

IN THE HIGH COURT OF SINDH, KARACHI

PRESENT:

Mr. Justice Aqeel Ahmed Abbasi
Justice Mrs. Kausar Sultana Hussain

C. P. Nos.D-1763 & 1764 of 2022

M/s. Dolmen Real Estate Management Pvt. Ltd.....Petitioner

C. P. Nos.D-1765 & 1766 of 2022

Central Depository Company of Pakistan Ltd.....Petitioner

Versus

Province of Sindh & others.....Respondents

Petitioners in
all Petitions : Through Syed Zaeem Haider, Advocate.
Respondent : Through Mr. Zeeshan Adhi, Addl. Advocate-
General, Sindh.
Date of Hearing : 26.08.2022
Date of Short Order : 26.08.2022

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J U D G M E N T

Aqeel Ahmed Abbasi, J :- Above captioned petitions have been filed by the petitioners against impugned order dated 03.01.2022 passed by the Chief Inspector of Stamps, Board of Revenue, Government of Sindh, Karachi and judgment dated 14.02.2022 passed by the Member (RS&EP)/Chief Revenue Authority, Board of Revenue, Sindh respectively in C.P. Nos.D-1763 and 1765 of 2022, whereas, through C.P. Nos.D-1764 and 1766 of 2022 similar impugned order dated 05.01.2022 and judgment dated 14.02.2022 have been impugned. Since the common legal controversy has been agitated through above petitions, therefore, by

consent of the parties, same are being disposed of through this combined order.

2. The precise controversy involved in all these petitions relates to the authority of the respondents to impose the penalty under Section 62(1) of the Stamp Act, 1899 upon the petitioners, who are all admittedly lessors/landlords in respect of lease agreement, which were not duly stamped, whereas, in case of all the petitioners, as per terms of the agreement it was the duty of the lessees/tenants to make payment of all taxes, including stamp duty.

3. Learned counsel appearing for the petitioners in all the petitions has argued that the amount of stamp duty has been paid by the lessees/tenants pursuant to the order passed by the respondent alongwith fine thereon, as they are duty bound under the agreement to pay such amount, however, inspite of such fact, respondents have imposed amount of penalty upon the petitioners, who are the lessors/landlords in addition to the amount of penalty duly imposed and duly paid by the lessees/tenants while invoking the provisions of Section 62 of the Stamp Act, 1899. It has been contended by the learned counsel for the petitioners that the provisions of section 62 cannot be read in isolation, which are with reference to the provisions of section 29 of the Stamp Act, 1899 is relevant for the purposes of determination of the liability to make payment of duty and liability, which according to learned counsel for the petitioners, was the responsibility of the lessees/tenants in view of the particular clause 4 of the agreement executed between the parties to this effect. It has been further contended by the learned counsel that once the liability to make payment of stamp duty has been fixed upon the lessees/tenants, who have been penalized while imposing fine under section 62(1) of the Stamp Act, 1899, therefore, to punish imposition of fine on the petitioners, who are lessors/landlords was not justified in fact and law of the instant

cases. Learned counsel for the petitioner in support of his contention has read out the provisions of sections 29 and 62 (1) of the Stamp Act, 1899 as well as relevant provisions of tenancy agreement executed between the parties while referring to the clause relating to payment of taxes during stamp duty by the lessees/tenants. It has been prayed that the imposition of fine upon the petitioners may be declared as illegal.

4. Conversely, learned Addl. A.G. Sindh submits that since the petitioners are not executants of the lease/tenancy agreement, therefore, in terms of Section 62(1) of the Stamp Act, 1899 in case of any default every executed of the aforesaid documents is liable to pay fine. It has been argued by the learned Addl.A.G. Sindh that it was the joint responsibility of the lessors/landlords and lessees/tenants, who have executed lease/tenancy agreement, however, without making payment of the requisite stamp duty, therefore, the imposition of fine on the petitioner is in accordance with law.

5. We have heard the learned counsel for the parties, perused the record and have also examined the relevant provisions of Stamp Act, 1899 with their able assistance.

6. Since the facts in all the petitions are not disputed, whereas, only legal controversy, as referred to hereinabove, is required to be decided by this Court in these petitions, therefore, we need not to narrate the facts, which have already been noted by the two authorities below in the impugned order/judgment. It has also come on record that the amount of duty and fine imposed through impugned order/judgment in terms of Section 62(1) of the Stamp Act, 1899 has already been paid by the lessees/tenants in these petitions, therefore, we would record our findings purported in the cases while referring to the provisions of Sections 29 and 62 of the Stamp Act, 1899, which are reproduced hereunder for the sake of brevity: -

29. Duties by whom payable. *In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne,___*

(a) *in the case of any instrument described in any of the following Articles of Schedule I, namely :___*

No.2. (Administration Bond),

¹[No. 6. (Agreement relating to Deposit of Title-deeds, Pawn or Pledge),]

No. 13. (Bill of Exchange),

No. 15. (Bond),

No. 16. (Bottomry Bond),

No. 26. (Customs Bond),

No. 27. (Debenture),

No. 32. (Further Charge),

No. 34. (Indemnity-Bond),

No. 40. (Mortgage-Deed),

No. 49. (Promissory-Note),

No. 55. (Release),

No. 56. (Respondentia Bond),

No. 57. (Security Bond or Mortgage-Deed),

No. 58. (Settlement),

No. 62. (a). (Transfer of shares in an incorporated company or other body corporate),

No. 62 (b). (Transfer of Debentures, being marketable securities, whether the debenture is liable to duty or not, except debentures provided for by section 8).

No. 62 (c). (Transfer of any interest secured by a bond, mortgage-deed or policy of insurance), –

by the person drawing, making or executing such instrument:

¹[(b) in the case of a policy of insurance other than fire insurance-by the person effecting the insurance;

(bb) in the case of a policy of fire-insurance_by the person issuing [Page 21 of 43](#) the policy;]

(c) in the case of a conveyance (including a re-conveyance of mortgaged property) by the, grantee: in the case of a lease or agreement to lease-by the lessee or intended lessee:

- (d) in the case of a counterpart of a lease-by the lessor:*
- (e) in the case of an instrument of exchange _by the parties in equal shares:*
- (f) in the case of a certificate of sale _by the purchaser of the property to which such certificate relates: and,*
- (g) in the case of an instrument of partition _by the parties thereto in proportion to their respective shares in the whole property partitioned, or, when the partition is made in execution of an order passed by a Revenue authority or Civil Court or arbitrator, in such proportion as such authority, Court or arbitrator directs.*

62. Penalty for executing, etc., instrument not duly stamped.__ (1) Any person—

- (a) drawing, making, issuing, endorsing or transferring, or signing otherwise than as a witness, or presenting for acceptance or payment, or accepting, paying or receiving payment of, or in any manner negotiating, any bill of exchange ²[payable otherwise than on demand] ^{3*} or promissory note without the same being duly stamped; or*
- (b) executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped; or*
- (c) voting or attempting to vote under any proxy not duly stamped;*

shall for every such offence be punishable with fine which may extend to five hundred rupees:

Provided that, when any penalty has been paid in respect of any instrument under section 35, section 40 or section 61, the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument upon the person who paid such penalty.

(2) If a share-warrant is issued without being duly stamped, the company issuing the same, and also every person who, at the time when it is issued, is the managing director or secretary or other principal officer of the company, shall be punishable with fine which may extend to five hundred rupees.

7. Section 29 of the Stamp Act, 1899, as referred to hereinabove creates a liability to pay stamp duty on various instruments described in any of the Articles of Schedule 1 to the Stamp Act, 1899, and also defines the person upon whom such liability to pay stamp duty has been created

by the Statute, however, subject to exception as provided in Section 29 of the Stamp Act, 1899, according to which, in case of an agreement to the contrary such liability to pay stamp duty will shift accordingly in terms of the agreement between the parties. In the aforesaid petitions, admittedly, in all the subject agreement there is specific clause with regard to payment of taxes and duty including stamp duty to be paid by the lessee/tenant, therefore, the liability to pay stamp duty in terms of Section 29 of the Stamp Act, 1899, and not the lessor/landlord. In all the aforesaid petitions, according to learned counsel for the parties, the requisite stamp duty, fine and the penalty imposed by the respondents for non-compliance of hereinabove provisions of Section 29 of the Stamp Act, 1899, has been admittedly paid by the lessee/tenant, who have not filed any appeal against such determination of stamp duty and imposition of penalty by the respondents, however, the appellants who are lessor/landlord have challenged the imposition of penalty upon them in terms of Section 62 of the Stamp Act, 1899, on the ground that in view of provision of Section 29 of the Act and the agreement between the parties the liability to pay stamp duty was of the lessee/tenant, therefore, petitioners have not committed any default nor violated the provisions of Stamp Act, 1899, and cannot be held liable to pay any penalty. If way may examine the provision of Section 62 of the Act relating to imposition of penalty for executing instrument not duly stamped, it appears that in terms of Section 62(1)(b) of the Act, any person executing or signing otherwise than as a witness in other instrument chargeable with duty when the same being duly stamp is liable to pay penalty.

8. Learned Addl. A.G. Sindh representing the respondents have argued before us that since the petitioners are also executed all the subject agreement upon which the stamp duty was not paid, therefore, they are also liable to pay penalty, hence the imposition of the penalty

upon the petitioners through impugned order/judgment is justified. Such contention of the learned Addl. A. G. Sindh is mis-conceived and contrary to the provisions of Section 29 as well as Section 62 of the Stamp Act, 1899, for the reason that both these provisions cannot be read in isolation and required to be read together as the provisions of Section 29 are charging provision, which create liability upon a person to pay stamp duty on instrument as described in any of the Article of Schedule 1 to the Stamp Act, 1899, and unless any person is liable to pay stamp duty under Section 29 of the Act, cannot be held liable to pay penalty for default of any other person, who is otherwise liable to pay such amount of stamp duty in terms of Section 29 and the agreement executed between the parties contrary to provision of Section 29 of the Stamp Act, 1899. Even the provision of Section 62 of the Act, do not provide for imposition of penalty on all the executant parties of an instrument chargeable with duty, whereas, the term "any person" refers to any of the executant, other than as a witness of an instrument chargeable with duty, subject to his liability to pay stamp duty in terms of Section 29 of the Stamp Act, 1899. The intention of the legislature in this regard is cleared from the plain language of the above provisions of law and there seem no ambiguity in this regard, whereas, if the intention of the legislature would have been to charge penalty from all the executants of any instrument chargeable to stamp duty then in such situation instead of using the words "any person" the words "every person" could have been used to make all the executants of instrument liable to pay penalty under Section 29 of the Stamp Act, 1899. It will not be out of place to observe that penalty provision in any Statute, particularly, in Taxing Statute, wherein, taxes, duties and other charges imposed, are attracted once some violation of the provisions of such Statute, including omission or commission or default towards compliance of law by the person, who is made liable under the charging provision to make payment of such amount of taxes, duties and other charges etc.,

however, a person, who otherwise is not liable to make payment of duties and taxes or charges etc. cannot be subjected to imposition of penalty for any default not committed by such person. In all these petitions, since the petitioners are not liable to make payment in view of agreement executed between the parties in terms of Section 29 of the Act were not liable to make payment of stamp duty upon the subject instrument, whereas, admittedly, it was the liability of lessor/tenant, who has already paid duty and taxes as well as the penalty imposed by the respondents, therefore, imposition of penalty upon the petitioners in addition to the amount of penalty already imposed has duly paid by the lessor/tenant is totally unjustified and without any lawful authority. Therefore, accordingly, impugned order(s)/judgment(s) to the extent of imposition of penalty upon the petitioners are hereby set-aside in view of hereinabove facts and circumstances of the case vide our short order dated 26.08.2022, the above petitions were allowed and the penalty imposed on the petitioners was waived and these are the reasons for such short order.

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