

**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

**BEFORE  
HON'BLE SHRI JUSTICE VIVEK RUSIA**

**ON THE 22<sup>nd</sup> OF AUGUST, 2023**

**MISC. PETITION No. 3009 of 2022**

**BETWEEN:-**

**MAHENDRA S/O SHRI NATHULAL JI JAIN, AGED ABOUT 55 YEARS,  
OCCUPATION: BUSINESS 204 J.B. COMPLEX, 2/3 RACE COURSE ROAD  
INDORE (MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI VISHAL BAHETI, ADVOCATE)***

**AND**

**RAMVILAS SHUKHLA S/O RAMSEVAK SHUKHLA DECEASED THR  
1. LRS ASHA W/O LATE RAMVILAS SHUKHLA M.G. ROAD DHAR NAKA  
TEHSIL MHOW DISTRICT INDORE (MADHYA PRADESH)**

**RAMVILAS SHUKHLA S/O RAMSEVAK SHUKHLA DECEASED THR  
2. LRS DR. RAMENDRA S/O RAMVILAS SHUKLA R/O M.G. ROAD DAHR  
NAKA TEHSIL MHOW (MADHYA PRADESH)**

**RAMVILAS SHUKHLA S/O RAMSEVAK SHUKHLA DECEASED THR  
3. LRS PRIYANKA D/O LATE RAMVILAS SHUKLA R/O M.G. ROAD DAHR  
NAKA TEHSIL MHOW (MADHYA PRADESH)**

**RAMVILAS SHUKHLA S/O RAMSEVAK SHUKHLA DECEASED THR  
4. LRS NUPUR D/O LATE RAMVILAS SHUKLA R/O M.G. ROAD DAHR  
NAKA TEHSIL MHOW (MADHYA PRADESH)**

**5. THE STATE OF MADHYA PRADESH COLLECTOR COLLECTOR  
OFFICE (MADHYA PRADESH)**

**.....RESPONDENTS**

***(RESPONDENT SNO.1 TO 4 BY SHRI PRAVEEN KUMAR PAL , ADVOCATE)***

***(RESPONDENT NO.5 BY SHRI SUDARSHAN JOSHI, GOVERNMENT  
ADVOCATE)***

*This petition coming on for admission this day, the court passed the following:*

O R D E R

The petitioner has filed the present petition under Article 227 of the Constitution of India being aggrieved by the order dated 31.03.2022, whereby V District Judge, Ambedkar Nagar, Indore has directed the petitioner to deposit Rs.26,99,400/- as an amount of deficit stamp duty with penalty payable on three sale agreements.

02. Facts of the case in short are as under:-

2.1. The petitioner has filed a suit for specific performance of contract and permanent injunction valued at Rs.12,85,26,000/- against late Ramvilas Shukla who died during pendency of the suit. According to the plaintiff, he entered into an agreement to sale with late Ramvilas Shukla for the land mentioned in paragraph – 1 of the plaint. The descriptions of advance payment to late Ramvilas Shukla are given in paragraph – 4 of the plaint. According to him, only Rs.7,70,00,000/- remained for payment for which he was ready to pay. The plaintiff paid Rs.1,50,000/- as fixed court fee. An agreement to sale was executed on 25.10.2011, thereafter, two more supplementary agreements were executed at the time of part payment to late Ramvilas Shukla. All the three agreements were neither investigated nor adequately stamped.

2.2. The defendants filed an application under Section 17, 49 of the M.P. Registration Act & Section 33 of the Indian Stamp Act which came up for consideration on 13.12.2018. After hearing the plaintiff's objection, the learned District Judge held that agreements

dated 25.10.2011 and 06.08.2012 and 09.12.2011 are insufficiently stamped, therefore, 1% interest is liable to be paid and directed the plaintiff to get these impounded.

2.3. The plaintiff did not challenge the aforesaid order and filed an application under Section 35 of the Indian Stamp Act on 21.01.2019 stating that he is ready to deposit amount of the Rs.7,70,000/- which is 1% of Rs.7,70,00,000/-. In paragraph – 2 of the application, he has admitted that as per the recent amendment in Section 35 of the Indian Stamp Act, equal amount of penalty is liable to be imposed of the deficit stamp duty for which the order is liable to be passed by the concerned Court. The learned Court vide order dated 31.03.2022 has held that the deficit stamp duty is Rs.13,49,700/- and equal amount of penalty is liable to be deposited and directed the plaintiff to deposit Rs.26,99,400/- by way of challan in 0030 stamp and registration head of the treasury and after deposit of receipt, all the three agreements shall be admissible in the evidence.

03. Learned counsel for the petitioner submits that the learned Court has committed jurisdictional error while ascertaining the amount of the stamp duty and penalty under the provisions of the stamp Act in view of the judgment passed by this Court in the case of *Bhagwati Prasad v/s Mathura Devi reported in 2012 (3) M.P.L.J. 170* in which it has been held that the Court has to send the document to the Collector to deal with the document in the manner prescribed under Section 40 of the Indian Stamp Act, therefore, impugned order be set aside and the learned trial Court be directed to send all the three agreements to the Collector, Stamp for deciding the stamp duty

as well as penalty.

04. Learned counsel for the respondents oppose the aforesaid prayer by submitting that the petitioner / plaintiff himself filed an application before the Court for depositing of the deficit stamp duty. The plaintiff has wrongly calculated the value of the instrument Rs.7,70,00,000/- and trying to deposit the less amount of stamp duty i.e. Rs.7,70,000/-. The stamp duty is liable to be paid on the sale consideration of the property mentioned in the agreement and not on the balance amount payable by the prospective purchaser at the time of registration in the sale deed. In view of the recent amendment in Sections 35 & 40 of the Indian Stamp Act, only 2% duty is liable to be imposed, therefore, there is no question of any adjudication by the Collector of Stamp. Hence, the judgment relied by the petitioner is not applicable in the present case.

05. In the present case, the issue of payment of stamp duty and impounding has already been decided vide order dated 13.12.2018. The plaintiff himself filed an application before the Court by submitting that in view of the amendment, the Court is competent to decide the issue of stamp duty and penalty. Paragraph – 2 of the application is reproduced below:-

2. यही कर्तव्य मानने के लिए धरा 35 स्टम्प एक्ट के अनुसार यह नियम बनाये गये हैं कि अनुबंध में लगे जाने वाले स्टम्प की कमी संबंधी स्टम्प तथा कमी स्टम्प के बहाव हेतु प्लेफर फॉर जस्टिस सेगी तथा उच्च अदालत में न्यायलय हेतु ही करन होंगे।

06. According to the plaintiff, he is ready to deposit Rs.7,70,000/- which is 1% of Rs.7,70,00,000/-. The stamp duty is liable to be on the value of the property mentioned in the deed. The trial Court has rightly held that the deficit stamp duty is Rs.13,49,700/- which is

liable to be paid as total sale consideration is Rs.13,50,00,000/- with equal amount of penalty. The plaintiff himself invited the impugned order by filing an application on 21.01.2019. Now in view of the amendment in Sections 35 & 40, there is no scope of adjudication. Sections 35 & 40 of the Indian Stamp (Madhya Pradesh Amendment) Act is reproduced below:-

“4. Amendment of Section 35. - In Section 35 of the principal Act, in the proviso,-

(i) for clause (a), the following clause shall be substituted, namely:-

"(a) any such instrument shall be admitted in evidence, registered or authenticated on payment of the duty with which the same is chargeable, or. In the case of an instrument insufficiently stamped, of the amount required to make up such duty together with a penalty of two percent of the deficient portion of stamp duty for every month or part thereof, from the date of execution of the instrument, but in no case the amount of penalty so calculated shall exceed the principal amount of deficit stamp duty to be recovered;"

(ii) for clause (d), the following clause shall be substituted, namely:-

"(d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter IX or part D of chapter X of the Code of Criminal Procedure, 1973 (No. 2 of 1974);";

(iii) clause (f) shall be deleted.

5. Substitution of section 40. - For Section 40 of the principal Act, the following Section shall be substituted, namely:-

"40. Collector's power to stamp instruments impounded. - (1) When the Collector impounds any instrument under section 33, or receives any instrument sent to him under sub-section (2) of Section 38, not being a receipt 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, after holding an enquiry, 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 two percent of the deficient portion of stamp duty for every month or part thereof from the date of execution of the instrument and shall certify by endorsement thereon that it is duly stamped. The amount shall be payable by the person liable to pay the duty:

Provided that in no case the amount of penalty so calculated shall exceed the principal amount of deficit stamp duty to be recovered:

Provided further that, when such 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;

(c) for the purpose of enquiry under this chapter, the Collector shall have the power to summon and enforce the attendance of witnesses, including the parties to the instrument or any of them and to compel the production of documents by the same means and so far as may be in the same manner as is provided in the case of Civil Court under the Code of Civil Procedure, 1908 (5 of 1908);

(d) any person aggrieved by an order of the Collector under sub-section (1) may, in the prescribed manner, appeal against such order to the officer notified by the State Government in this regard:

Provided that no appeal shall be admitted unless such person has deposited at least 25 percent of the amount of deficit stamp duty as ordered by the Collector. Such amount shall be adjustable against the amount payable as per final order of the appellate authority, or refundable together with an interest of one percent for every month or part thereof from the date of deposit;

(e) any person aggrieved by an order passed in appeal under clause (d) may appeal against such order to the Chief Controlling Revenue Authority in the prescribed manner;

(f) every first and second appeal shall be filed within thirty days from the date of communication of the order against which the appeal is filed, along with a certified copy of the order to which the 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;

(g) the appellate authority, in deciding the appeal, shall follow such procedure as may be prescribed:

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

(h) subject to orders passed in first or second appeal, as the case may be, the order passed by the Collector under sub-section (1) shall be final and shall not be called into question in any Civil Court or before any other authority whatsoever.

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

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

08. Clause (a) of the proviso to Section 35 provides that any such instrument shall be admitted in evidence, registered or authenticated on payment of the duty, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty together with a penalty of two percent of the deficient portion of stamp duty. Therefore, for the purpose of admission of the document in the Court, the newly inserted provision would be applicable for which the Court is competent to pass an appropriate order.

09. Section 40 applies to a situation where the Collector impounds any instrument under Section 33, or receives an instrument sent to him under sub-section (2) of Section 38. Section 40(1)(b) also provides for payment of amount required to make up the same, together with a penalty of 2% of the deficit portion of stamp duty. Therefore, there is no scope of adjudication by the Collector and as on today only the Court can pass an order under Section 35(1)(a)

before admission of agreement to sale in the evidence. Hence, no case for interference is made out in the matter.

In view of the above analysis, Miscellaneous Petition stands dismissed with a cost of Rs.10,000/- payable to the defendants.

(VIVEK RUSIA)  
J U D G E

Ravi