed application u/s 31 of the Act for adjudication after

more than three months of such execution of the document and further the Collector of Stamps has issued certificate after more than five months of such execution for which the Collector was not competent in accordance with proviso (a) to sub-section (3) of Section 32 of the Act.

4. On the other hand, learned Counsel for respondent No. 1 opposes the petition and submits that there is no limitation for filing application u/s 31 of the Act, the aforesaid instrument was chargeable with a duty of exceeding 10 nay paise and no such limitation is specified for issuance of such certificate u/s 32 of the Act, especially in the light of proviso (c) to sub-section (3) of Section 32 of the Act. Learned Counsel placed reliance in the matter of Government of Uttar Pradesh and Others Vs. Raja Mohammad Amir Ahmad Khan, , in which the Supreme Court has held that Section 31 of the Act provides no limitation and instrument can be presented at any time for adjudication. Therefore, there is no substance in the petition.

5. As per the documents and endorsement, stamp of Rs. 50/- has been used for execution of document. As per the endorsement and order of the Collector of Stamps there was deficiency of Rs. 95,515/-, which has been paid by respondent No. I after five months of such execution. The document was presented for adjudication after three months of such execution. Section 31 of the Act provides no limitation. Section 31 of the Act reads as follows:--

31. Adjudication as to proper stamp.- (1) When any instrument, whether executed or not and whether previously stamped or not, is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount not exceeding five rupees and not less than fifty naye paise as the Collector may in each case direct, the Collector shall determine the duty (if any) with which, in his judgment, the instrument is chargeable.

(2) For this purpose the Collector may required to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the changeability of the instrument with duty, or the amount of the duty with which it is chargeable, are. fully and truly set forth therein, and may refuse to proceed upon any such application until such abstract and evidence have been furnished accordingly:

Provided that,-

(a) no evidence furnished in pursuance of this section shall be used against any person in any civil proceeding, except in an enquiry as to the duty with which the instrument to which it relates is chargeable; and

(b) every person by whom any such evidence is furnished shall, on payment of the full duty with which the instrument to which it relates, is chargeable, be relieved from any penalty, which he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid.

6. Section 32 of the Act applicable in India reads as follows:--

32. Certificate by Collector.- (1) When an instrument brought to the Collector u/s 31 is, in his opinion, one of a description chargeable with duty, and--

(a) the Collector determines that it is already fully stamped, or

(b) the duty determined by the Collector u/s 31, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid, the Collector shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid.

(2) When such instrument is, in his opinion, not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable.

(3) An instrument upon which an endorsement has been made under the section, shall be deemed to be duly stamped or not chargeable with duty, as the case may be, and, if chargeable with duty, shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped:

Provided that nothing in this section shall authorise the Collector to endorse--

(a) any instrument executed or first executed in India and brought to him after the expiration of one month from the date of its execution or first execution, as the case may be;

(b) any instrument executed or first executed out of India and brought to him after the expiration of three months after it has been first received in India; or

(c) any instrument chargeable with a duty not exceeding ten naye paise or any bill of exchange or promissory note, when brought to him, after the drawing or execution thereof on paper not duly stamped.

7. The undivided State of Madhya Pradesh has amended Section 32 of the Act in its application vide M.R Act No. 18 of 1957. Amended provisions of Section 32 of the Act applicable to the State of Chhattisgarh read as follows:--

32. Certificate by Collector.- (1) When an instrument brought to the Collector u/s 31 is, in his opinion, one of a description chargeable with duty, and--

(c) the Collector determines that it is already fully stamped, or

(d) the duty determined by the Collector u/s 31, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid, the Collector shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid.

(2) When such instrument is, in his opinion, not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable.

(3) An instrument upon which an endorsement has been made under the section, shall be deemed to be duly stamped or not chargeable with duty, as the case may be, and, if chargeable with duty, shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped:

Provided that nothing in this section shall authorise the Collector to endorse--

(a) any instrument [other than an instrument chargeable with a duty under clause (bb) of the first Proviso to Section 3] executed or first executed in India and brought to him after the expiration of one month from the date of its execution or first execution, as the case may be;

(b) any instrument executed or first executed out of India and brought to him after the expiration of three months after it has been first received in India;

(c) any instrument chargeable with a duty not exceeding ten naye paise or any bill of exchange or promissory note, when brought to him, after the drawing or execution thereof on paper not duly stamped.

(d) any instrument chargeable with duly under clause (bb) of the first Proviso to Section 3 and brought to him after the expiration of three months of the date on which it is first received in the Madhya Pradesh (Chhattisgarh).

8. The instrument in dispute reveals that more than Rs. 95,000/- was chargeable, i.e., more than ten naye paise. Therefore, it would fall under the category of Proviso (c) to sub-section (3) of Section 32 of the Act for which no limitation is provided u/s 32 of the Act. Proviso (c) to sub-section (3) of Section 32 of the Act is independent clause and not controlled by Proviso (d), (b) or (a) to subsection (3) of Section 32 of the Act. Consequently, by dismissing the application for impounding of such document before receiving such document in evidence on the ground of insufficiency of stamps, the Court below has not committed any illegality requiring interference in exercise of supervisory jurisdiction.

9. The petition is, therefore, liable to be dismissed and it is hereby dismissed. No order as to costs.

