

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAI PUR

SB Civil Writ Petition No.7313/ 2007

Birju Singh

Vs.

Additional District Judge (Fast Track) No.1, Jhunjhunu
& anr.

Judgment reserved on 06/ 02/ 2015

Judgment pronounced on 27/ 02/ 2015

PRESENT
HON'BLE MR. JUSTICE J.K. RANKA

Mr. MK Jain, counsel for the petitioner

Mr. Intjar Ali, counsel for the respondents

Reportable

1. By way of instant writ petition, the petitioner, plaintiff in the suit for recovery, has assailed the order dt. 16/08/2007, whereby the trial court, while deciding the application moved by the defendant-respondent herein, under Order 13 Rule 3 read with Section 151 CPC, held a document dt.26/05/2003 to be a bond and directed the plaintiff-petitioner to deposit the deficit stamp duty alongwith penalty of 10 times of the requisite duty. The trial court further observed that the document shall be admissible in evidence only upon the plaintiff-petitioner depositing the deficit stamp duty alongwith penalty as described herein before and otherwise not.

2. Ld. counsel for the plaintiff-petitioner submits that

although the order of the trial court, holding the document in question to be a bond, is erroneous, however, the plaintiff-petitioner, in compliance of the order of this Court dt. 24/09/2007 has already deposited the deficit stamp duty and his grievance is with respect to 10 times penalty imposed by the trial court. According to him, imposition of 10 times penalty was not warranted and as such, that part of the order ought to be quashed and set aside. In support of his submission, he relied upon judgments rendered in the case of Pyare Mohan Vs. Smt. Narayani: AIR 1982 Rajasthan 43; M.L. Abdul Jabbar Sahib Vs. H. Venkata Sastri and Sons and others : AIR 1969 Supreme Court 1147; Gopaldas Vs. Ramdeo: RLW 1958 73; Ghanshamsingh Tirathsing and another Vs. Mahomed Yacoob: AIR 1933 Sind 257 and Hanuman Vs. Fattu: AIR 1967 Rajasthan 235.

3. Per-contra, Id. counsel for the defendant-respondent submits that the document was inadmissible in evidence and the impugned order suffers from no perversity or material irregularity. He also relied upon the judgments rendered in the case of Bherulal Vs. Ghisulal: RLW 1958 179; Ramdeo Vs. Gulabchand: RLW 1958 375; Hanuman Vs. Fattu: AIR 1967 Rajasthan 235; Gordhansingh and others Vs. Suwalal and Kalyanbus and others: AiR 1959 Rajasthan 156; Ujagar Singh Vs. Chanan Singh and others: AIR 1986

Punjab and Haryana 230; M. Venkatasubbaiah Vs. M. Subbamma and others: 1956 Andhra 195 (AIR V 43 C 56 Oct); Sita Ram Vs. R.D. Gupta and others: AIR 1981 Punjab and Haryana 83; Dhruba Sahu (dead) Vs. Paramananda Sahu: AIR 1983 Orissa 24; Pitchumanithevar Vs. Subbuthai : I (2003) BC 576; Bhagatram Gandhi Vs. Mohan Gupta : I (2001) BC 671; Laxman Krishnaji Mustilwar Vs. Ramesh Amarchand Agrawal and anr.: I (2000) BC 405.

4. Heard Id. counsel for the parties and carefully perused the record.

5. From admitted facts, it emerges that it is the plaintiff-petitioner who has approached the Court impugning the order and the defendant-respondent has not challenged the order of impounding passed by the trial court and as such, the defendant-respondent, in the writ petition filed by the plaintiff-petitioner, cannot challenge that the trial court committed an error in even impounding the documents. As far as imposition of penalty is concerned, Section 44 of the Rajasthan Stamps Act provides ad-infra:-

“Collector's power to stamp instrument impounded

(1) When the Collector,-

(a) impounds any instrument under section 37, or

(b) receives any instruments sent to him under sub-section (2) of section 42, and such

instrument is chargeable with a duty under this Act, he shall adopt the following procedure,-

(i) if he is of opinion that such instrument is duly stamped or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be;

(ii) if he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of proper duty or the amount required to make up the same, together with a penalty of one hundred rupees; or, if he thinks fit and amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of one hundred rupees:

Provided that, when instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector may, if he thinks, fit, remit the whole penalty prescribed by this section.

(2) Every certificate under clause (a) of sub-section (1), shall for the purpose of this Act, be conclusive evidence of matters stated therein.

(3) Where an instrument has been sent to the Collector under sub-section (2) of section 42, the Collector shall, when he has dealt with it as provided by this section, return it to the impounding officer."

6. A bare perusal of the aforesaid section of the Rajasthan Stamps Act demonstrates that a discretion is vested in the Collector to levy a penalty of Rs.100/- or an amount not exceeding 10 times the amount of proper duty. But the Rajasthan Stamps Act, 1998 came into force on 27/05/2004 and thus was not applicable to the document in question being dated 26/05/2003.

7. Section 40 of the Indian Stamps Act, 1899 which was applicable to the said document, defines the power of the Collector which provides ad-infra:-

"40. Collectors' power to stamp instruments impounded.- (1) When the Collector impounds any instrument under section 33, or receives any instrument sent to him under section 38, sub-section (2), not being an instrument chargeable [with a duty not exceeding ten naya paise] only or a bill of exchange or promissory note, he shall adopt the following procedure:-

- (a) if he is of opinion that such instrument is duly stamped, or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be;*
- (b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of the*

five rupees; or if he thinks fit, [an amount not exceeding] ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees:

Provided that, when instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector may, if he thinks, fit, remit the whole penalty prescribed by this section.

(2) Every certificate under clause (a) of sub-section (1) shall, for the purpose of this Act, be conclusive evidence of matters stated therein.

(3) Where an instrument has been sent to the Collector under sub-section 38, sub-section (2), the Collector shall, when he has dealt with it as provided by the section, return it to the impounding officer."

8. A bare glance of the above said provision reveals that a discretion is vested with the Collector to impose a penalty from Rs.5/- upto the amount not exceeding 10 times and such being the position, looking to the peculiar facts and circumstances of the case, which involves a petty sum of Rs.34,800/- (Rs.58,800/-), this Court is of the opinion that imposition of 10 times penalty was unwarranted and the minimum penalty of Rs.5/- was just and equitable.

9. As a result of the above discussion, the instant writ petition succeeds and is hereby allowed. The order passed by

the trial court is partly modified and it is ordered that if the plaintiff-petitioner deposits penalty of Rs.5/- in accordance with law, the document shall be treated to be admissible in evidence. Even otherwise, this Court has already ordered on 24/09/2007 that the documents shall be provisionally liable to be read in evidence. So far as the refund of the duty already deposited by the petitioner is concerned, this Court is of the opinion that no such order is warranted in the facts and circumstances of the case and the prayer with respect to the same is declined. Since the matter pertains to the document, which was executed in the year 2003 and the suit is pending for last more than seven years, therefore, the trial court is directed to proceed ahead to decide the suit expeditiously and preferably within a period of six months of receipt of certified copy of this order in accordance with law.

(J.K. Ranka), J.

Raghu

Certificate: All corrections made in the judgment / order have been incorporated in the judgment / order being e-mailed.

Raghu, Sr. PA.