A.F.R.

Court No. - 19

Case :- WRIT - C No. - 7092 of 2024

Petitioner :- Ascent Education Trust,Kanpur Thru. Chairman Mr. Gurusharan Singh
Respondent :- State Of U.P. Thru. Addl. Chief Secy./Prin. Secy. Deptt. Of Revenue,Lko. And 2 Others
Counsel for Petitioner :- Ram Raj,Gokul Seth,Hanumant Lal Srivastava,Rishabh Raj
Counsel for Respondent :- C.S.C.

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Rishabh Raj Advocate, the learned counsel for the petitioner and Sri Hemant Kumar Pandey, the learned Standing Counsel representing all the opposite parties.

2. By means of the instant Writ Petition filed under Article 226 of the Constitution of India, the petitioner has challenged the validity of an order dated 12.12.2022 passed by the Collector, Unnao, holding that the petitioner has paid a deficient stamp-duty on a sale-deed dated 17.07.2017 executed in its favour and ordering recovery of a sum of Rs. 15,24,220/- towards deficient stamp-duty and an equal amount as penalty. The petitioner has also challenged the validity of an order dated 09.05.2024 passed by the Commissioner, Lucknow Division, Lucknow, dismissing the petitioner's appeal under Section 56 (1-A) of the Indian Stamp Act filed against the aforesaid order passed by the Collector.

3. The learned Standing Counsel has raised a preliminary objection that in the order dated 09.05.2024 passed by the Commissioner Lucknow Division, Lucknow, it is recorded that it was stated on behalf of the petitioner-appellant that the penalty of Rs. 15,24,220/- imposed by the Collector, Unnao be waived and the appellant was ready to deposit the

amount of deficient stamp duty i.e. Rs. 15,24,220/-. He has submitted when the order was passed accepting the offer made on behalf of the petitioner itself, it is not open for the petitioner to turn around and challenge the validity of the order. In support of his support of his submission, the learned Standing Counsel relied upon a judgment of Hon'ble Supreme Court in the case of **B. L. Sreedhar and others Vs. K.M. Munireddy (Dead) and others**: (2003) 2 SCC 355, wherein it has been held that: -

> ***"13.*** *Estoppel is a rule of evidence and the general rule is enacted in Section 115 of the Indian Evidence Act, 1872 (in short "the Evidence Act") which lays down that when one person has by his declaration, act or omission caused or permitted another person to believe a thing to be true and to act upon that belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing. (See Sunderabai v. Devaji Shankar Deshpande AIR 1954 SC 82.)*
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> ***14.*** *"Estoppel is when one is concluded and forbidden in law to speak against his own act or deed, yea, though it be to say the truth" — Co Litt 352(a), cited in Ashpitel v. Bryan [(1863) 3 B & S 474 : 122 ER 179 : 32 LJQB 91] B & S at p. 489; Simm v. Anglo American Telegraph Co. [(1879) 5 QBD 188 : 49 LJQB 392 : 42 LT 37 (CA)] , per Bramwell, L.J. at p. 202; Halsbury, Vol. 13, para 488. So there is said to be an estoppel where a party is not allowed to say that a certain statement of fact is untrue, whether in reality it be true or not. Estoppel, or conclusion, as it is frequently called by the older authorities, may therefore be defined as a disability whereby a party is precluded from alleging or proving in legal proceedings that a fact is otherwise than it has been made to appear by the matter giving rise to that disability. (Halsbury, Vol. 13, para 448) The rule on the subject is thus laid down by Lord Denman, in Pickard v. Sears [(1837) 6 Ad & El 469 : 112 ER 179] Ad & E at p. 474 : ER p. 181*
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> > *"But the rule of law is clear, that, where one by his words or conduct wilfully causes another to believe the existence of a certain state of things, and induces him to act on that belief, so as to alter his own previous position, the former is concluded from averring against the latter a different state of things as existing at the same time;"*
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> > *"The whole doctrine of estoppel of this kind, which is a fictitious statement treated as true, might have been founded in reason, but I am not sure that it was. There is another kind of*

estoppel — estoppel by representation — which is founded upon reason and it is founded upon decision also." Per Jessel, M.R. in General Finance & Co. v. Liberator [(1878) 10 Ch D 15 : (1874-80) All ER Rep Ext 1597 : 39 LT 600] , Ch D at p. 20.

See also in Simm v. Anglo American Telegraph Co. [(1879) 5 QBD 188 : 49 LJQB 392 : 42 LT 37 (CA)] , QBD at p. 202 where Bramwell, L.J. said "An estoppel is said to exist where a person is compelled to admit that to be true which is not true, and to act upon a theory which is contrary to the truth."

***15.** On the whole, an estoppel seems to be when, in consequences of some previous act or statement to which he is either party or privy, a person is precluded from showing the existence of a particular state of facts. Estoppel is based on the maxim allegans contraria non est audiendus (a party is not to be heard to allege the contrary) and is that species of presumption juries et de jure (absolute or conclusive or irrebuttable presumption), where the fact presumed is taken to be true, not as against all the world, but against a particular party, and that only by reason of some act done, it is in truth a kind of argumentum ad hominem."*

4. The learned Standing Counsel has also relied upon a decision in the case of **Sree Surya Developers & Promoters v. N. Sailesh Prasad**: (2022) 5 SCC 736, wherein the Hon'ble Supreme Court referred to some precedents and held that the only remedy available to a party to a consent decree to avoid such consent decree, is to approach the court which recorded the compromise and made a decree in terms of it, and establish that there was no compromise. In that event, the court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. A party to a consent decree based on a compromise to challenge the compromise decree on the ground that the decree was not lawful i.e. it was void or voidable has to approach the same court, which recorded the compromise and a separate suit challenging the consent decree has been held to be not maintainable.

5. Replying to the aforesaid objection raised by the learned Standing Counsel, Sri. Rishabh Raj, the learned counsel for the petitioner has submitted that the aforesaid observations were made by the Hon'ble Supreme Court in the light of the factual background where the

validity of the consent decree passed under Order XXIII C.P.C. Rule 3 C.P.C. was under challenge, which is not the case here.

6. Learned counsel for the petitioner has relied upon a decision of Hon'ble the Supreme Court in the case of **Gurpreet Singh Vs. Chatar Bhuj Goel**: (1988) 1 SCC 270 wherein Hon'ble Supreme Court held that: -

> ***"10.*** *Under Rule 3 as it now stands, when a claim in suit has been adjusted wholly or in part by any lawful agreement or compromise, the compromise must be in writing and signed by the parties and there must be a completed agreement between them. To constitute an adjustment, the agreement or compromise must itself be capable of being embodied in a decree. When the parties enter into a compromise during the hearing of a suit or appeal, there is no reason why the requirement that the compromise should be reduced in writing in the form of an instrument signed by the parties should be dispensed with. The court must therefore insist upon the parties to reduce the terms into writing."*

7. Learned counsel for the petitioner has submitted that in the present case, neither was an agreement of compromise signed between the parties, nor has any decree been passed on the basis of any compromise. Therefore, the decision in the case of **Sree Surya Developers and Promoters** (Supra) will not apply to the facts of the present case. The learned Counsel for the petitioner has submitted that the petitioner has not given in writing that it was foregoing the challenge to the imposition of additional stamp-duty.

8. The learned Counsel for the petitioner also relied upon a decision of Hon'ble Supreme Court in the case of **Himalayan Coop. Group Housing Society Vs. Balwan Singh and others**: (2015) 7 SCC 373 wherein Hon'ble Supreme Court has held that: -

> ***"32.*** *Generally, admissions of fact made by a counsel are binding upon their principals as long as they are unequivocal; where, however, doubt exists as to a purported admission, the court should be wary to accept such admissions until and unless the counsel or the advocate is authorised by his principal to make such admissions. Furthermore, a client is not bound by a statement or admission which he or his lawyer was not authorised to*

make. A lawyer generally has no implied or apparent authority to make an admission or statement which would directly surrender or conclude the substantial legal rights of the client unless such an admission or statement is clearly a proper step in accomplishing the purpose for which the lawyer was employed. We hasten to add neither the client nor the court is bound by the lawyer's statements or admissions as to matters of law or legal conclusions. Thus, according to generally accepted notions of professional responsibility, lawyers should follow the client's instructions rather than substitute their judgment for that of the client. We may add that in some cases, lawyers can make decisions without consulting the client. While in others, the decision is reserved for the client. It is often said that the lawyer can make decisions as to tactics without consulting the client, while the client has a right to make decisions that can affect his rights."

9. The learned Counsel for the petitioner has submitted that the petitioner had not instructed its Counsel to forego the challenge to imposition of additional stamp-duty and it is not bound by the concession given by the Counsel.

10. I have considered the aforesaid submissions advance by the learned counsel for the parties and the case law relied upon by them. I now proceed to refer to some precedents which are relevant for the present case.

11. In **State of Maharashtra v. Ramdas Shrinivas Nayak**: (1982) 2 SCC 463, the High Court had recorded a concession made by the learned Counsel for the State of Maharashtra. The Counsel intervened and protested before the Hon'ble Supreme Court that he never made any such concession and invited the Hon'ble Supreme Court to peruse the written submissions made by him in the High Court. Rejecting this contention, the Hon'ble Supreme Court held that: -

***"4.** …We are afraid that we cannot launch into an enquiry as to what transpired in the High Court. It is simply not done. Public policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation." [Per Lord Atkinson in Somasundaram Chetty v. Subramanian Chetty, AIR 1926 PC 136] We are bound to accept the statement of the Judges recorded in their*

judgment, as to what transpired in court. We cannot allow the statement of the Judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well-settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. [Per Lord Buckmaster in Madhu Sudan Chowdhri v. Chandrabati Chowdhrain, AIR 1917 PC 30] That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an appellate court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment."

12. In **Bhavnagar University v. Palitana Sugar Mill (P) Ltd.**: (2003) 2 SCC 111, the Hon'ble Supreme Court held that: -

> ***"61.*** *...We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the Judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error (Per Lord Buckmaster in Madhu Sudan Chowdhri v. Chandrabati Chowdhrain [AIR 1917 PC 30 : 21 CWN 897] .) That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an appellate court may permit him*

in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment."

12. The Hon'ble Supreme Court reiterated the above mentioned principle in **Roop Kumar v. Mohan Thedani**, (2003) 6 SCC 595 by stating that: -

> ***"11.*** *... It is to be noted that the parties agreed before the High Court that instead of remanding the matter to the trial court, it should consider materials on record and render a verdict. After having done so, it is not open to the appellant to turn around or take a plea that no concession was given. This is clearly a case of sitting on the fence, and is not to be encouraged. If really there was no concession, the only course open to the appellant was to move the High Court in line with what has been said in State of Maharashtra v. Ramdas Shrinivas Nayak [(1982) 2 SCC 463 : 1982 SCC (Cri) 478] . In a recent decision Bhavnagar University v. Palitana Sugar Mill (P) Ltd. [(2003) 2 SCC 111 : 2002 AIR SCW 4939]..."*

13. So far as the petitioner's contention based on the judgment in the case of **Himalayan Coop. Group Housing Society** (Supra) is concerned, in the aforesaid case it has been held that generally, admissions of fact made by a counsel are binding upon the client as long as they are unequivocal but the client or the court is not bound by the lawyer's statements or admissions as to matters of law or legal conclusions. The admission in the present case was not regarding a matter of law or legal conclusions. The Hon'ble Supreme Court has held that in some cases, lawyers can make decisions without consulting the client, while in others, the decision is reserved for the client. The lawyer can make decisions as to tactics without consulting the client, while the client has a right to make decisions that can affect his rights. Therefore, if the lawyer assessed that there was no chance of success of the entire appeal and he decided to restrict his prayer for waiver of the penalty, it cannot be said that he acted absolutely without any authority and that might be the reason as to why the petitioner did not initiate any proceedings against his Advocate who had given the concession.

14. In view of the aforesaid discussion, I am of the considered view that the petitioner cannot be permitted to dispute before this Court the correctness of the happenings recorded by the appellant authority i.e. Commissioner Lucknow Division, Lucknow in the impugned order 09.05.2024 to the effect it had been submitted by the learned counsel for the petitioner that the petitioner was willing to pay the deficient amount of stamp duty and he was confining his prayer for waiver of the penalty. However, it will be open for the petitioner to move an appropriate application before the Commissioner Lucknow Division, Lucknow for disputing the correctness of the averments recorded in the impugned order and in case any such application is filed by the petitioner, the Commissioner, Lucknow Division, Lucknow shall decide the same expeditiously, without granting any unnecessary adjournment to any of the parties.

15. The writ petition is ***disposed off*** in light of the aforesaid observations.

(Subhash Vidyarthi J)

Order Date- 23.08.2024
Anuj **S**ingh