* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on: July 17, 2013

% *Judgment Pronounced on: July 22, 2013*

+ CM(M) 168/2011 & C.M. Nos.3187/2011 & 1321/2013

KOTAK MAHINDRA BANK LTD ..... Petitioner
Through Mr.Ashwini Kr.Mata, Sr.Adv. with
Mr.Rahul Tyagi, Adv.

versus

YOGESH BAWEJA & ANR ..... Respondents
Through None

AND

+ CM(M) 169/2011 & C.M. No.3189/2011

KOTAK MAHINDRA BANK LTD ..... Petitioner
Through Mr.Ashwini Kr.Mata, Sr.Adv. with
Mr.Rahul Tyagi, Adv.

versus

DEEPAK SAXENA & ORS ..... Respondents
Through None

AND

+ CM(M) 170/2011 & C.M. No.3191/2011

KOTAK MAHINDRA BANK LTD ..... Petitioner
Through Mr.Ashwini Kr.Mata, Sr.Adv. with
Mr.Rahul Tyagi, Adv.

versus

ANIL KUMAR SHARMA & ANR ..... Respondents

Through None

AND

\+ **CM(M) 171/2011 & C.M. No.3193/2011**

KOTAK MAHINDRA BANK LTD ..... Petitioner
Through Mr.Ashwini Kr.Mata, Sr.Adv. with
Mr.Rahul Tyagi, Adv.

versus

KAJAL CHOPRA & ORS ..... Respondents
Through None

AND

\+ **CM(M) 172/2011 & C.M. No.3195/2011**

KOTAK MAHINDRA BANK LTD ..... Petitioner
Through Mr.Ashwini Kr.Mata, Sr.Adv. with
Mr.Rahul Tyagi, Adv.

versus

MUKESH CHAUHAN & ORS ..... Respondents
Through None

AND

\+ **CM(M) 173/2011 & C.M. No.3197/2011**

KOTAK MAHINDRA BANK LTD ..... Petitioner
Through Mr.Ashwini Kr.Mata, Sr.Adv. with
Mr.Rahul Tyagi, Adv.

versus

RAKESH KUMAR SARNA & ANR ..... Respondents
Through None

AND

+ CM(M) 206/2011 & C.M. No.3926/2011

KOTAK MAHINDRA BANK LTD ..... Petitioner
Through Mr.Ashwini Kr.Mata, Sr.Adv. with
Mr.Rahul Tyagi, Adv.

versus

NARINDER SINGH MEHTA & ANR ..... Respondents
Through None

AND

+ CM(M) 207/2011 & C.M. No.3945/2011

KOTAK MAHINDRA BANK LTD ..... Petitioner
Through Mr.Ashwini Kr.Mata, Sr.Adv. with
Mr.Rahul Tyagi, Adv.

versus

MUKESH & ANR ..... Respondents
Through None

AND

+ CM(M) 208/2011 & C.M. No.3947/2011

KOTAK MAHINDRA BANK LTD ..... Petitioner
Through Mr.Ashwini Kr.Mata, Sr.Adv. with
Mr.Rahul Tyagi, Adv.

versus

RAJENDER SINGH & ANR ..... Respondents
Through None

AND

+ CM(M) 209/2011 & C.M. No.3949/2011

KOTAK MAHINDRA BANK LTD ..... Petitioner
Through Mr.Ashwini Kr.Mata, Sr.Adv. with
Mr.Rahul Tyagi, Adv.

versus

RAHUL YADAV & ORS ..... Respondents
Through None

AND

+ CM(M) 210/2011 & C.M. No.3951/2011

KOTAK MAHINDRA BANK LTD ..... Petitioner
Through Mr.Ashwini Kr.Mata, Sr.Adv. with
Mr.Rahul Tyagi, Adv.

versus

SURENDER SINGH & ANR ..... Respondents
Through None

AND

+ CM(M) 211/2011 & C.M. No.3953/2011

KOTAK MAHINDRA BANK LTD ..... Petitioner
Through Mr.Ashwini Kr.Mata, Sr.Adv. with
Mr.Rahul Tyagi, Adv.

versus

VINEET RANA & ANR ..... Respondents
Through None

AND

+ CM(M) 212/2011 & C.M. No.3955/2011

KOTAK MAHINDRA BANK LTD ..... Petitioner
Through Mr.Ashwini Kr.Mata, Sr.Adv. with
Mr.Rahul Tyagi, Adv.

versus

VINOD KUMAR & ANR ..... Respondents
Through None

AND

+ CM(M) 213/2011 & C.M. No.3957/2011

KOTAK MAHINDRA BANK LTD ..... Petitioner
Through Mr.Ashwini Kr.Mata, Sr.Adv. with
Mr.Rahul Tyagi, Adv.

versus

CHARANJIT SINGH & ANR ..... Respondents
Through None

AND

+ CM(M) 214/2011 & C.M. No.3959/2011

KOTAK MAHINDRA BANK LTD ..... Petitioner
Through Mr.Ashwini Kr.Mata, Sr.Adv. with
Mr.Rahul Tyagi, Adv.

versus

SANJAY SONI & ANR ..... Respondents
Through None

AND

+ CM(M) 215/2011 & C.M. No.3961/2011

KOTAK MAHINDRA BANK LTD ..... Petitioner
Through Mr.Ashwini Kr.Mata, Sr.Adv. with
Mr.Rahul Tyagi, Adv.

versus

DINESH KHANNA & ANR ..... Respondents
Through None

AND

+ CM(M) 216/2011 & C.M. No.3963/2011

KOTAK MAHINDRA BANK LTD ..... Petitioner
Through Mr.Ashwini Kr.Mata, Sr.Adv. with
Mr.Rahul Tyagi, Adv.

versus

DEVENDRA KUMAR & ANR ..... Respondents
Through None

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. By this common order, I shall disposed of the above mentioned 17 petitions in which similar issue is involved.

2. In these petitions, the petitioner has filed Civil Miscellaneous (Main) petition under Article 227 of the Constitution of India against the order(s) dated 3rd November, 2010, 18th December, 2010, 28th January, 2011 and 4th

February, 2011 as passed by Sh.Surinder S.Rathi, Additional District Judge, Tis Hazari, Delhi in Civil Suit No.73/2010 entitled "Kotak Mahindra Bank Ltd. Vs. Yogesh Baweja".

3. The petitioner i.e. M/s. Kotak Mahindra Bank Limited is a corporate body incorporated and registered under the Companies Act, 1956 and carrying its business of banking under Banking Regulation Act, 1949 and is having its registered office at 36-38A, Nirman Bhawan, 227, Nariman Point, Mumbai-400021 and inter alia Branch office at G-9, Vikas Puri, New Delhi.

4. The respondents in the matters are the borrowers who had taken the loan from Respondent No.2 ICICI Bank and against whom various suits for recovery have been filed and are pending adjudication before the learned trial courts.

5. As mentioned earlier, by the present petitions the petitioner challenges the order(s) dated 3rd November, 2010, 18th December, 2010, 28th January, 2011 and 4th February, 2011 whereby the learned trial court has been issuing directions to the petitioner and compelling the petitioner to produce the original Deeds of Assignment. The learned trial court has also issued bailable warrants against the chairman of the petitioner Bank to enforce its direction to produce the original deed of assignment so as to enable the learned trial court to impound the same.

6. It is argued by petitioner that the aforesaid order directing coercive measures and forcing the plaintiff to produce the original document is perverse, illegal and against the established provisions of law. The learned trial court while considering the applications for substitution compelled the petitioner to produce documents in a suit for recovery thereby giving a complete go by to the process laid down in law and forced the petitioner to

produce the documents and even issued bailable warrants against the chairman of the petitioner bank with the direction to the Police Commissioner to execute the same.

7. The respondent No.2/ICICI Bank by way of Assignment Deed, assigned all its rights, titles, interests in the NPA in favour of Kotak Mahindra Bank Limited i.e. Petitioner Bank. The copy of the Deeds of Assignment dated 31st December, 2007 are filed. The learned trial court vide order dated 3rd November, 2010 directed the petitioner bank to produce the original assignment deeds. The request was made by petitioner before the learned trial court that the application be adjudicated upon in the absence of the original and on the basis of a copy of the same which was already on record. But learned trial court instead of taking a view on the application/suit, vide order dated 18th December, 2010 issued direction to Chairman of the petitioner Bank to produce and file the original assignment deed and also expressed its opinion and recorded that there may be necessity of impounding the same under Section 33 of the Indian Stamp Act, 1899.

8. As no original deeds of assignment could be produced by the petitioner, the learned trial court vide order dated 28th January, 2011 issued notice of Proclamation against the chairman of the petitioner bank, Sh. Uday Kotak and further by order dated 4th February, 2011 issued bailable warrant against Sh. Uday Kotak to the tune of Rs.50,000/- with one surety of the like amount.

9. Section 33 of the Stamp Act, 1899 which relates to impounding of the documents is applicable only when the original document is actually and voluntarily brought before the court of law. Further contrary to forcing any party to produce the original document it is only when the document

chargeable is produced or comes in the performance of the working that the same can be ordered to be impounded.

10. The court is bound with the domain of the procedure envisaged in the Civil Procedure Code, 1908. The Court is authorized to receive evidence and can for this purpose issue summons for attendance and adducing evidence under different provisions of Civil Procedure Code. Order 16 Rule 10 of the Code of Civil Procedure, 1908 is designed to protect the interest of a party against a "Non Cooperative" witness for which purpose it confers power upon a court to ensure the attendance and "Co-operation" of the witness.

11. Section 33 of the Stamp Act, 1899 is applicable when the original document is actually and voluntarily brought before the court. The words "is produced or comes in the performance of his function" used in Section 33 of the Stamp Act, 1899 mean the production of the instrument voluntarily by the party relying on it. It is for the party alone to produce the document and the court cannot force the production of the same.

12. The Supreme Court in its judgment passed in ***District Registrar Vs. Canara Bank***, **AIR 2005 SC 186** held that Section 31 of the Stamp Act, 1899 involves an element of voluntariness in the persons seeking adjudication to apply before the collector and under that provision the collector cannot compel its production. Section 33 of the Stamp Act, 1899 confers power of impounding a document deficiently stamped <u>if the document is produced or comes before the authority in performance of its functions</u>.

13. Thus, it is clear from the law settled on this aspect that the levy of stamp duty upon voluntary production of the instrument is an essential

characteristic of the Stamp Duty Act. If the authorities are allowed to issue direction for the production of the original documents not produced then it would lead to invasion of the house of the person in whose possession the document lies. Further non-payment of the stamp duty is not a criminal offence and as such the party in those possession the document lies cannot be compelled to produce the same or to forcefully pay the penalty.

14. Mr. Ashwani Mata, learned Senior counsel appearing on behalf of the petitioner submits that these orders also contain an opinion of the learned trial court to the effect that "there is a gross/rampant violation of non payment of stamp duty on thousand of such transactions of thousands of apparently clubbed M/s Kotak Mahindra Bank Limited not only illegal thousand of transactions under one deed in clear violation of statutory provisions but also violated the strict guidelines of Reserve Bank of India in this regard". In view of passing these orders, number of matters are at the stage of admission without process and various matters are kept pending. Thus, in view of settled law, the petitioner is suffering a lot in the impugned orders by the trial courts. Mr. Mata argues that merely on the basis of apprehension by the court, such orders could not have been passed, which on the face of the same are incorrect and contrary to law.

15. In a case of ***Shanti Devi L. Singh Vs. Tax Recovery Officer and Others,*** **(1990)3 SCC 605**, where the Supreme Court observed that under the relevant rules, a copy of the certificate of sale should have been endorsed to the Sub-Registrar but it was actually sent to the Sub-Registrar on 12th May, 1988. The petitioner in SLP No.138 of 1990 purchased property bearing No.112-113, Gautam Nagar, Delhi, at an auction conducted by the Income-tax department. A certificate of sale in their favour was issued on

23rd May, 1988. A copy of the sale certificate was forwarded by the T.R.O. to the Sub-Registrar. The Supreme Court was called upon to answer the following questions:- "On the above facts, three different and separate questions arise for consideration: (1) What is the action to be taken by the Sub-Registrar when the copy of a certificate of sale is forwarded to him by the T.R.O.? (2) Is the vendee in a sale by the T.R.O. entitled to ask the T.R.O. to make entries regarding the transfer in his records on the basis of the copy of the certificate of sale sent to him by the T.R.O.? (3) What is the procedure to be, followed by the Sub-Registrar when the original certificate of sale is produced before him by the vendee?"

Answering to the questions, the Supreme Court held as under:

> "10. We now come to the last question and that is whether the certificate of sale is liable to stamp duty and, if so, what the consequences are. The High Court has referred to Section 3, Section 29(f) and Article 18 of the Schedule I to the Stamp Act. This provision applies in the absence of a contract to the contrary. Prima facie, therefore, the view taken by the High Court and there are other decisions also to the same effects is correct unless a contract to the contrary can be spelt out. The auction notice did not promise any exemption from Stamp duty. The extract quoted earlier from the Departmental Manual (viz. that both the certificate and copy are liable to stamp duty) also renders it unlikely that any promise was given by the TRO at the time of sale that no stamp duty will be payable. However the TRO's letter to the Collector referring to the legal advice obtained by him strikes a somewhat inconsistent note. Even if there had been any such mention by the TRO or the auctioneer, the question would arise whether it can be construed as a contract to the contrary binding on the Union for the purposes of Section 29(f) of the Stamp Act. Sri Mehta requests that we may not now go into these questions but leave the issue to be decided as and when the petitioners seek to have the certificate of registration registered or introduced in evidence before the

Court or authority entitled to take evidence which is at present a remote contingency.

11. There are two provisions in the Stamp Act which provide for the adjudication of stamp duty. Under Section 31, it is open to the executants of any document, at any stage but within the time limit set out in Section 32, to produce a document before the Collector of Stamps and require him to adjudicate on the question whether the document should bear any stamp duty. The Collector thereupon may adjudicate the stamp duty himself or refer the matter to the Chief Controlling Revenue Authority of the State. In turn, it is open to the Chief Controlling Revenue Authority to refer the matter to the High Court for an authoritative decision (Section 32 and 56). This procedure could have been followed by the petitioners if they wished to seek an answer to the question whether the certificate of sale is liable to stamp duty but they have not done it and the time limit under section 32 has run out. The other provision that may become applicable is section 33. Under this section, if any document (and this includes a certificate of sale) is presented to the Registrar for registration and the Registrar is of opinion that it is a document which should bear stamp duty but that it has not been stamped, it is his body to impound the document and send it on to the Collector of Stamps for necessary adjudication (Section 38). This contingency has also not happened. The third contingency also provided for in Section 33 is when a party wishes to rely upon the certificate of sale as a piece of evidence before a Court or an authority entitled to take evidence. Such court or authority will also have to impound the document and shall not admit the same in evidence unless the stamp duty chargeable and the stipulated penalty are paid. This situation has not arisen so far but may arise at some time in future. It is unnecessary to anticipate the same and decide the issue. We shall therefore leave the issue of stamp duty to be adjudicated upon in the normal course, as and when found necessary, and express no views thereupon at this stage."

16. This Court in ***Ashok Kamal Capital Builders Vs. State and Another,***

162 (2009) DLT 396 was called upon to judge where the Sub-Divisional Magistrate issued a show cause notices to a party for payment of deficient stamp duty and other penal action under the Stamp Act on the basis of the photocopies of the document furnished to the learned SDM. The learned SDM passed an order, the last portion of which is recorded as under:

> "Keeping in view the ill intention of the executants to evade the stamp duty and transfer MCD duty, it is a fit case for imposing penalty to the highest extent as provided under Section 35 of Indian Stamp Act, 1899 and therefore considering the whole issue, a penalty equivalent to 10 times of deficient stamp duty is imposed i.e. Rs.3.66 X 10 : Rs.36.60 lakhs. The total stamp duty including penalty and transfer MCD duty thus comes to Rs.3.66 Lakhs + Rs.36.60 Lakhs : Rs.40.26 Lakhs + Rs.6.10 as transfer MCD duty. Under section 29 of Indian Stamp Act and as per Clause 5 of Article XIII of the agreement the duty etc. is to be paid by the builder i.e. M/s Ashok Kamal Capital Builders (P) Ltd. The Promoters/Directors/Owners of Ashok Kamal Capital Builder (P) Ltd. at the first instance are directed to deposit the said amount of Rs.46.36 Lakhs within 1 month of receipt of this order with the direction to both the parties i.e. M/s Dyer's Stone Lime Co.(P) Ltd. and Ashok Kamal Capital Builder (P) Ltd. to deposit the original agreement within the above period. In case they fail to deposit the said amount within stipulated period, the amount will be recovered under section 48 of Indian Stamp Act, 1899 as an arrear of land revenue and in addition to the above action under section 62/64 of Indian Stamp Act read with relevant provision of I.P.C. and Cr.P.C. will be initiated against all concerned and all executants."

17. There are certain States where an adjudicating authority has the power to require production of an original document, illustrating the erstwhile State of Madhya Pradesh, (by virtue of the stamp "M.P. Act, 1990") whereby Section 48B was inserted (for the State of Madhya Pradesh). Section 48B read as under:

> "48-B. Original instrument to be produced before the

> Collector in case of deficiency –Where the deficiency of stamp duty is noticed from a copy of any instrument, the Collector may, by order, require the production of original instrument from a person in possession or in custody of the original instrument for the purpose of satisfying himself as to the adequacy of amount of duty paid thereupon. If the original instrument is not produced before him within the period specified in the order, it shall be presumed that the original document is not duly stamped and the Collector may proceed in the manner provided in this Chapter:
>
> Provided that no action under this section shall be taken after a period of five years from the date of execution of such instrument."

18. The Supreme Court in dealing with powers under Section 48B in the state amendments categorically held that the amendment only authorized the adjudicator to recover the adequate stamp duty, which in its opinion, had been avoided for payment on the original instrument. The said amendment did not authorize the said adjudicator to impound the copy of the instrument.

19. However, a provision similar to Section 48B (that was by amendment made applicable to the State of Madhya Pradesh) is not applicable of N.C.T. of Delhi, as noticed by this Court. In the case of ***Ashok Kamal Capital Builders Vs. State and Anr.***, 162 (2009) DLT 396 it was held that in the N.C.T. of Delhi no such powers in Section 48B which is applicable to the State of Madhya Pradesh is applicable in the National Capital Territory of Delhi. Similar or identical provisions, under which action can be taken by the authorities on production of a copy or secondary evidence exist in some other States, in view of the state specific amendments e.g. Indian Stamp (Orissa Second Amendment) Act, 1986, Tamil Nadu by Pondicherry Act XXI of 1970, Rajasthan Act No.17 of 1989 and Uttar Pradesh Act No.22 of

1998 and West Bengal Act No.17 of 1990. However, in the National Capital Territory of Delhi no such power vests with the authorities to compel production of an original document from a party to impound the same or levy penalty or for direction to pay proper stamp duty/penalty on failure to produce the original.

20. It may also be useful to state that this Court proceeded to notice the judgment of Supreme Court in ***District Registrar and Collector, Hyderabad Another Vs. Canara Bank and Others*** and a judgment of Hon'ble Privy Council in ***Surajmull Nagoremull Vs. Triton Insurance Co. Limited*** held as under :

> "Section 33 confers power of impounding a document not duly stamped subject to the document being produced before an authority competent to receive evidence or a person incharge of a public office. It is necessary that the document must have been produced or come before such authority or person incharge in performance of its functions. The document should have been voluntarily produced. At the same time, Section 36 imposes an embargo on the power to impound, vesting in the authority competent to receive evidence, by providing that it cannot question the admission of document in evidence once it has been admitted. None of these provisions have been amended by the State of Andhra Pradesh.
>
> 13. In Surajmull Nagoremull v. Triton Insurance Co. Ltd. their Lordships of the Privy Council made it clear that the provisions of the Stamp Act cannot be held to have been framed solely for the protection of revenue and for the purpose of being enforced solely at the instance of the revenue officials.
>
> 24. The Supreme Court in the aforesaid paragraphs has emphasized that while exercising the power of impounding under Section 33 of the Act, the authority competent and entitled to receive evidence or a person in charge of public

> office cannot compel a person to produce the "instrument". The "instrument" has to be produced voluntarily. The Supreme Court approved of two judgments of the Lahore High Court in Jai Devi Vs. Gokal Chand (1906) 7 PLR 428 (FB) and Munshi Ram Vs. Harnam Singh AIR 1934 Lah. 637. In the case of Jai Devi (Supra) it was held that a document not duly stamped but filed with the plaint, which was dismissed for non prosecution, cannot be subsequently impounded as it was not produced in the court in evidence. It was further observed that the Court cannot call for production of the original document and impound the same. In the case of Munshi Ram (supra) the suit was compromised at the first hearing and the original bahi was not put in evidence. It was held that the bahi was not liable to be impounded. Reference was also made with approval to the judgment L. Puran Chand V. Emperor, AIR 1942 Lah. 257. It was observed that when an unduly stamped document was directed to be returned as not proved, the same cannot be impounded even if the document had not been physically returned."

21. Further, in the present case the Assignments have been executed between an Assignor(s) and Assignee(s) which act of the assignment has been declared lawful, legal and binding as held by the Supreme Court in ***ICICI Bank Limited Vs. Official Liquidator of APS Star Industries Limited and Others***, **(2010) 10 SCC 1**.

22. Thus, any opinion at this stage by the learned trial Court that such an assignment is not proper and is contrary to the aforesaid judgment and cannot be sustained.

23. It is a matter of fact that all the deed(s) of Assignment concerning each of the matter have also been duly adjudicated by the learned Collector of Stamps, Mumbai. There is no opposition from the respondents' side and infact no one appeared on behalf of any of the respondents when the matters

were taken up.

24. The deed(s) of assignment deal with hundreds of accounts in one single instrument. It is not feasible, practical or realistic to require production/filing of the original deed(s) of Assignment in all the courts where such deed(s) of Assignment may be required, since litigations would be spread over the length and breadth of the country. The learned Senior Counsel has denied that at the appropriate stage if required, the petitioner would produce the original assignment. Such assignment, whether on an individual account basis, or on a bulk basis, has been held to be valid, legal, binding and a part of legitimate banking activity as held by the Supreme Court in ***ICICI Bank Limited***'s case (supra).

25. In view of the above stated facts, this court is of the considered view that the impugned order dated 3rd November, 2010, 18th December, 2010, 28th January, 2011 and 4th February, 2011 passed by the learned trial court at this stage are not sustainable in law. The same are quashed.

26. All the petitions are accordingly disposed of.

(MANMOHAN SINGH)
JUDGE

JULY 22, 2013