(2004) 02 MP CK 0002

In the Madhya Pradesh High Court

Case No : Writ Petition No. 566 of 2004

Smt. Savita Devi and Others APPELLANT

Vs

Board of Revenue and Others RESPONDENT

Date of Decision : 10-02-2004

Acts Referred:

Madhya Pradesh Prevention of Undervaluation of Instruments Rules, 1975 — Rule 9(3)
Stamp Act, 1899 — Section 47A

Citation : (2004) 2 MPJR 77

Hon'ble Judges : K.K. Lahoti, J

Bench : Single Bench

Advocate : A.G. Dhande, with Mr. Rahul Rawat, for the Appellant; B.N. Mishra, G.A., for the Respondent

Judgement

K.K. Lahoti, J.

Notice on behalf of respondents accepted by Shri B.N. Mishra, G.A.

Learned counsel for the parties submit that looking to the controversy involved, these cases may be decided finally.

In all the aforesaid petitions, a common question of law arises whether second appeal before the Board of Revenue is maintainable, against the order passed by the Collector (Stamp) and in appeal by the Additional Commissioner affirming the aforesaid order.

The Board of Revenue by the impugned order dismissed the appeal on the following grounds:

a) that the appeal has been filed u/s 47-A of the Indian Stamp Act, 1899 (hereinafter referred to as "the Act") and in view of Section 47-A (5) there is a provision that the aforesaid appeal shall be filed before the Chief Controlling Revenue Authority.

b) the said appeal was not filed in accordance with Rule 9(3) of the M.P.

Prevention of Undervaluation of Instruments Rules, 1975 (hereinafter referred to as "the Rules").

c) that the said appeal is not maintainable u/s 44 of the M.P. Land Revenue Code, 1959 (hereinafter referred as ''Code'')

Learned counsel for petitioners assailed the aforesaid order on the ground that the Board of Revenue is the Chief Controlling Revenue Authority of the State in view of section 7 of the Code. Under sub-section (5) of Section 47-A of the Act, the appeal lies to the Chief Controlling Revenue authority of M.P. and was rightly filed before the Board of Revenue and merely misquoting the provision will not render dismissal of the appeal. That even if the appeal was not filed on the prescribed form as required under rule 9(3) of the Rules, then, one opportunity ought to have been allowed to the petitioners to rectify the defect but in absence of this the appeal ought not to have been dismissed by the Board of Revenue. That the order passed by the Board of Revenue is against the principle of natural justice and the matter may be remitted back to the Board of Revenue with an opportunity to the petitioners to rectify the defect. Contending aforesaid, learned counsel for the petitioners submits that all the three appeals be remitted back to the Board of Revenue with aforesaid opportunity.

Learned counsel appearing for State supported the order and contended that all the appeals were filed under the Code which were not maintainable. The petitioners ought to have filed duly constituted appeal under sub-section (5) of section 47-A of the Act, in accordance with rule 9(3) of the Rules and because of the non-compliance of the aforesaid provisions, the Board of Revenue rightly dismissed the appeal as not maintainable. Contending aforesaid, learned counsel for the State prays that all the petitions may be dismissed.

To appreciate the contentions of both the parties, it is necessary to look into the provisions of sub-section (5) of Section 47-A of the Act, which reads as under:

47-A. Instruments undervalued how to be dealt with -

(1) to (4)...

(5) any person aggrieved by an order passed appeal under sub-section (4) may in prescribed manner appeal against such order to the Chief Controlling Revenue Authority, Madhya Pradesh.

The relevant rule 9 of the rules reads as under :

9. Appeals - (1) Every appeal under sub-section (4) or (5) of Section 47-A of the Act shall contain the following particulars namely :-

(a) full name, fathers name or husband''s name, occupation and address of the appellant;

(b) full name, father''s name or husband''s name, occupation and address of every person executing the instrument;

(c) full name, father''s name or husband''s name, occupation and address of every person claiming under the instrument;

(d) date and nature of the instrument;

(e) registration under, date of registration and name of office where the instrument was registered;

(f) name of town or village in which the property is situated together with the name of tehsil and the registration sub-districts;

(g) number and date of the Collector''s order which is appealed against, number and date of the order passed in appeal under sub-section (4) of section 47-A of the Act;

(h) market value of the property as determained by the Collector.

(2) Every appeal shall be accompanied by -

(a) the original or certified copy of the instrument; and

(b) memorandum of grounds of appeal.

(3) At the foot of the memorandum of appeal the following verification shall be endorsed and signed by the appellant, namely:

I.... the appellant do hereby declare that what is stated above is true to the best of my information and belief. Verified today the... day of... 199....

(4) Every appeal shall be presented in person or by an Advocate or by an authorised agent or sent by registered post to the appellate authority having jurisdiction which shall endorse the date of receipt.

Sub-section (5) of Section 47-A of the act provides that any person aggrieved by an order passed in appeal under sub-section (4) may in the prescribed manner appeal against such order to the Chief Controlling Revenue Authority. The prescribed manner in the present case is manner prescribed in rule 9 of the Rules. The appellant who is filing appeal has to file appeal which shall contain the particulars as stated in rule 9. If such an appeal is not filed with the aforesaid particulars will be defective, and will be deemed of not according to the Rules. Division Bench of this Court in Trilochan Singh v Board of Revenue 1997 (I) MPLJ 164 considered rule 9 of the Rules held :

12. Therefore, even in the absence of specific power, the appellate authority by virtue of sub-rule (4) of Rule 14, while dealing with appeal, can apply the provisions the CPC in respect of the matters not provided for in the Rules, and the appellate authority can follow the procedure in appeals as is followed in appeal against the order of the Civil Court which are enumerated in Section 107 of Civil Procedure Code. Sub-section (2) of Section 107 lays down that subject to the powers as given in Section 107(1) the appellate Court shall have the same powers and shall perform as nearly as may be, the same duties as are conferred

and imposed by the Code on Courts of original jurisdiction in respect of suits instituted therein.

Besides section 47-A (6) and/or Rule 9 or its sub-rule (3) or any other rule does not indicate the powers which are inherent in the Court of original or appellate jurisdiction, acting judicially (like a Court) in trying a case or hearing appeal in the matter of undervalued instrument and forcing the decision rendered or for giving the decision, inherent power which a Court possesses to act ex debito justitia to do the real and substantial justice cannot be exercised. There is no specific provision or bar that once an appeal which is not verified in the manner prescribed, is filed, the appellate court would have no option but to reject the appeal. Hence, in the absence of specific provision, the inherent powers can always be exercised. Therefore, the order of the Board cannot be sustained that it had no power to grant an opportunity to rectify the defect of Verification, a defect of technical nature. As the appellant prayed for time for reviewing the defect and for verifying the appeal memo on its foot, we are of the opinion that the learned Member, Board of Revenue illegally refused to exercise his jurisdiction in not giving an opportunity to verify the memo of appeal, to do substantial justice between the parties.

From the perusal of Rule 9, it requires that the appeal filed u/s 47A be filed with certain particulars. Furnishing of particulars is a matter of procedure. If some particulars are lacking, the Board of Revenue while hearing appeal may direct appellant to furnish all the particulars. Merely not furnishing the particulars as enumerated in rule 9 of the Rules would not entail instant dismissal of appeal. On the contrary, the Board of Revenue should have permitted the appellant to cure the defect at the first instance on any date subsequent to the date of order. Then only because of non-compliance of the order, the appeal may be dismissed. Rules of procedure are framed to advance justice and not to shut the doors of Courts. When it is brought to the notice of an authority that some procedure is not followed then ought to have allowed one opportunity to concern to rectify the defect. Appeal and revision are filed by Advocates who are expected to know the law but because of their fault litigant should not suffer instantly, without affording some opportunity to rectify the defect. But, in the present case no such opportunity was granted to the appellant before dismissal of the appeal.

From the perusal of rule 9, it provides that the various particulars shall be furnished while filing the appeal which is necessary for the decision of the case. The aforesaid particulars are required to facilitate appellate authority to decide the appeal. But, in absence of any mandatory provision for dismissal of the appeal, such appeal ought not to have been dismissed by the Board of Revenue. In view of the aforesaid, the Board of Revenue erred in dismissing the appeal as not maintainable.

It is not disputed before me that the Board of Revenue is the Chief Controlling Revenue Authority of the State as enumerated u/s 7 of the Code. For ready reference section 7 is quoted hereinunder:

7 Jurisdiction of Board -

(1) The Board shall exercise the powers and discharge the functions conferred upon it by or under this Code and such functions of the State Government as may be specified by notification by the State Government in that behalf and such other functions as have been conferred or may be conferred by or under any Central or State Act on the Chief Revenue Authority or the Chief Controlling Revenue Authority.

(2) The State Government may, subject to such conditions as it may deem fit to impose, by notification, confer upon, or entrust to the Board or any member of the Board additional powers or functions assigned to the State Government by or under any enactment for the time being in force.

In view of the specific provision u/s 7, it is not necessary to deal with the question that the Board is the Chief Controlling Revenue Authority and shall exercise all the powers and discharge the functions conferred upon it by or under the Code and such other functions as may be specified by the State Government by notification. As section 47A(5.) of the Act specifically provides that second appeal shall lie before the Chief Controlling Revenue Authority of Madhya Pradesh, in the circumstances, there is no iota of doubt that the second appeal lies to the Board of Revenue and the Board of Revenue was having jurisdiction to hear and decide the appeal in accordance with the provisions of section 47A of the Act.

So far objection that the aforesaid appeal was filed u/s 44 of the Code is concerned, merely quoting incorrect provision in the appeal memo will not result the dismissal of the appeal. The Board of Revenue was well aware with the fact that the second appeal lies out of order passed by the Collector and the Commissioner under sub-section (4) of section 47-A. Second appeal is provided under sub-section (5) of Section 47-A of the Act. In the circumstances, because of quoting section 44 of the Code, the appeal cannot be dismissed. Considering the aforesaid, Board of Revenue erred in dismissing the appeal of appellants as not maintainable.

In view of aforesaid, all the three writ petitions are allowed. The order passed by the Board of Revenue in all the three cases are hereby quashed and the matter is remanded back to the Board of Revenue to afford an opportunity to the petitioners to furnish a fresh appeal memo in accordance with rule 9 of the Rules. The petitioners shall furnish a fresh appeal memo within a period of one week from the date of first appearance before the Board of Revenue and thereafter the Board of Revenue shall proceed in appeal in accordance with law. No order as to costs.

C.C. as per rules.