(1993) 04 MP CK 0015

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 623 of 1986

Trilochan Singh APPELLANT

Vs

Board of Revenue and Others RESPONDENT

Date of Decision : 27-04-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1, Order 5 Rule 14, Order 5 Rule 15, 107
Madhya Pradesh Stamp (Prevention of Under Valuation of Instruments) Rules, 1975 — Rule 14, 14(4), 9, 9(3)
Stamp Act, 1899 — Section 47A, 47A(5)

Citation : AIR 1993 MP 208 : (1994) 2 MPJR 30 : (1997) 1 MPLJ 164

Hon'ble Judges : S.K. Dubey, J;S.K. Chawala, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Dubey, J.

By this petition under Art, 227 of the Constitution of India, the petitioner who is a transferee of the lands, transferred by a document of sale (Annexure P/1) for consideration of Rupees 20,500/-executed on 13-6-1981, has challenged the order of the Board of Revenue (Annexure P/19), passed on 4-2-1986 in Appeal No. 27-V-85, whereby the appeal of the petitioner u/s 47A(5) of the Indian Stamp Act, 1899, for short, the ''Act'', against the order of the Commissioner, Bastar Division, Jagdalpur''s order dated 23-5-1985, passed in Appeal No. 44A-3/83-84, has been dismissed as not competent for want of verification of the foot of the memorandum of appeal,

For the purpose of this petition, it would be appropriate to state that an area of 34.66 acres known as Aam Bagia, situated at the bank of river Indravati, in the township of Jagdalpur, was transferred by the respondent No. 6 Smt. Vedvati, the wife of Maharaj Pravirchandra Bhanjdeo of Jagdalpur, by registered sale-deed dated 13-6-1981 (Annexure P/1) for a consideration of Rs. 22,500/-. The Sub-

Registrar after registering the instrument having reason to believe that the market value of the property which is the subject-matter of the instrument has not been truly set forth, referred the instrument to the Collector for determination of market value of such property as in his opinion market value of the subject-matter was Rs. 1,36,000/- and was liable to the stamp duty to the extent of Rs. 12,920/-.. The document being deficit of Rs. 10,780/-because of the under-valuation, the deficit was to be recovered.

This reference by the Sub-Registrar was made u/s 47A(1) of the Act read with Rule 4 of the M.P. Prevention of Undervaluation of Instrument Rules, 1975, framed u/s 75 of the Act read with Section 47A for the purpose of carrying out the provisions of Section 47A of the Act, for short, the ''Rules of 1975''.

The Collector of Stamps on being satisfied, issued the notice to the petitioner and to the vendor, who filed a joint written statement and contended that the market value as shown in the document is proper. Later, respondent No. 6 also contended that even it the duty and penalty is payable, it is payable by the purchaser, the petitioner. The Collector of Stamps perused the material adduced and after hearing the parties and taking into consideration the principles as enumerated in Rules, passed an order under Rule 7, determining the value of the property to be Rs. 55,10,700/- and, thus, determined the stamp duty payable at Rs. 5,23,497/-. Aggrieved of the same, the petitioner preferred an appeal u/s 47A(4) of the Act, before the Commissioner, Bastar Division, who dismissed the appeal as barred by time as also on merits vide order dated 23-5-1985 (Annexure P/15). Thereupon, the petitioner preferred an appeal under Rule 9 before the Board of Revenue, but, as required by Sub-rule (3) of Rule 9, at the foot of the memorandum of appeal, the verification was not endorsed and signed by. the appellant/petitioner, hence, on a preliminary objection being raised by Government Advocate, on behalf of the State, Member, Board of Revenue, vide order, Annexure P/19, without dealing the appeal on merits, dismissed the appeal as not competent as the Board was of the opinion that there is no provision in law to allow any opportunity to the appellant for verification.

Shri S. K. Vajpei, learned counsel for the petitioner and Shri Govind Singh, Government Advocate, for respondent Nos. 4 and 5 and Shri P. D. Gupta, counsel for respondent No. 6 were heard.

To deal with the instruments which are undervalued, Section 47A has been inserted in the Act by M.P. Act No. 8 of 1975 which has been enforced from 15-5-1975, which we reproduce :

"47A. Instruments undervalued how to be dealt with.-- (1) If the registering officer appointed under the Registration Act, 1908 (No. 16 of 1908) while registering any instrument has reason to believe that the market value of the property which is the subject matter of such instrument has not been trully set forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of market value of such property and the proper duty payable thereon.

(2) On receipt of a reference under Sub-section (1), the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an enquiry in such manner, as may be prescribed, determine the market value of the property which is the subject matter of such instrument and the duty as aforesaid. The difference, if any, in the amount of duty shall be payable by the person liable to pay the duty.

(3) The Collector may suo-motu, within five years from the date of registration of any instrument not already referred to him under Sub-section (1), call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property which is the subject matter of any such instrument and the duty payable thereon and if after such examination, he has reason to believe that the market value of such property has not been truly set forth in the instrument, he may determine the market value of such property and the duty as aforesaid in accordance with the procedure provided for in Sub-section (2). The difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty : Provided that nothing in this Sub-section shall apply to any instrument registered prior to the date of commencement of the Indian Stamp (Madhya Pradesh Amendment) Act, 1975.

(4) Any person aggrieved by an order of the Collector under Sub-section (2) or Sub-section (3) may, in the prescribed manner appeal against such order to the Commissioner who may either himself decide the appeal or transfer it to the Additional Commissioner of the Division.

(5) 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, Madhya Pradesh.

(6) Every first and second appeal shall be filed within thirty days from the date of the communication of the order against which the appeal is filed, along with a certified copy of the order to which objection is made and shall be presented and verified in such manner as may be prescribed :

Provided that in computing the period aforesaid, the time requisite for obtaining a copy of the order appealed against shall be excluded person or by an Advocate or by an authorised agent or sent by registered post to the appellant authority having jurisdiction which shall endorse the date of receipt."

(7) The appellate authority shall follow such procedure as may be prescribed :

Provided that no order shall be passed without affording opportunity of being heard to the appellant.

(8) The order passed in second appeal or, where no second appeal is preferred the order passed in first appeal shall be final and subject to orders passed in first or second appeal, as the case may be, the order passed by the Collector under

Sub-section (2) or Sub-section (3) shall be final and shall not be called into question in any Civil Court or before any other authority whatsoever.

Explanation.-- For the purposes of this Act,--

(i) market value of any property other than the property which is the subject matter pf conveyance by or on behalf of the Central Government or the State Government or any authority or body incorporated by or under any law for the time being in force shall be estimated to be the price which in the opinion of the Collector or the appellant authority, as the case may be, such property would have fetched or fetch if sold in the market on the date of execution of instrument;

(ii) market value of any property which is subject matter of conveyance by or on behalf of the Central Government or the State Government or any authority or body incorporated by or under any law, for the time being in force shall be the value shown in the instrument."

The above provision has been made to deal with the undervalued instrument and if any order is made determining the market value of the property and directing the payment of the difference, if any, in the amount of duty, the person aggrieved may prefer an appeal under Sub-section (4) to the Commissioner and against the order of the Commissioner, under Sub-section (5) of Section 47A, the second appeal lies. Sub-section (6) provides that every first and second appeal shall be filed within thirty days from the date of the communication of the order against which appeal is filed along with a certified copy of the order to which objection is made and shall be presented and verified in such manner as may be prescribed. Rule 9 of the Rules deals with the appeal which we reproduce :

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

(a) full name, father''s 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 the name of the 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 47A of the Act;

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

(2) Every appeal shall be accompanied by-

(a) the original or a 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 appellant authority having jurisdiction which shall endorse the date of receipt."

A look at Sub-rule (3) makes abundantly clear that at the foot of the memorandum of appeal the verification shall be endorsed and signed by the appellant in the manner prescribed. As the verification was not endorsed and signed by the appellant, the Board of Revenue, considering that the provision being mandatory and there being no power to allow an opportunity to rectify the defect, has dismissed the appeal. True, it is wellsettled principle of law that where the law required a particular thing to be done in a certain manner, it has to be done in that manner or not at all as other modes of compliance are excluded. See Narbada Prasad Vs. Chhaganlal and Others, However, if an appeal does not contain verification as required by the Sub-rule (3) of Rule 9, in that situation whether the appellate authority can afford an opportunity for removing the irregularity is indeed the question for consideration.

True, there is no specific power, but, Rule 14 which deals with the Rules of procedure, in our opinion, gives power to Appellate Authority to exercise the powers as provisions of CPC have been made applicable in appeals in respect of matters not provided in the Rules. Rule 14, we extract in extenso :

"14. Rules of Procedure.-- (1) The appellate authority may adjourn the hearing of the appeal from time to time, as it thinks fit.

(2) The appellate authority may at any stage call for any information record or other evidence from the appellant or the Collector.

(3) In the appeal the appellant may appear either in person or through an advocate, or an authorised agent.

(4) In respect of matters not provided for in these rules, the provisions of the Code of Civil Procedure, 1908 (No. V of 1908), relating to the procedure to be followed by the appellate authority in appeals against the order of the Civil Court, shall, as far as may be, apply to appeals under Sub-sections (4) and (5) of Section 47A of the Act".

Sub-rule (4) of Rule 14 lays down that in respect of the matters not provided for in these rules, the provisions of the CPC relating to procedure to be followed in appeals shall, as far as may be, apply to appeals under Sub-sections (4) and (5) of Section 47A of the Act. Order V, Rules 14 and 15 of the C.P.C. relate to signing and verification of the pleadings. Rule 14 of Order VI speaks that every pleading shall be signed by the party and Rule 15 lays down that every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case. Therefore, it is for the purpose of the Court that it is to be seen if a pleading is signed or verified or not.

Signing and verification of plaint are mere matters of procedure and if a plaint is not properly signed or verified, but is admitted and entered in the register of suits, it does not cease to be a plaint and the suit cannot be said as not having been instituted merely because of the existence of some defects or, irregularities in the matter of signature and verification. The defect in regard to the signature and verification of the plaint is an irregularity and is curable on any day subsequent to the date of filing, which does not furnish a ground for rejecting the plaint or written statement. Such an irregularity is curable even at appellate stage under the provisions of Section 99 of C.P.C. as it does not affect the merits of the case or the jurisdiction of the Court. See decisions of this Court in Dau Pawankumar v. Khatijabai 1967 MPLJ SN 45; Chunnilal Saran Kumar (Firm) v. Union of India 1980 JLJ SN 4; Joseph v. Agatha Toppo 1985 MPWN 150 and a Division Bench decision of Bombay High Court in All India Reporter Ltd. and Another Vs. Ramchandra Dhondo Datar, Supreme Court, in a case where the verification was defective, ruled that it would be wrong exercise of discretionary power to dismiss an application on the sole ground of absence of date of verification. In such a case, the appellant should formally be called upon to remove the lacuna by adding a supplementary verification. (See, Bhikaji Keshao Joshi and Another Vs. Brijlal Nandlal Biyani and Others,

Therefore, even in the absence of specific power, the appellate authority by virtue of Sub-rule (4) of Rule 14, while dealing with an appeal, can apply the provisions of 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 appeals aginst the order of the Civil Court which are enumerated in Section 107 of C.P.C. Sub-section (2) of the Section 107 lays down that subject to the powers as given in Section 107 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 47A(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 enforcing the decision rendered or for giving the decision, inherent power which a Court possesses to act ex debito justitiae to do the real and substantial justice cannot be exercised. There is no specific provision or bar that once an appeal memo 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 removing 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.

In the result, the petition is allowed. The order of the Board of Revenue is quashed and the case is sent back to the Board of Revenue for deciding the appeal in accordance with law after allowing opportunity to the petitioner/ appellant to verify the memorandum of appeal in accordance with the requirements of Sub-rule (3) of Rule 9. In the circumstances of the case, the parties are left to bear their own costs.

Chawla, J.

I will like to add a few words of my own.

Rule 9(3) of the M.P. Prevention of Undervaluation of Instruments Rules, 1975 (hereinafter called the Rules) makes a departure from the requirement of the CPC in as much as it says that the memorandum of appeal shall be verified and signed by the appellant. The parallal provision in Order 41, Rule 1 of the CPC requires the memorandum of appeal to be simply signed either by the appellant or his pleader. No further requirement of verification of memorandum of appeal is laid down therein. Where the rule itself makes adifferent provision from the provision of the C.P.C., it may not be open to invoke the provision of Rule 14(4) of the Rules and to say that provisions of C.P.C. are generally applicable to a particular situation.

At the same time, the requirement about verification and signature of the memorandum of appeal contained in Rule 9(3), a la the requirement of signature and verification of plaint under the provisions of the Civil Procedure Code, is a requirement after all about the form or procedure. The consistent view of the Courts is that such a defect can, and should in the ends of the justice, be allowed to be cured at any stage, including at the stage of appeal. My learned brother S. K. Dubey, J. has made a reference to a number of deisions on the point, including the decision on the Apex Court. The Court is not supposed to act as a drill sergeant to punish litigant the moment he commits a mistake. The Court is meant to do justice; whenever possible, it should extend a helping hand to the parties.

A perusal of the Rules would show that there is no rule, and in fact there cannot be one, compelling the appellate authority to reject a memorandum of appeal just because it is not verified or properly verified. In the absence of such a rule, the appellate authority would be said to have adopted a rigid or wooden approach, as the learned Member of the Board of Revenue did in the present case, if it chooses to reject a memorandum of appeal on the technical ground of improper verification on lack of verification, instead of giving opportunity to the appellant to remove the defect. It is only if the appellant persists in refusing to meet with the direction of the Appellate Tribunal in this regard that the Appellate Tribunal would be justified in rejecting the memorandum of appeal, being left with no alternative. Every court, and the appellate authority acting under the Rules is no exception, has inherent power to act ex debito justitiae and to do real and substantial justice. Giving an opportunity to remove the above kind of defect, is not only not interdicted by the Rules, but is also enjoined by the requirements of justice. I agree with my learned brother that the Board of Revenue illegally refused to exercise jurisdiction vested in it by not giving opportunity to the petitioner/ appellant to make good the defect about verification of the memorandum of appeal.

ORDER

In the result, the petition is allowed in terms of the directions contained in para 14 of this order.