

(2016) 03 KAR CK 0330

In the Karnataka High Court

Case No : Writ Petition Nos. 16693/2014 (GM-RES) and 16694/2014 (GM-RES)

United Precision Engineers Pvt. Ltd.

APPELLANT

Vs

Kiocl Ltd.

RESPONDENT

Date of Decision : 24-03-2016

Acts Referred:

Karnataka Stamp Act, 1957 — Section 33, Section 33 (1), Section 34, Section 35, Section 36, Section 37, Section 37(1), Section 37(1) (2), Section 37(2), Section 38, Section 38 (2), Section 39, Section 40, Section 40 (1)

Citation : (2016) 03 KAR CK 0330

Hon'ble Judges : A.S. Bopanna, J.

Bench : Single Bench

Advocate : Jayakumar S. Patil, Sr. Counsel for Varun Jayakumar Patil, Advocate, for the Appellant; Shankarlingappa Nagaraj, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

A.S. Bopanna, J.—1. The petitioner is the same in both these petitions and the impugned orders also arise out of the same proceedings. In W.P. No. 16694/2014 the order dated 01.02.2014 whereby the stamp duty and penalty relating to the award is directed to be paid, is assailed. Since the petitioner was unable to pay the stamp duty and penalty as directed, they filed an application under Section 37(2) of the Karnataka Stamp Act, 1957 ("Karnataka Act, 1957" for short) seeking that the same be referred to the Deputy Commissioner (Stamps) and District Registrar for determination and collection of Stamp duty which is declined by the order dated 10.03.2014, which is assailed in W.P. No. 16693/2014. As the issues are interrelated, the petitions are taken up together and disposed of by this common order.

2. In respect of certain dispute between the parties herein, the same had been referred to the sole arbitrator who has passed the award dated 31.05.2007. The award being under the Arbitration Act, 1940 in order to seek that the same be made rule of the Court, the proceedings in AC. No. 2/2007 is initiated by the

petitioner. The respondent raised the objection that the award has not been duly stamped and it is in that regard the present issue between the parties has arisen.

3. Heard Sri Jayakumar S. Patil, learned senior counsel on behalf of Sri Varun Patil, learned counsel for the petitioner and Sri Shankarlingappa Nagaraj, learned counsel for the respondent and perused the petition papers.

4. Though the order dated 01.02.2014 whereby the deficit stamp duty has been determined and the penalty has been imposed is assailed in W.P. No. 16694/2014, the said order being a fall out of the earlier proceedings, in my opinion, the same does not call for interference. This is due to the fact that at an earlier instance the petitioner was before this Court in W.P. No.44482/2014 assailing the order dated 25.07.2014 and in the said proceedings this Court had impounded the award for not being sufficiently stamped and the trial Court was directed to determine the stamp duty and penalty payable keeping in view the observations made in W.P. No. 14486/2010, an earlier writ petition between the parties. It is in that light the Court below has taken into consideration the provision contained in Article 11 of the Karnataka Act, 1957 and the stamp duty as provided therein has been applied and after providing deduction for the amount already paid, the balance amount is held to be the deficit stamp duty. Insofar as the penalty, there being no discretion vested in the Court to impose the lesser penalty, it has ordered the penalty to be paid as contained in the provision.

5. In the light of the above, since the order passed by the Court below dated 01.02.2014 is in accordance with law, the contentious issue which arises for consideration is with regard to the procedure that is required to be adopted by the Court, if the party who is directed to pay the deficit stamp duty and penalty does not choose to pay the amount and proceed with the case, but on the other hand pleads inability to pay the stamp duty.

6. The learned senior counsel for the petitioner while relying on Section 37(2) of the Karnataka Act, 1957 being applicable to the present position herein would further refer to Section 39 therein to contend that in such situation the only option for the impounding authority or the Court is to send the original of the instrument to the Deputy Commissioner to enable the Deputy Commissioner to proceed in the manner as provided in Section 39. The learned counsel for the respondent would however contend that in the instant case, the impounding has been done by this Court while disposing of W.P. No.44482/2013 and in that view had directed the Court below to determine the stamp duty and penalty payable on the impounded award. Hence he contends, in that view when the learned Judge of the Court below has already determined the stamp duty and penalty, a re-determination by the Deputy Commissioner would not arise and as such, the Court below was justified in dismissing the application through the order dated 10.03.2014. Learned counsel would rely on the decision in the case of Ningappa Bharamappa Sogi v. Government of Karnataka by its Secretary, Department of Stamps and Registration and Others (, ILR 2011 KAR 2484) and the order passed

in the case of M/s. Bangalore Ice Factory v. V.S. Venkatram (W.P. No. 16063/2011 dated 24.04.2013).

7. A perusal of the above referred decisions relied on by the learned counsel for the respondents would no doubt refer to the manner in which the determination of the deficit stamp duty and penalty is to be made as provided under Section 34 of the Karnataka Act, 1957 and the manner in which the collection of duty and penalty is to be made as provided. Though there can be no dispute to the fact that the re-determination is not provided for once, the Authority/Court impounding the instrument has determined the deficit stamp duty, the purpose for which the provisions under Sections 37 and 39 of the Karnataka Act, 1957 is made and the scope thereof needs consideration insofar as the penalty is concerned.

8. The learned senior counsel in that regard has referred to the similar provisions contained in Sections 38 and 40 of the Indian Stamp Act, 1899, ("the Stamp Act, 1899" for short) and has relied on the consideration made on that aspect by the Hon"ble Supreme Court in the case of Peteti Subba Rao v. Anumala S. Narendra [(2002) 10 SCC 427]. In the said case, in a situation where the trial Court had determined the stamp duty, as also the penalty and had directed the deposit of such stamp duty, as also penalty within a month, failing which it had directed dismissal of the suit and the said order had been affirmed by the High Court, the Hon"ble Supreme Court had set aside the orders and directed reference to the Collector. The consideration as made by the Hon"ble Supreme Court is as hereunder:

"5. Chapter IV of the Indian Stamp Act contains provisions regarding "instruments not duly stamped". It is Section 35 which falls under the said chapter which empowered the trial Court to direct the party (who wants the document to be acted upon) to pay the stamp duty (or the deficient portion) together with a penalty of rupees fifteen, or, when ten times the amount of the proper duty or deficient portion thereof exceeds fifteen rupees, of a sum equal to ten times such duty or portion. This is for the purpose of enabling the document to be admitted in evidence, in such a situation the document would be admitted only on payment of the aforesaid sum. In a case where the party is not willing or he cannot afford to pay the said sum the court has to adopt the procedure envisaged in Section 38 (2) of the Act. That sub-section is with reference to the action which the trial court is, perforce to adopt under Section 33 (1) of the Act.

6. Mr. M.N. Rao, learned Senior Counsel submitted that the appellant cannot afford to pay the penalty now suggested as the amount is far beyond his capacity. But at the same time, he made a fervent plea that his suit cannot be allowed to be dismissed on the ground of inability to pay the huge penalty amount alone. We find some force in the said plea. In a case where the party fails to pay the penalty suggested by the court the document impounded has to be sent to the Collector for the purpose of taking further steps in respect of that documents as provided in Section 40 of the Act. The Collector has the power to

require the person concerned to pay the proper duty together with a penalty amount which the Collector has to fix in consideration of all aspects involved. The restriction imposed on the Collector in imposing the penalty amount is that under no circumstances the penalty amount shall go beyond ten times the duty or the deficient portion thereof. That is the farthest limit which meant only in very extreme situations the penalty need be imposed up to that limit. It is unnecessary for us to say that the Collector is not required by law to impose the maximum rate of penalty as a matter of course whenever an impounded document is sent to him. He has to take into account various aspects including the financial position of the person concerned.

7. XXXXXX

8. We also direct the Collector concerned to complete the proceedings envisaged in Section 40 (1) of the Act within a period of one month from the date of receipt of the document. The trial court shall await the receipt of the certificate of the order passed by the Collector for proceedings further in the suit. In other words the suit will be revived only on receipt of such certificate and the copy of the order of the Collector so passed."

(emphasis supplied)

9. The learned senior counsel for the petitioner has also relied on the decision of this Court in the case of K. Amarnath v. Smt. Puttamma [, 2000 (4) Kar. L.J. 55] wherein while advertng to the provision contained in Sections 33, 34, 35, 37 and 40 of the Karnataka Act, 1957, it is held that if the party does not pay the duty and penalty, the Court will have to pass an order impounding the document and send the instrument in original to the District Registrar for being dealt with in accordance with law as per Section 37(2) of Karnataka Act, 1957.

10. To arrive at an appropriate conclusion, it will be useful to refer to the decision of a Hon"ble Division Bench of this Court in the case of Digambar Warty and Others v. District Registrar, Bangalore Urban District and Another (, ILR 2013 KAR 2099), wherein after exhaustively considering all aspects, it is held as hereunder:

"37. Section 37 of the Act deals with the procedure to be followed by the authority after impounding the document under Section 33 and after passing of the orders under Section 34 or Section 36. When the person impounding an instrument under Section 33 has by law or consent of parties authority to receive evidence and admits such an instrument in evidence upon payment of a penalty as provided by Section 34 or of duty as provided by Section 36, under Sub-Section(1) of Section 37, he shall send to the Deputy Commissioner an authenticated copy of such instrument together with a certificate in writing, stating the amount of duty and penalty, levied in respect thereof and shall send such amount to the Deputy Commissioner or to such person as he may appoint in this behalf Sub-section (2) of Section 37 provides that in every other case, the person so impounding an instrument shall send it in original to the Deputy

Commissioner.

38. The reason is obvious. Generally, it is the Civil Court which receives the instrument in evidence. Admission of instrument in evidence is not proof of the said instrument. If the execution of the instrument is denied by the executant or the opposite party, burden is cast on the person producing the said instrument to prove that the instrument was executed in accordance with law. He may have to examine the attesting witnesses if there is any, or he may request the Court to compare the signature found on the said instrument with the admitted signatures in the case or he may request for sending the said instrument containing the signature for the opinion of the handwriting expert. Therefore the original document, after it being impounded and the party paying the duty and penalty cannot be sent to the Deputy Commissioner, the law provides for a authenticated copy of such an instrument being sent to the Deputy Commissioner. However, in all other cases, it is the original of the document impounded which is to be sent to the Deputy Commissioner. The object being, the said provision should not come in the way of speedy disposal of cases before the Court.

39. Section 38 of the Act deals with the power of the Deputy Commissioner to refund the penalty paid under Sub- section (1) of Section 37. When a copy of an instrument is sent to the Deputy Commissioner under Sub-section (1) of Section 37, he may, if he thinks fit, refund any portion of the penalty in excess of five rupees which has been paid in respect of such instrument. The reason being, when a person receiving the evidence impounds the document and collects the duty under Section 34 of the Act, which in most of the cases, is the Civil Court, the time of the Court should not be wasted in deciding, whether it is a fit case where penalty of ten times the duty is to be levied or a case is made out for imposition of lesser penalty. Therefore, the Legislature consciously has used the word, "shall" taking away any discretion in the Civil Court in the matter of imposition of penalty equal to ten time the duty payable. However, the Civil Court after impounding the document, collecting the duty and penalty, is under a statutory obligation to send it to the Deputy Commissioner under Sub- section (1) of Section 37. Therefore, when such an instrument is so sent to the Deputy Commissioner, he has been conferred the power to reduce the penalty already paid before the Civil Court. One of the reasons why such a discretion is not vested with the Civil Court is, it is the revenue authorities who are more concerned with the collection of revenue, and that is not the job of the Civil Courts. However, if a document which is not stamped or insufficiently stamped is tendered in evidence in Civil Court and admitted in evidence, then the very purpose of the Stamp Act itself would be defeated. Therefore, a power is vested in Civil Court to impound the document. In fact, it is an obligation cast on the Civil Court by the statute. But, the legislature does not want to burden the Civil Court to go into the question, whether a case for payment of lesser penalty is made out or not. The Civil Courts cannot be expected to be wasting their precious judicial time in deciding matters which exclusively fall within the sphere of revenue authorities and under the scheme of the Act, which has to be decided

by them. Therefore, it prescribes that after determining the duty payable on such instrument, to collect the duty with ten times penalty and then transmit the document to the Deputy Commissioner with duty and penalty so collected. Thereafter, a power is conferred on the Deputy Commissioner under Section 38 of the Act to hold an enquiry after giving an opportunity to the person who has paid duty and penalty to extend the benefit of reduction of penalty. Such a reduction in penalty is available to both the documents i.e., tendered before the Civil Court or produced directly before the Deputy Commissioner under Section 33. No discrimination in law is made between these two types of documents. However, there appears to be some conflicting opinion in this regard.

(emphasis supplied)

11. From the provisions contained in Sections 33, 34, 37(1) (2), 38, 39 of the Karnataka Act, 1957, the view expressed by the Hon''ble Supreme Court and the Hon''ble Division Bench, the position of law is therefore clear that the obligation cast on the Civil Court in respect of an instrument not being duly stamped, is to impound the same and determine the duty and penalty payable. The Civil Court has no discretion, but to impose the penalty of ten times of the deficit and permit the party to pay the same. If the party chooses to pay the same, the effect of impounding gets diluted and the document will become admissible in evidence for the purpose of proving the same as per law. In such event, the Civil Court is required to despatch an authenticated copy of the instrument along with the deficit duty and penalty collected, to the Deputy Commissioner. The matter does not stop at that. Though the Civil Court as bound by law would collect the penalty at ten times, the power is still vested with the Deputy Commissioner under Section 38 of the Karnataka Act, 1957 to hold an enquiry and reduce the penalty in the manner as provided therein.

12. As observed in Digarribar Warty and others (supra) the said procedure is prescribed with a dual purpose, firstly, to avoid overburdening the Court with the work of deciding the quantum of penalty as it would require providing opportunity and arriving at a decision. Secondly, it is also to accelerate the proceedings before the Court by giving an option to the party to pay the amount and proceed with the case and thereafter secure a decision from the Deputy Commissioner with regard to actual penalty payable and obtain refund if any. On the other hand, on determination by the Civil Court if the party does not choose to pay the amount, the impounding will continue to subsist. In such situation the instrument will not be available to be admitted in evidence and as such the original is to be sent to the Deputy Commissioner as provided under Section 37(2) of the Karnataka Act, 1957. In that case, the Deputy Commissioner shall proceed in terms of Section 39 of the Karnataka Act, 1957 and on such consideration after collecting the amount, it will be sent back to the Impounding Officer since on such collection of the amount the impounding will stand diluted and the instrument will become admissible.

13. The question therefore is as to the extent of power to be exercised by the

Deputy Commissioner in the latter situation since it is the contention of the learned counsel for the respondent that it will amount to the Deputy Commissioner interfering with the order of the Civil Court. Such contention will not stand to reason on the face of it since the provision contained in Section 37(1) of the Karnataka Act is a situation where not only the Court would have determined the amount of penalty but would have also collected the same and will be sent to the Deputy Commissioner, yet the Deputy Commissioner is vested with the power to refund the penalty in the manner provided in Section 38 of the Karnataka Act, 1957 and in that regard, the Hon"ble Division Bench has explained that it is due to the reason that the collection of revenue is the duty of the Deputy Commissioner and not that of the Court. If in that light, the provision in Sections 37(2) and 39 are considered without losing sight of the provision in Section 38 of the Act, the power to consider and reduce the penalty cannot be held as not being available merely because the determined amount is not paid.

14. In that regard, the phrase "In every other case" contained in sub-section (2) of Section 37 of the Karnataka Act, 1957 will have to be understood to include not only an instrument which is merely impounded and referred but also an instrument impounded, relating to which the duty and penalty is determined but not paid by the party concerned. Thus if Sections 37, 38 and 39 of the Karnataka Act, 1957 are collectively considered and read in harmony, since in respect of an instrument referred under Section 37(1), Section 38 provides only for refund of the penalty, it will have to be held that in a case where the Impounding Authority has by a considered order determined the deficit duty and penalty and thereafter referred the impounded instrument under sub-section (2) of Section 37 of the Act, the Deputy Commissioner will have the power only to consider with regard to the reduction of penalty in the manner as it would be done under Section 38 of the Act. Therefore, there is no other option for the Court impounding an Instrument but to send it to the Deputy Commissioner. In fact this is also the view of the Hon"ble Supreme while considering similar provision under the Stamp Act, 1899.

15. In view of the above conclusion, in the instant case, though the instrument was impounded by this Court in W.P. No.44482/2014 and on direction issued therein the stamp duty and penalty was determined, it does not take away the liberty of the petitioner to seek that the impounded instrument be sent to the Deputy Commissioner in a circumstance where the Court concerned had not sent it as per the requirement under the Act. Hence, the order dated 10.03.2014 dismissing the application will not be justified. As already noticed, if the procedure contemplated in Section 37(1) of the Act is not availed and the suit is not continued, the proceedings before the Court will be stalled. In that regard, if the instrument concerned is the document without which the suit cannot be proceeded with as in the instant case, the course to be adopted will have to be in the manner indicated in the case of Peteti Subba Rao (supra) i.e., the Court sending it to the Deputy Commissioner will set a time frame and if it receives the certificate and the order of the Deputy Commissioner, it will proceed with the

suit. If within the time frame the instrument is not received, it may thereafter dismiss the suit and revive it as and when the certificate is received subsequently.

16. In the result, the following;

ORDER

"i. W.P. No.16694/2014 is dismissed.

ii. W.P. No. 16693/2014 is allowed in part.

iii. Consequently, the I.A. filed under Section 37(2) of the Karnataka Stamp Act, is also allowed in part.

iv. The Court below is directed to send the Arbitration award dated 31.05.2007 to the Deputy Commissioner (Stamps) and District Registrar, Gandhinagar, Bengaluru, in terms of the observations supra.

v. The parties to bear their own costs."