

Seetharama Shetty Vs. Monappa Shetty

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Court : Supreme Court of India

Decided On : Sep-02-2024

Judge : Hon'Ble Mr. Justice Hrishikesh Roy Hon'Ble Mr. Justice S.V.N. Bhatti

Appeal No. : C.A. No.-010039-010040 - 2024

Appellant : Seetharama Shetty

Respondent : Monappa Shetty

Advocate for Pet/Ap. : ANIRUDH SANGANERIA __

Judgement :

2024 INSC650REPORTABLE IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL NOS. 10039-40 OF2024[@S.L.P. (CIVIL) NOS. 7249-7250 OF2022 SEETHARAMA SHETTY APPELLANT(S) Versus MONAPPA SHETTY RESPONDENT(S)

JUDGMENT

S.V.N. BHATTI, J.

1. Leave granted.

2. The Civil Appeals arise from an order dated 14.09.2021 in Review Petition No.340 of 2019 and Writ Petition No.30734 of 2019.

3. In these Civil Appeals, the scope of Sections 33, 34, 37, and 39 of the Karnataka Stamp Act, 1957 (for short, the Act) arises for consideration. I. FACTUAL MATRIX⁴ The appellant filed O.S. No.295 of 2013 for perpetual injunction restraining the respondent from interfering with the appellants peaceful possession and enjoyment of the plaint schedule property. The plaint schedule property consists of agricultural land in Kavoor village of Mangalore taluk. The prayer for injunction rests on the plea that the respondent entered into the agreement of sale dated 29.06.1999 with the appellant. The appellant claims to have been put in possession of the plaint schedule property as part performance under the agreement of sale dated 29.06.1999 by the respondent. The other clauses covered by the agreement are not adverted to as part of the narrative, for they are of little relevance for disposing of the Civil Appeals.

5. It is alleged that the respondent, contrary to the possession given as part performance under the suit agreement, tried to dispossess the appellant. This led to exchange of notices between the parties. The sheet anchor in the appellants narrative is that the agreement of sale dated 29.06.1999 exists between the parties, and in part performance thereunder, the appellant was put in possession of the plaint schedule property by the respondent. Contrary to the ad idem of the parties in putting the appellant in possession, the respondent was trying to dispossess the appellant from the plaint schedule property. Therefore, the suit was filed for the relief of perpetual injunction. Briefly narrated, the possession claimed under the 2 agreement of sale is sought to be protected through the prayer for perpetual injunction.

6. The respondent denies the execution of the agreement of sale dated 29.06.1999. The appellant, since claims possession through the agreement of sale, the suit agreement shall be treated as a conveyance. The suit agreement is insufficiently stamped. Therefore, the document is inadmissible in evidence unless the document is made compliant with the requirements of the Act. 6.1. The respondent filed an application before the trial court under Section 33 of the Act to impound the suit agreement to collect the deficit stamp duty and penalty in accordance with the Act. By order dated 10.11.2016, the trial court sent the agreement of sale dated 29.06.1999 to the District Registrar for determination of

requisite stamp duty and penalty payable on the agreement of sale. The record discloses that the District Registrar expressed inability to determine the deficit stamp duty and penalty payable on the suit agreement for want of the name of the village, hence, returned the instrument to the trial court. Thereafter, the appellant filed a memo dated 26.04.2017 purporting to clarify the name of the village in the schedule of the agreement of sale. The said effort was opposed by the respondent, namely ex-post-facto incorporation of material details into 3 the suit agreement; gaps in the agreement are not filled up by the appellant to the detriment of the respondent. The trial court, agreeing with the respondents objection, rejected the memo dated 26.04.2017. The appellant filed Writ Petition No.8506 of 2018 challenging the trial courts order dated 12.08.2017 before the High Court of Karnataka. On 10.08.2018, the Writ Petition was disposed of, and the operative portion reads thus: Accordingly, in modification of the impugned order dated 12.08.2017, it is directed that a copy of the memo filed by the plaintiff may be sent by the Trial Court to the office of the District Registrar for appropriate proceedings in accordance with law. However, it is made clear that the order and proposition with reference to the name of the village mentioned by the plaintiff/petitioner shall have relevance only for the purpose of calculation of deficit stamp duty and other charges but shall have no bearing on the merit consideration of the submissions of the parties, including the submissions of the defendant/respondent about the genuineness and the validity of the document in question and the corresponding right of the plaintiff/petitioner to contest such objections.

7. The District Registrar, through report dated 10.11.2016, determined the deficit stamp duty payable on the instrument at Rs. 71,200/-. The trial court, by order dated 23.01.2019, directed the appellant to pay the deficit stamp duty of Rs.71,200/- and ten times penalty on the agreement of sale dated 29.06.1999. Thus, the total levy of stamp duty and penalty is Rs. 7,83,200/-. The appellant assailed the order dated 23.01.2019 in O.S. No.4 295 of 2013 in Writ Petition No.30734 of 2019 before the High Court. The Writ Petition was dismissed, and the appellant was granted four months time for payment of deficit stamp duty and the penalty. The appellant filed Review Petition No.340 of 2019, and through the impugned order dated 14.09.2021, the Review Petition was dismissed. Hence, the

Civil Appeals have been filed questioning the orders dated 23.01.2019 and 14.09.2021.

8. The learned Single Judge has, in great detail, referred to all the attending circumstances, appreciated their implication vis--vis the statutory obligation under the Act to pay ad valorem stamp duty on an agreement of sale satisfying the definition of a conveyance under the Act and dismissed the Review Petition. The findings, in brief, are as follows:

8. 1. Section 33 of the Act requires the adjudicating authorities to impound and determine the duty payable on the suit agreement. 8.2. Section 34 of the Act provides for levy of deficit stamp duty and penalty. The Section employs the expression ten times the amount of the proper duty or deficit portion thereof. Therefore, there is no discretion granted to the adjudicating authorities to waive or reduce the penalty. 8.3. Only on the payment of deficit stamp duty along with ten times penalty, the suit agreement is relied in evidence. 5

8.4. The text used in Sections 34 and 39 of the Act cannot be linguistically approximated, as the legislature has not vested the discretion given to the Deputy Commissioner under Section 39 of the Act in the same way to the adjudicating authorities under Section 34 of the Act. 8.5. Relying on case law, the impugned order noted that the adjudicating authorities do not have the discretion to disobey the legislative command to waive or reduce the penalty in any circumstance. The discretion however extends to the grant of a reasonable time for the payment of duty and penalty. 8.6. Thus, through the Impugned Order, the Learned Single judge concluded that the Review Petition fails, and the appellant was granted a period of six months time to pay the deficit stamp duty along with ten times penalty.

9. Hence, the Civil Appeals.

10. We have heard the learned counsel and also Ms. Liz Mathew, who was appointed as Amicus Curiae to assist the Court. II. SUBMISSIONS¹¹ Learned counsel for the appellant firstly contends that the suit document conforms to the requirements of the Act and the suit was for injunction. Considering the total

circumstances, it is argued that even if the 6 suit document is not stamped correctly but having regard to the orders dated 12.08.2017 and 10.08.2018, the trial court ought not to have decided the deficit stamp duty and penalty under Section 34 of the Act. Instead, the trial court ought to have sent the impounded instrument to the District Registrar for determining the stamp duty and the penalty. Thereupon, the District Registrar would have exercised his discretionary jurisdiction under Section 39 of the Act and determined the quantum of penalty payable by the appellant. In the case on hand, the dispute arose on the application filed by the respondent requesting to send the suit document to the District Registrar for determination of duty and penalty. The District Registrar has sent a report on the stamp duty payable but has not collected the deficit stamp duty or levied the penalty on the suit agreement. It is argued that the case falls under Section 37(2) of the Act, and the impugned orders have denied the appellant the option to have the penalty decided by the District Registrar. Therefore, the trial court and the High Court have committed an illegality by exercising the jurisdiction under Section 34 of the Act.

12. The learned Amicus Curie places reliance on Gangappa and another v. Fakkirappa¹, Trustees of H.C. Dhanda Trust v. State of 1 (2019) 3 SCC788 7 Madhya Pradesh and others², Digambar Warty and others v. District Registrar, Bangalore Urban District and another³, K. Amarnath v. Smt. Puttamma⁴, Suman v. Vinayaka and others⁵, Niyaz Ahmed Siddique v. Sanganageria Company Private Limited⁶, United Precision Engineers Private Limited v. KIOCL Limited⁷, Chilakuri Gangulappa v. Revenue Divisional Officer, Madanpalle⁸, and Sri. K. Govinde Gowda v. Smt. Akkayamma and others⁹, and contends that the scope of jurisdiction in receiving in evidence insufficiently stamped instruments by every person, having by law or consent of parties, authority to receive evidence and every person in charge of a public office on the one hand and the Deputy Commissioner/District Registrar on the other hand, is fairly well-settled by the binding precedents. The scope of discretion available in two distinct forums covered by Sections 34 and 39 of the Act is fairly well settled and defined. 12.1. It is further argued that the ratio in Chilakuri Gangulappa (supra) is not applicable to the facts and circumstances of this case. The trial court 2 (2020) 9 SCC510 3 ILR 2013 KAR2099 4 ILR 1999 KAR4634 5 (2013) SCC OnLine Kar 10138. 6 (2023)

SCC OnLine Cal 1391. 7 (2016) SCC OnLine Kar 1077. 8 (2001) 4 SCC197 9 ILR 2011 KAR4719 8 while considering the prayer for an injunction by relying on the suit document, exercised its jurisdiction under Section 34 of the Act. The procedure under Section 37(2) of the Act arises in the cases not attracting Section 37(1) of the Act. The discretionary jurisdiction under Section 39 of the Act is exclusive to the District Registrar/Deputy Commissioner while exercising the powers under the Act. Thus, expecting the court to exercise the discretion of Section 39 of the Act is untenable. III. ANALYSIS¹³ We have perused the record and noted the rival submissions. The following points arise in the Civil Appeals: I. Whether the agreement of sale dated 29.06.1999, with a recital on delivery of possession to the appellant, conforms to the definition of conveyance under Section 2(d) read with Article 20(1) of the Schedule of the Act or not?. II. Whether, in the facts and circumstances of the case, the order dated 23.01.2019 of trial court, as confirmed by the impugned orders dated 23.08.2019 and 14.09.2021, are legal and valid or call for interference by this Court under Article 136 of the Constitution of India?. 9 POINT I¹⁴ Agreement of sale dated 29.06.1999, among other clauses, refers to the alleged delivery of possession in favour of the appellant by the respondent. Article 5 of the Schedule of the Act deals with an agreement of sale coupled with possession and the requirement of paying the ad valorem stamp duty. If an instrument conforms to the requirements of conveyance under Section 2(d) read with Article 20(1) of the Schedule of the Act, the applicable stamp duty is ad valorem. In other words, ad valorem stamp duty is paid on such instruments. The learned counsel appearing for the appellant has not argued on the applicability of the clause dealing with possession in the agreement and requirement to ad valorem pay stamp duty. The relief of injunction is sought on the basis of delivery of possession by the respondent under the suit agreement. The following Judgments are relevant and are close in circumstance to the case on hand and are referred to. 14.1. Gangappas case (supra), analysed a situation on an insufficiently stamped document produced before a court, and compared Sections 34 and 39 of the Act and held that the discretion conferred by the provision is different by the text and the context of these provisions. This Court upheld the ratio laid in Digambar Warty (supra) and held that even though no 10 discretion was provided to the court to impose a reduced penalty, Section 38 of

the Act empowered the Deputy Collector to refund the duty so collected. In paragraph 18 of the Judgment, it is recorded that: 18. The above view of the Karnataka High Court that there is no discretion vested with the authority impounding the document in the matter of collecting duty under Section 33, is correct. The word used in the said proviso is shall. Sections 33 and 34 clearly indicate that penalty imposed has to be 10 times. The Division Bench of the Karnataka High Court in Digambar Warty [Digambar Warty v. Bangalore Urban District, 2012 SCC OnLine Kar 8776 : ILR 2013 KAR2099 has rightly interpreted the provisions of Sections 33 and 34 of the Act. We, thus, are of the view that the High Court in the impugned judgment [Fakkirappa v. Gangappa, 2014 SCC OnLine Kar 12775]. did not commit any error in relying on the judgment of the Division Bench in Digambar Warty [Digambar Warty v. Bangalore Urban District, 2012 SCC OnLine Kar 8776 : ILR 2013 KAR2099. We thus have to uphold the above view expressed in the impugned judgment [Fakkirappa v. Gangappa, 2014 SCC OnLine Kar 12775].. However, as a one-time measure, this Court allowed closing the matter by confirming the payment of deficit duty with the double penalty as imposed by the trial court. The precedent interpreted the discretionary limits under Section 34 of the Act. 14.2. In United Precision Engineers Private Limited (supra), the question arose as to the extent of power exercised by Deputy Commissioner under Section 37(2) of the Act. The Court observed that the phrase in every other case contained in Section 37(2) of the Act will have to be understood to include not only an instrument which is merely 11 impounded and referred but also an instrument impounded, relating to which duty and penalty determined but not paid by the party. The court observed that as per the combined reading of the sections, if the impounding authority determined the penalty under Section 37(1) of the Act, and thereafter, sends the document to Deputy Commissioner under Section 37(2) of the Act, then the Deputy Commissioner will have the power to reduce the penalty under Section 38 of the Act. The ratio deals with the interplay between Sections 37 and 38 of the Act.

15. The impugned order, in fact, refers to these judgments. The High Court has correctly distinguished the jurisdiction vested in every person or a person in the public office on the one hand and on the other hand the District Registrar in determining the penalty payable on insufficiently stamped instrument. The ratio in

all fours is applicable to the circumstances of the case. Therefore, by relying on the above judgments, it is held that the appellant, with a view to produce in evidence the agreement of sale in the suit, must pay the deficit stamp duty and penalty. We are confirming the findings of the High Court in this behalf. The next question for consideration is whether in the facts and the circumstances of the case, the penalty determined by the Court on the instrument instead of sending the 12 instrument to the District Registrar for determination and collection of penalty as may be applicable is legal. POINT II16 Chapter IV of the Act is both mandatory and regulatory. Section 33 mandates every person having by law or consent of parties authority to receive evidence and every person in charge of public office (for short, Every Person/Court) when an instrument insufficiently stamped is produced, the person is mandated to impound the insufficiently stamped instrument. In law, the word impound means to keep in custody of the law.¹⁰ Having taken legal custody of the insufficiently stamped document, the inter-play available between Sections 33, 34, 37, 38 and 39 of the Act, as the case may be, would start operating. Sub-section (2) of Section 33 of the Act fastens an obligation to examine the instrument on the duty payable, value etc. of the instrument. Unless it is duly stamped, Section 34 of the Act, prohibits Every Person/Court from admitting in evidence or act upon an insufficiently/improperly stamped instrument. The proviso to Section 34 of the Act, subject to deposit, of deficit stamp duty and penalty enables 10 (2003) 3 SCC674 13 receipt of an instrument in evidence which is otherwise prohibited by Section 34 of the Act.

17. The object of the Act is not to exclude evidence or to enable parties to avoid obligations on technical grounds. Rather, the object is to obtain revenue even from such instruments which are at the first instance unstamped or insufficiently stamped. The said objective has the twin elements of recovering the due stamp duty and penalty, and also the public policy of binding parties to the agreed obligations. It is apposite to refer to the declaration of law by a seven-judge benches judgement of this Court on the object of the Indian Stamp Act, 1899. 17.1. In Re: Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899¹¹, a Seven- Judge Bench of this Court noted that Section 35 of the Indian Stamp Act, 1899 (analogous to Section 34 of the Act) unambiguously requires an instrument chargeable with stamp duty to only be

admitted in evidence if it is properly stamped. This Court further noted that improperly stamping the instrument does not render that instrument void or invalid. On the contrary, it is a defect which is curable upon payment of requisite stamp duty and penalty. The relevant paragraph reads thus:

11. (2024) 6 SCC1 14 54. Section 35 of the Stamp Act is unambiguous. It stipulates, No instrument chargeable with duty shall be admitted in evidence The term admitted in evidence refers to the admissibility of the instrument. Sub-section (2) of Section 42, too, states that an instrument in respect of which stamp-duty is paid and which is endorsed as such will be admissible in evidence. The effect of not paying duty or paying an inadequate amount renders an instrument inadmissible and not void. Non-stamping or improper stamping does not result in the instrument becoming invalid. The Stamp Act does not render such an instrument void. The non-payment of stamp duty is accurately characterised as a curable defect. The Stamp Act itself provides for the manner in which the defect may be cured and sets out a detailed procedure for it. It bears mentioning that there is no procedure by which a void agreement can be cured.

17.2. In *Hindustan Steel Limited v. Dilip Construction Company*¹², this Court held that the Indian Stamp Act, 1899 is a fiscal measure intended to raise revenue, and the stringent provisions of the Stamp Act cannot be used as a weapon to defeat the cause of the opponent. The relevant paragraph reads thus: 7. The Stamp Act is a fiscal measure enacted to secure revenue for the State on certain classes of instruments: It is not enacted to arm a litigant with a weapon of technicality to meet the case of his opponent. The stringent provisions of the Act are conceived in the interest of the revenue once that object is secured according to law, the party staking his claim on the instrument will not be defeated on the ground of the initial defect in the instrument. Viewed in that light the scheme is clear. 12 (1969) 1 SCC597 15 17.3. The ratio in *District Registrar and Collector v. Canara Bank*¹³ and *State of Maharashtra v. National Organic Chemical Industries Limited*¹⁴ and *Chiranji Lal v. Haridas*¹⁵ reiterated that the Indian Stamp Act, 1899 is a piece of fiscal legislation, and not a remedial statute enacted on demand of the permanent public policy to receive a liberal interpretation. The principles for interpreting a fiscal provision/law are fairly settled. There is no scope for equity or judiciousness

if the letter of law is clear and unambiguous in method, mode and manner of levy and collection. The decisions further held that the act authorises involuntary extraction of money, and therefore, is in the nature fiscal statute which has to be interpreted strictly. 17.4. Section 37 of the Act stipulates the procedure on how the instrument impounded is dealt with. The plain reading of Section 37(1) of the Act discloses that the person impounding the instrument under Section 33 of the Act and after receiving the penalty under Section 34 of the Act or duty under Section 36 of the Act, shall send to the Deputy Commissioner an authenticated copy of such instrument together with the amount of duty and penalty so levied and collected. Section 37(2) of the Act deals with an 13 (2005) 1 SCC496 14 (2024) SCC OnLine SC497 15 (2005) 10 SCC746 16 instrument not subjected to the procedure of Sections 34 or 36 of the Act. According to Section 37(2) of the Act, the instrument is sent to the Deputy Commissioner for enquiry and decision at his end. The Deputy Commissioner gets jurisdiction under Section 39 of the Act and then decides the duty and also the penalty leviable on the insufficiently stamped instrument. In this background, we take note of the principle laid down on the distinction in the discretion available to Every Person/Court and the discretionary jurisdiction conferred on the District Registrar. See, United Precision Engineers (supra) and Gangappa (supra). The settled distinction and discretion available under Sections 34 and 39 of the Act is no more res integra.

18. The above consideration does not actually address the appellant's argument under Section 37(2) read with Section 39 of the Act. Appellant contends that the respondents by filing an application for impounding the instrument, preferred to have deficit stamp duty and the penalty collected exclusively by the District Registrar because the admissibility or otherwise of the suit document is not yet considered by the trial court for any purpose. From the record, it appears that the instrument is likely to be considered at the interlocutory stage for granting or refusing temporary injunction. Therefore, the option available under Section 33 read with Section 37 of 17 the Act is set in motion, resulting in the instrument being sent to the District Registrar, and calling for a report.

19. A Three-Judge Bench of this Court in Trustees of HC Dhandha Trust v State of Madhya Pradesh¹⁶ held that in case of deficiency of Stamp Duty the Collector of

Stamps cannot impose ten times penalty under Section 40(1)(b) of the Indian Stamp Act, 1899 (analogous to Section 39(1)(b) of the Act) automatically or mechanically. The relevant paragraph reads thus: 22. The purpose of penalty generally is a deterrence and not retribution. When a discretion is given to a public authority, such public authority should exercise such discretion reasonably and not in oppressive manner. The responsibility to exercise the discretion in reasonable manner lies more in cases where discretion vested by the statute is unfettered. Imposition of the extreme penalty i.e. ten times of the duty or deficient portion thereof cannot be based on the mere factum of evasion of duty. The reason such as fraud or deceit in order to deprive the Revenue or undue enrichment are relevant factors to arrive at a decision as to what should be the extent of penalty under Section 40(1)(b). (Emphasis supplied) 16 (2020) SCC OnLine SC75318 20. Further, in *Petiti Subba Rao v. Anumala S. Narendra*¹⁷, this Court notes on the discretionary limits while interpreting analogous provisions¹⁸ in the Indian Stamp Act, 1899 that: 6. 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. (Emphasis supplied) 17 (2002) 10 SCC42718 Karnataka Stamp Act, 1957 33 34 35 36 37 38 39 Indian Stamp Act, 1899 33 35 36 37 38 39 40 19 21. As per the steps taken under Sections 33¹⁹, 34²⁰, 35²¹, 37²², and 39²³ under Chapter IV of the Act, the position in law is well-established, and 19 Section 33: Examination and impounding of instruments.- (1) Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same. (2)

For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in the 1[State of Karnataka].1 when such instrument was executed or first executed: [1. Adapted by the Karnataka Adaptations of Laws Order, 1973 w.e.f. 1.11.1973.]. Provided that,- (a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898; (b) in the case of a Judge of the High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf. (3) For the purposes of this section, in cases of doubt, the Government may determine,- (a) what offices shall be deemed to be public offices; and (b) who shall be deemed to be persons in charge of public offices. 20 Section 34: Instruments not duly stamped inadmissible in evidence, etc.- No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped: Provided that,- (a) any such instrument not being an instrument chargeable 1[with a duty not exceeding fifteen naye paise].1 only, or a mortgage of crop [Article 1[35].1 (a) of the Schedule]. chargeable under clauses (a) and (b) of section 3 with a duty of twenty-five naye paise shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, or the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion; [1. Substituted by Act 29 of 1962 w.e.f. 1.10.1962.]. (b) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped; (c) 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 XII or Chapter XXXVI of the Code of Criminal Procedure, 1898; (d) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government, or where it bears the certificate of the 1[Deputy Commissioner].1 as provided by section 32 or any other provision of this Act 2[and such certificate has not been revised in exercise of the powers conferred by the provisions of Chapter VI].2. [1. Substituted by Act 29 of 1962 w.e.f. 1.10.1962.]. [2. Inserted by Act 29 of 1962 w.e.f. 1.10.1962.]. 21 Section 35: Admission of instrument where not to be questioned.- Where an instrument has been admitted in evidence such admission shall not, except as provided in section 58, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped. 20 axiomatic by the letter of law and precedents of this Court. However, there are a few misgivings in the sequence of its application. For the benefit of practice and procedure, we sum up the steps as follows. 21.1. Section 33 of the Act is titled examination and impounding of instruments. The object of the provision is to disable persons from withdrawing the instruments produced by them on being told that proper stamp duty and penalty should be paid. 22 Section 37: Instruments impounded how dealt with.- (1) When the person impounding an instrument under section 33 has by law or consent of parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by section 34 or of duty as provided by section 36, he shall send to the 1[Deputy Commissioner].1 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 1[Deputy Commissioner].1 or to such person as he may appoint in this behalf. [1. Substituted by Act 29 of 1962 w.e.f. 1.10.1962.]. (2) In every other case, the person so impounding an instrument shall send it in original to the 1[Deputy Commissioner].1. [1. Substituted by Act 29 of 1962 w.e.f. 1.10.1962.]. 23 Section 39:

1. Deputy Commissioner].1's power to stamp instruments impounded.- (1) When the 1[Deputy Commissioner].1 impounds any instrument under section 33, or receives any instrument sent to him under sub-section (2) of section 37, not being an instrument chargeable 1[with a duty not exceeding fifteen naye paise].1 only or

a mortgage of crop [Article 1[35].1 (a) of the Schedule]. chargeable under clause (a) or (b) of section 3 with a duty of twenty-five naye paise, he shall adopt the following procedure:- [1. Substituted by Act 29 of 1962 w.e.f. 1.10.1962.]. (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 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 such instrument has been impounded only because it has been written in contravention of section 13 or section 14, the 1[Deputy Commissioner].1 may, if he thinks fit, remit the whole penalty prescribed by this section. [1. Substituted by Act 29 of 1962 w.e.f. 1.10.1962.]. (2) 1[Subject to any orders made under Chapter VI, every certificate].1 under clause (a) of sub- section (1) shall, for the purposes of this Act be conclusive evidence of the matters stated therein. [1. Substituted by Act 29 of 1962 w.e.f. 1.10.1962.]. (3) Where an instrument has been sent to the 1[Deputy Commissioner].1 under sub-section (2) of section 37, the 1[Deputy Commissioner].1 shall, when he has dealt with it as provided by this section, return it to the impounding officer. [1. Substituted by Act 29 of 1962 w.e.f. 1.10.1962.]. 21 21.1.1. The person who intends to rely on an insufficiently/improperly stamped instrument has option to submit to the scope of Section 34 of the Act, pay duty and penalty. The party also has the option to directly move an application under Section 39 of the Act before the District Registrar and have the deficit stamp duty and the penalty as may be imposed collected. In either of the cases, after the deficit stamp duty and the penalty are paid, the impounding effected under Section 35 of the Act is released and the instrument available to the party for relying as evidence. In the event, a party prefers to have the document sent to the deputy commissioner for collecting the deficit stamp duty and penalty, the Court/Every Person has no option except to send the document to the District Registrar. The caveat to the above is that, before the Court/Every Person exercises the jurisdiction under Section 34 of the Act, the option must be exercised by a party.

21.2. Section 34 of the Act is titled instruments not duly stamped inadmissible in evidence. This provision bars the admission of an instrument in evidence unless adequate stamp duty and the penalty are paid. Every person so authorised to collect deficit stamp duty and penalty has no discretion except to levy and collect ten times the penalty of deficit stamp duty. 22

21.3. Section 35 of the Act is titled admission of instrument where not to be questioned. Section 35 prohibits questioning the admission of an insufficiently stamped instrument in evidence. 21.4. Section 37 of the Act is titled instruments impounded, how dealt with. This Section arises when the party pays the deficit duty and penalty, the Court is to impound the instrument under Section 33 of the Act and has to forward the instrument to the Deputy Commissioner/District Registrar. Sub- section (2) of Section 37 of the Act deals with cases not falling under Section 34 and 36, and the person impounding an instrument shall send it in original to the Deputy Commissioner. This includes the exigencies set out in paragraph 21.1.1. 21.5. Being a regulatory and remedial statute, a party who follows the regulation, and pays the stamp duty and penalty, as per Sections 34 or 39 of the Act, the legal objection emanating from Section 33 of the Act alone is effaced and the document is admitted in evidence. In other words, the objection under the Stamp Act is no more available to a contesting party. 21.6. Section 39 of the Act is titled deputy commissioners power to stamp instruments impounded. This Section provides the procedure to be followed by the Deputy Commissioner/District Registrar while stamping instruments that are impounded under Section 33 of the Act. As per Section 39(1)(b) of 23 the Act, the penalty may extend to ten times the stamp duty payable; however, ten times is the farthest limit which is meant only for very extreme situations. Therefore, the Deputy Commissioner/District Registrar has discretion to levy and collect commensurate penalty. 21.7. The above steps followed and completed by paying/depositing the deficit duty and penalty would result in the instrument becoming compliant with the checklist of the Act. The finality is subject to the just exceptions envisaged by the Act addressing different contingencies. 21.8. The scheme does not prohibit a party to a document to first invoke directly the jurisdiction of the District Registrar and present the instrument before Court/Every Person after complying with the requirement of duty and penalty. In such an event, the available objection under

Sections 33 or 34 of the Act is erased beforehand. The quantum of penalty is primarily between the authority/court and the opposing party has little role to discharge.

22. Reverting to the circumstances of the case by keeping in perspective the steps summarised in the preceding paragraph, we notice that, before the stage of admission of the instrument in evidence, the respondent raised an objection on the deficit stamp duty. Therefore, it was the respondent who required the suit agreement to be impounded and then sent to the District 24 Registrar to be dealt with under Section 39 of the Act. In this case, the respondent desired the impounding of the suit agreement and collect the deficit stamp duty and penalty. The trial court is yet to exercise its jurisdiction under Section 34 of the Act. On the contrary, the trial court has called for a report from the District Registrar, so for all purposes, the suit instrument is still at one or the other steps summed up in paragraph 21. Therefore, going by the request of the respondent, the option is left for the decision of the District Registrar. Contrary to these admitted circumstances, though the suit instrument is insufficiently stamped, still the penalty of ten times under Section 34 of the Act is imposed through the impugned orders. The imposition of penalty of ten times at this juncture in the facts and circumstances of this case is illegal and contrary to the steps summed up in paragraph 21. The instrument is sent to the District Registrar, thereafter the District Registrar in exercise of his jurisdiction under Section 39 of the Act, decides the quantum of stamp duty and penalty payable on the instrument. The appellant is denied this option by the impugned orders. It is trite law that the appellant must pay what is due, but as is decided by the District Registrar and not the Court under Section 34 of the Act.

23. Hence, for the above reasons, the direction to pay ten times the penalty of the deficit stamp duty merits interference and accordingly is set 25 aside. The trial court is directed to send the agreement of sale dated 29.06.1999 to the District Registrar to determine the deficit stamp duty and penalty payable. Upon receipt of the compliance certificate from the District Registrar, without reference to an objection under the Act, the suit document be received in evidence. All objections available to the respondents except the above are left open for consideration.

24. Appeals are allowed in part, as indicated above. ..J.

(HRISHIKESH ROY) J.

(S.V.N BHATTI) NEW DELHI; SEPTEMBER02 2024. 26

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