

(2011) 05 CAL CK 0031

Calcutta High Court

Case No: C.O. No. 148 of 2011

Biswa Sarathi Ghosh and

Another

APPELLANT

Vs

Prahlad Chandra Singha and

Others

RESPONDENT

Date of Decision: May 20, 2011

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Abhishek Banerjee, for the Appellant; Hiranmoy Bhattacharya, for the Respondent

Final Decision: Dismissed

Judgement

Prasenjit Mandal, J.

Challenge is to the order No. 55 dated August 21, 2010 passed by the learned Civil Judge (Senior Division), 1st Court, Hooghly in Title Suit No. 249 of 2000 thereby disposing an application filed by the Plaintiff for lowering the amount of penalty in respect of impounding of a document.

2. The Plaintiff/opposite party herein instituted a suit being Title Suit No. 35 of 2003 against the Petitioners before the learned Civil Judge (Senior Division), 1st Court, Hooghly for specific performance of contract, permanent injunction etc. The Petitioners entered an appearance in the said suit and they are contesting the said suit. In course of dealing in the suit, the learned Trial Judge observed that the Plaintiff did not pay adequate stamp duty for the agreements and as such directed the local Collector for impounding the relevant agreements. The Collector valued the property of the suit and determined the amount to be paid for impounding the documents. Subsequently, the Defendants/Petitioners herein filed another application for reconsideration of the valuation of the suit property by the Collector. That application was rejected. Thereafter, the Plaintiff filed an application for exempting him from paying penalty to the extent of ten times on the assessed value

for impounding the documents and that application was disposed of by the impugned order directing the Plaintiff to make payment of the deficit amount of the stamp duty and a sum of Rs. 20,000/- on account of penalty for non-payment of actual stamp duty. Being aggrieved, this application has been preferred by the Defendants.

3. Upon hearing the learned Counsel for the parties and on going through the materials on record, I am of the view that this application has been filed to frustrate the object of filing the suit for specific performance of contract. So far as the Court-fee concerned, it is a matter between the Court and the Plaintiff and the Defendant is entitled to point out, if deficit court-fees are paid. In the instant case, when a document is filed without proper valuation and stamp thereon, the court may send the same to the Collector for determination of the actual valuation, the stamp duty payable thereon and the penalty for impounding the document. The maximum amount of penalty is ten times of the deficit court-fees. But it is within the discretionary power of the Court to determine the quantum of amount to be paid by the Plaintiff over the penalty. This has been clarified in an unreported decision in C.O. No. 4424 of 2007 passed by a Single Bench of this Hon"ble Court on April 15, 2008. Therefore, according to this decision, the Court has the exclusive jurisdiction to determine the quantum of penalty subject to the maximum of 10 times of the same. In the instant case, the learned Trial Judge directed that beside the actual deficiency of the stamp duty, the Plaintiff was required to pay a sum of Rs. 20,000/- as penalty.

4. Therefore, the learned Trial Judge has exercised his discretionary power for imposition of penalty. I think that such discretionary power should not be interfered with in exercising the revisional application. Therefore, there is no scope of interference with the impugned order.

5. Accordingly, this revisional application is dismissed.

6. Considering the circumstances, there will be no order as to costs.

7. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.