



CNR: KAHC010525492022

NC: 2026:KHC:47303
W.P. No.22823/2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 1ST DAY OF SEPTEMBER, 2026
BEFORE
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO.22823/2022 (GM-CPC)

BETWEEN:

M/S. SHIVALIKA LEASING FINANCE LTD
ADMINISTRATIVE OFFICE AT
K.R. MILLS COMPOUND
MYSURU BENGALURU REPTD.
BY ITS DIRECTOR
AUTHORIZED SIGNATORY
SRI. A.S. YADAV.

...PETITIONER

(BY SRI. CHANDRAKANTH R. GOULAY, ADV.,)

AND:

1. M/S. PERK INN INTERNATIONAL LTD
NO.8, 2ND BLOCK
KORAMANGALA
HOSUR MAIN ROAD
MADIVALA POST
BENGALURU
REPTD. BY ITS MANAGING DIRECTOR
SRI. K. KARUNAKARAN.
2. SRI. K. KARNUKARAN
S/O R.P. KAVERI CHETTY
AGED 50 YEARS
R/AT HOUSE NO.1795
20TH MIN SECTOR, HSR LAYOUT
BENGALURU.

Digitally signed
by RUPA V
Location: HIGH
COURT OF
KARNATAKA



CNR: KAHC010525492022

NC: 2026:KHC:47303
W.P. No.22823/2022

AND ALSO R/AT NO.8
2ND BLOCK, HOSUR MAIN ROAD
KORAMANGALA, MADIVALA POST
BENGALURU-560068.

3. SMT. SENTHIL RANI
W/O RESPONDENT NO.4
K. KARUNAKARAN
AGED ABOUT 44 YEARS
R/AT HOUSE NO.1795
20TH MIN SECTOR, HSR LAYOUT
BENGALURU.

AND ALSO R/AT NO.8
2ND BLOCK, HOSUR MAIN ROAD
KORAMANGALA, MADIWALA POST
BENGALURU-560068.

...RESPONDENTS

(BY SRI. K.S. HARISH, ADV., FOR R1 & R2
R3 SERVED)

- - -

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR THE RELEVANT RECORDS IN COM. O.S. NO.15/2020 DATED 10.02.2022 ON THE FILE OF THE COMMERCIAL COURT AND II ADDL DISTRICT AND SESSIONS JUDGE MYSURU VIDE ANNEXURE-E. SET ASIDE THE ORDER DATED 10.02.2022 IN COM.O.S. NO.15/2020 PASSED ON I.A. FILED U/S 151 OF C.P.C. R/W SECTIONS 33 AND 34 OF KARNATAKA STAMP ACT FURTHER R/W SECTION 17 OF INDIAN REGISTRATION ACT ON THE FILE OF THE COMMERCIAL COURT AND II ADDITIONAL DISTRICT AND SESSIONS JUDGE AT MYSORE VIDE ANNEXURE-E, AND TO REJECT THE APPLICATION FILED BY THE RESPONDENT OR DEFENDANT & ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED ON 29.08.2026, COMING ON FOR PRONOUNCEMENT OF ORDER, THIS DAY, THE COURT MADE THE FOLLOWING:



CNR: KAHC010525492022

**NC: 2026:KHC:47303
W.P. No.22823/2022**

CORAM: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

CAV ORDER

This writ petition is filed challenging the order dated 10.02.2022 passed in Com.O.S.No.15/2020 by the Commercial Court, Mysuru (hereinafter referred to as 'the Commercial Court').

2. Sri.Chandrakanth R.Goulay, learned counsel appearing for the petitioner-plaintiff submits that the Commercial Court has committed a grave error in directing the plaintiff to pay the duty and 10 times penalty on the said duty, without ascertaining the actual duty payable on the instrument in question. It is submitted that Ex.P1 was marked in the year 2010 and after a period of 12 years, the respondents-defendants filed an application raising an objection on payment of duty. However, the Commercial Court failed to take note of the same and allowed the application. It is further submitted that the Commercial Court ought to have referred Ex.P1 to the competent



authority with a request to calculate the duty and penalty payable and thereafter, ought to have ordered to pay the duty and penalty. It is also submitted that the plaintiff had paid Rs.13,00,000/- as Court fee and if Rs.15,60,19,380/- is paid as per the impugned order, the entire amount of recovery sought in the plaint would be towards the Court fee, duty and penalty. In support of his contentions, he placed reliance on the decision of the Hon'ble Supreme Court in the case of **SEETHARAMA SHETTY Vs. MONAPPA SHETTY¹**. Hence, he seeks to allow the petition.

3. *Per contra*, Sri.K.S.Harish, learned counsel appearing for the respondent Nos.1 and 2 supports the impugned order of the Commercial Court and seeks to dismiss the petition.

4. I have heard the arguments of the learned counsel for the petitioner, learned counsel for the

¹ 2024 SCC OnLine SC 2320



NC: 2026:KHC:47303
W.P. No.22823/2022

respondent Nos.1 and 2 and meticulously perused the material available on record. I have given my anxious consideration to the submissions advanced on both the sides.

5. The petitioner had filed Com.O.S.No.15/2020 against the respondents herein seeking the relief of recovery of sum of Rs.22,27,20,000/- along with interest thereon from 28.01.2008 till realisation of amount. The respondents filed a detailed written statement denying the plaint averments and sought for dismissal of the suit. The defendant No.2 filed an application under Section 151 of Code of Civil Procedure, 1908 (for short, 'the CPC') read with Sections 33 and 34 of the Karnataka Stamp Act, 1957 (for short, 'the Act') read with Section 17 of the Registration Act, 1908, seeking prayer to impound the document marked as Ex.P1 and further prayer that the said document cannot be looked into for any purpose on the ground that the instrument is insufficiently stamped.



The plaintiff filed objections to the said application, mainly contending that the instrument in question is already marked as an exhibit in the evidence and such admission of the document in the evidence cannot be questioned at a later stage and sought for rejection of the application. The Commercial Court, under the impugned order, allowed the application on the ground that the instrument at Ex.P1 is a mortgage deed with delivery of possession and the same is written on Rs.100/- stamp paper which is insufficiently stamped and hence, is liable to be impounded and ordered to pay the stamp duty of Rs.1,41,83,580/- and 10 times penalty on such duty at Rs.14,18,35,800/-, in total Rs.15,60,19,380/-.

6. With regard to the contention of the learned counsel for the petitioner that when once a document is marked, it cannot be re-opened and ordered to pay the duty and penalty and further that the Commercial Court ought to have referred the instrument in question to the



CNR: KAHC010525492022

NC: 2026:KHC:47303
W.P. No.22823/2022

competent authority under the Act, it would be useful to refer to paragraphs 27 to 30 of the decision of the Hon'ble Supreme Court in the case of **G.M.SHAHUL HAMEED Vs. JAYANTHI R. HEGDE²**, which reads as under:

"27. On the face of such an order, it does not leave any scope for doubt that on the date the GPA was admitted in evidence and marked as an exhibit, the trial court did not deliberate on its admissibility, much less applied its judicial mind, resulting in an absence of judicial determination. In the absence of a "decision" on the question of admissibility or, in other words, the trial court not having "decided" whether the GPA was sufficiently stamped, Section 35 of the 1957 Act cannot be called in aid by the respondent. For Section 35 to come into operation, the instrument must have been "admitted in evidence" upon a judicial determination. The words "judicial determination" have to be read into Section 35. Once there is such a determination, whether the determination is right or wrong cannot be examined except in the manner ordained by Section 35. However, in a case of "no judicial determination", Section 35 is not attracted.

² (2024) 7 SCC 719



CNR: KAHC010525492022

NC: 2026:KHC:47303
W.P. No.22823/2022

28. *In the light of the aforesaid reasoning of the trial court of admitted failure on its part to apply judicial mind coupled with the absence of the counsel for the appellant before it when the GPA was admitted in evidence and marked exhibit, a factor which weighed with the trial court, we have no hesitation to hold that for all purposes and intents the trial court passed the order dated 19-10-2010 in exercise of its inherent power saved by Section 151 CPC, to do justice as well as to prevent abuse of the process of court, to which inadvertently it became a party by not applying judicial mind as required in terms of Sections 33 and 34 of the 1857 Act. We appreciate the approach of the trial court in its judicious exercise of inherent power.*

29. *Reference to Section 58 of the 1957 Act by the learned counsel for the respondent is without substance. The clear language of Section 58 refers to a situation, where an order is passed admitting an instrument in evidence as duly stamped or as one not requiring a stamp, for its attraction. As is evident from a bare reading of the order dated 19-10-2010, the trial court did neither hold the GPA as duly stamped or as not requiring a stamp and, therefore, its applicability was not attracted.*



CNR: KAHC010525492022

NC: 2026:KHC:47303
W.P. No.22823/2022

30. *We may not turn a blind eye to the fact that the Revenue would stand the risk of suffering huge loss if the courts fail to discharge the duty placed on it per provisions like Section 33 of the 1957 Act. Such provision has been inserted in the statute with a definite purpose. The legislature has reposed responsibility on the courts and trusted them to ensure that requisite stamp duty, along with penalty, is duly paid if an unstamped or insufficiently stamped instrument is placed before it for admission in support of the case of a party. It is incumbent upon the courts to uphold the sanctity of the legal framework governing stamp duty, as the same are crucial for the authenticity and enforceability of instruments. Allowing an instrument with insufficient stamp duty to pass unchallenged, merely due to technicalities, would undermine the legislative intent and the fiscal interests of the State. The courts ought to ensure that compliance with all substantive and procedural requirements of a statute akin to the 1957 Act are adhered to by the interested parties. This duty of the court is paramount, and any deviation would set a detrimental precedent, eroding the integrity of the legal system. Thus, the court must vigilantly prevent any circumvention of*



*these legal obligations, ensuring due compliance
and strict adherence for upholding the rule of law.”*

7. In view of the aforesaid decision, the contention of the learned counsel for the petitioner that once the document is marked as an exhibit, it cannot be re-opened and ordered to pay the duty and penalty, has no merit and is accordingly rejected. The marking of the instrument in question as Ex.P1 is without the judicial determination of the duty payable on the said instrument and marking it at the initial stage of the proceeding is required to be considered as a tentative marking and now, the Commercial Court, on raising the objection with regard to the deficiency of stamp duty, has rightly entertained the application of the defendant No.2 and ordered to pay the duty and penalty.

8. The Hon'ble Supreme Court in the case of **SEETHARAMA SHETTY** referred *supra*, at paragraphs 21 to 23 has held as under:



CNR: KAHC010525492022

NC: 2026:KHC:47303
W.P. No.22823/2022

"21. *As per the steps taken under Sections 33¹⁹, 34²⁰, 35²¹, 37²², and 39²³ under Chapter IV of the Act, the position in law is well-established, and axiomatic by the letter of law and precedents of this Court. However, there are a few misgivings in the sequence of its application. For the benefit of practice and procedure, we sum up the steps as follows.*

21.1. *Section 33 of the Act is titled examination and impounding of instruments. The object of the provision is to disable persons from withdrawing the instruments produced by them on being told that proper stamp duty and penalty should be paid.*

21.1.1. *The person who intends to rely on an insufficiently/improperly stamped instrument has option to submit to the scope of Section 34 of the Act, pay duty and penalty. The party also has the option to directly move an application under Section 39 of the Act before the District Registrar and have the deficit stamp duty and the penalty as may be imposed collected. In either of the cases, after the deficit stamp duty and the penalty are paid, the impounding effected under Section 35 of the Act is released and the instrument available to the party for relying as evidence. In the event, a party prefers to have the document sent to the*



CNR: KAHC010525492022

NC: 2026:KHC:47303
W.P. No.22823/2022

deputy commissioner for collecting the deficit stamp duty and penalty, the Court/Every Person has no option except to send the document to the District Registrar. The caveat to the above is that, before the Court/Every Person exercises the jurisdiction under Section 34 of the Act, the option must be exercised by a party.

21.2. *Section 34 of the Act is titled instruments not duly stamped inadmissible in evidence. This provision bars the admission of an instrument in evidence unless adequate stamp duty and the penalty are paid. Every person so authorised to collect deficit stamp duty and penalty has no discretion except to levy and collect ten times the penalty of deficit stamp duty.*

21.3. *Section 35 of the Act is titled admission of instrument where not to be questioned. Section 35 prohibits questioning the admission of an insufficiently stamped instrument in evidence.*

21.4. *Section 37 of the Act is titled instruments impounded, how dealt with. This Section arises when the party pays the deficit duty and penalty, the Court is to impound the instrument under Section 33 of the Act and has to forward the instrument to the Deputy Commissioner/District Registrar. Subsection (2) of Section 37 of the Act deals with cases not falling under Section 34 and*



CNR: KAHC010525492022

NC: 2026:KHC:47303
W.P. No.22823/2022

36, and the person impounding an instrument shall send it in original to the Deputy Commissioner. This includes the exigencies set out in paragraph 21.1.1.

21.5. *Being a regulatory and remedial statute, a party who follows the regulation, and pays the stamp duty and penalty, as per Sections 34 or 39 of the Act, the legal objection emanating from Section 33 of the Act alone is effaced and the document is admitted in evidence. In other words, the objection under the Stamp Act is no more available to a contesting party.*

21.6. *Section 39 of the Act is titled deputy commissioner's power to stamp instruments impounded. This Section provides the procedure to be followed by the Deputy Commissioner/District Registrar while stamping instruments that are impounded under Section 33 of the Act. As per Section 39(1)(b) of the Act, the penalty may extend to ten times the stamp duty payable; however, ten times is the farthest limit which is meant only for very extreme situations. Therefore, the Deputy Commissioner/District Registrar has discretion to levy and collect commensurate penalty.*

21.7. *The above steps followed and completed by paying/depositing the deficit duty and penalty*



CNR: KAHC010525492022

NC: 2026:KHC:47303
W.P. No.22823/2022

would result in the instrument becoming compliant with the checklist of the Act. The finality is subject to the just exceptions envisaged by the Act addressing different contingencies.

21.8. *The scheme does not prohibit a party to a document to first invoke directly the jurisdiction of the District Registrar and present the instrument before Court/Every Person after complying with the requirement of duty and penalty. In such an event, the available objection under Sections 33 or 34 of the Act is erased beforehand. The quantum of penalty is primarily between the authority/court and the opposing party has little role to discharge.*

22. *Reverting to the circumstances of the case by keeping in perspective the steps summarised in the preceding paragraph, we notice that, before the stage of admission of the instrument in evidence, the respondent raised an objection on the deficit stamp duty. Therefore, it was the respondent who required the suit agreement to be impounded and then sent to the District Registrar to be dealt with under Section 39 of the Act. In this case, the respondent desired the impounding of the suit agreement and collect the deficit stamp duty and penalty. The trial court is yet to exercise its jurisdiction under Section 34 of the Act. On the*



CNR: KAHC010525492022

NC: 2026:KHC:47303
W.P. No.22823/2022

contrary, the trial court has called for a report from the District Registrar, so for all purposes, the suit instrument is still at one or the other steps summed up in paragraph 21. Therefore, going by the request of the respondent, the option is left for the decision of the District Registrar. Contrary to these admitted circumstances, though the suit instrument is insufficiently stamped, still the penalty of ten times under Section 34 of the Act is imposed through the impugned orders. The imposition of penalty of ten times at this juncture in the facts and circumstances of this case is illegal and contrary to the steps summed up in paragraph 21. The instrument is sent to the District Registrar, thereafter the District Registrar in exercise of his jurisdiction under Section 39 of the Act, decides the quantum of stamp duty and penalty payable on the instrument. The appellant is denied this option by the impugned orders. It is trite law that the appellant must pay what is due, but as is decided by the District Registrar and not the Court under Section 34 of the Act.

23. *Hence, for the above reasons, the direction to pay ten times the penalty of the deficit stamp duty merits interference and accordingly is set aside. The trial court is directed to send the*



CNR: KAHC010525492022

NC: 2026:KHC:47303
W.P. No.22823/2022

agreement of sale dated 29.06.1999 to the District Registrar to determine the deficit stamp duty and penalty payable. Upon receipt of the compliance certificate from the District Registrar, without reference to an objection under the Act, the suit document be received in evidence. All objections available to the respondents except the above are left open for consideration."

9. The Hon'ble Supreme Court in the aforesaid decision, considering the scheme of the Act and the facts of the said case, has ordered to pay the duty as decided by the District Registrar. It is to be noticed that Section 33 of the Act confers power on the Civil Court to impound the document produced before it, if the same is not duly stamped as required under the law. Section 34 of the Act indicates that the instrument which is not duly stamped is inadmissible in the evidence and the Court has power to levy 10 times penalty. In the case on hand, the Commercial Court, under the impugned order has recorded detailed reasons that the instrument in question is a memorandum of understanding dated 27.01.2004



(mortgage with possession in respect of immovable properties and advanced an amount of Rs.17,72,96,000/-) and the said instrument is liable to be impounded as the duty and penalty ought to have been paid under Article 34-A of the Act, and proceeded to calculate the duty and penalty. The contention of the learned counsel for the petitioner that the Commercial Court ought to have referred the instrument to the competent authority under the Act, has no merit as the Commercial Court has the power and jurisdiction to calculate the duty and penalty payable on Ex.P1 and accordingly, the duty and penalty was calculated and ordered to be paid. I do not find any error or perversity in the finding recorded by the Commercial Court under the impugned order calling for interference in this petition.

10. For the aforementioned reasons, I proceed to pass the following:



CNR: KAHC010525492022

NC: 2026:KHC:47303
W.P. No.22823/2022

ORDER

The writ petition is devoid of merits and the same is hereby ***rejected***.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

RV
List No.: 1 Sl No.: 1