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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of Decision: 18th October, 2024***

+ CM(M) 3640/2024 & CM APPL. 61217-61218/2024

PUNITA BHARDWAJPetitioner

Through: Mr. Pankaj Gupta, Advocate with Mr.
Akshit Sachdeva, Advocate

versus

RASHMI JUNEJARespondent

Through: Mr. Vineet Jhanji and Mr. Imran
Moulaey, Advocates

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

CM APPL. 61218/2024 (exemption)

Exemption allowed, subject to all just exceptions.

CM(M) 3640/2024 & CM APPL. 61217/2024

1. Petitioner Ms. Punita Bhardwaj is judgment debtor in execution petition i.e. Ex. No. 117/2024 and challenges order dated 05.10.2024.
2. Said Execution petition has been filed in view of the arbitral award passed on 23.11.2022 whereby six connected cases and one counter claim were adjudicated by the learned Sole Arbitrator.
3. It is not in dispute that one of the respondents in said arbitral proceedings was Ms. Rashmi Juneja (respondent herein). While defending the aforesaid arbitral proceedings, she had also submitted a counter-claim and the aforesaid execution is in terms of the award passed in her favour in relation to her such counter-claim.
4. In context of issue between the two parties here, it may be noted that, before the learned Sole Arbitrator, Punita Bhardwaj was seeking cancellation of a sale deed dated 28. 7.2010 executed by her in favour of



Rashmi Juneja and whereas Rashmi, in counter claim, sought to retrieve the possession of the said property from Punita Bhardwaj who purported to have retained the possession of the same.

5. The learned Sole Arbitrator, while allowing counter claim, observed that having held the sale deed dated 28.07.2010 registered on 29.07.2010 to be valid, the aspect of deciding such counter-claim was relatively easier as she had prayed for twin relief i.e. possession and the payment of mesne profits.

6. The total sale consideration of the property mentioned in sale deed dated 28.07.2010 is, admittedly, Rs. 1.12 crores which was reportedly paid by the counter-claimant Ms. Rashmi Juneja to Ms. Punita Bhardwaj. Besides above, learned Sole Arbitrator also assessed the mesne profits @ Rs. 50,000/- per month and the total amount for all the relevant months comes to Rs. 57,75,000/- as on date of filing of the execution petition i.e. on 29.05.2023.

7. During the execution proceedings, judgment debtor had raised several issues.

8. The impugned order dated 05.10.2024 talks about three different applications but at the moment, the present petition limits itself to the one passed in relation to the application moved by the judgment debtor under Section 35 of Indian Stamps Act, 1899.

9. According to judgment debtor, the award was scribed on non-judicial stamp paper of Rs. 500/- and, therefore, it was insufficiently stamped and, therefore, it ought to have been impounded by the Court and should have been sent to Collector for adjudication of proper stamp duty, before proceeding any further with the execution petition.



10. Such request has been declined by the learned Executing Court.
11. Learned counsel for Decree Holder has appeared on advance notice.
12. This Court has gone through the impugned order carefully and heard learned counsel for both the sides.
13. Learned counsel for Decree Holder submits that well before the filing of execution petition, the requisite stamp was paid through electronic mode on 25.05.2023. Such total stamp duty was Rs. 21,000/-, which was even more than what was payable as per the schedule and and, since it had already been duly paid, there was no reason or occasion for the learned Executing Court to have impounded it. Therefore, relying on *Mohini Electricals Ltd. Vs. Delhi Jail Board: (2021) SCC OnLine Delhi 3506*, it has been contended that learned Trial Court was fully justified in dismissing the aforesaid application moved by judgment debtor.
14. According to learned counsel for judgment debtor (petitioner herein), whereas the calculation of the stamp duty is not proper and sufficient stamp duty has not been paid.
15. According to him, worth of the property in question is approximately Rs. 7 crores as on date and such market value was required to be taken into consideration for the purpose of paying stamp duty and not the sale consideration as mentioned in the sale deed. In this regard, he relies upon *Maung Po Tun and another Vs. U. Sandiwara: AIR 1935 Rangoon 204*. It is also contended that even otherwise the award is silent as to what was the value of the property in question on the date of the award.
16. There does not seem to any doubt that the stamp duty was paid on 23.05.2023 and the execution was instituted on 29.05.2023.
17. However, the question is whether duty so paid is sufficient or not.



18. This Court has seen the nature of the counter-claim raised by the counter-claimant before the learned Sole Arbitrator and the adjudication thereof by the learned Sole Arbitrator.

19. The property in question was bought by counter-claimant and undoubtedly, there is already a registered sale deed with respect to same very property and such registration took place, way back in the year 2010. Sale deed is, virtually, the very foundation of the award in question and learned Sole Arbitrator noticing that the sale deed was a valid one, the counter-claimant was held entitled to possession and also for mesne profits.

20. It is not in dispute that in terms of the relevant entry i.e. Article 12 appearing in Schedule 1A of Stamp (Delhi Amendments) Act, 2001, the Stamp Duty payable in Delhi in the present context would be 0.1% (one rupee for every thousand rupee).

21. Such duty is payable on value of property and mesne profits only.

22. If one sees the sale consideration as mentioned in the registered sale deed and the amount of mesne profits awarded by learned Sole Arbitrator, it would become clear that the duty paid is rather more than what was to be paid. The argument that the duty should have been paid on the market value of the property as it was on the date of the passing of the award does not click at all. In *Maung Po Tun (supra)*, the question was different as it was eventually observed that Award related to Monastery, which has no value. Moreover, it also noted that word "value" was not defined in the Stamp Act, but if the value of the property with which the instrument in question is concerned is not stated in the instrument, its value for purpose of stamp duty must be taken to be the price which could be obtained for it on a sale in open market. Here, as already noted above, we have the benefit of having a



registered sale deed which records sale consideration. Its nobody's case that such consideration amount has been undervalued and that price was much more than that in the year 2010.

23. Question of impounding document would come into play only if the Court learns that document is insufficiently stamped.

24. The moment, it was apprised by the Decree Holder that it had already paid the requisite stamp duty, there was no requirement of impounding the document. Undoubtedly, judgement debtor has taken a specific ground in his application moved before the learned Trial Court that the stamp duty has to be in terms of the market value and, unfortunately, there is no discussion with respect to the aforesaid aspect in the impugned order. However, in view of foregoing discussion, it does not matter as such ground is evidently unsustainable. Moreover, Stamp Act is a fiscal measure enacted to secure revenue for the State on certain classes of instruments and it has not been enacted to arm a litigant with a weapon of technicality to counter and oppose the case of its adversary.

25. Keeping in mind the overall facts this Court is of the view that there does not exist any reason whatsoever to impound the Award on the premise that it was insufficiently stamped.

26. Finding no reason to interfere with the impugned order, the present petition is hereby dismissed.

(MANOJ JAIN)
JUDGE

OCTOBER 18, 2024/dr