AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP No. 625 of 2002

- Raipur Bright Steel & Wire Weld Industries Ltd.

---- Petitioner

Versus

- The State Of C.G.& Ors.

---- Respondents

For Petitioner/s	:	Shri Anjinesh Shukla, Advocate
For Respondent / State	:	Shri D.R.Minj, Dy.G.A.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

08/12/2016

Shri Baghel appears for respondent No.4 and submits that a No Objection Certificate has been taken by the concerned authority and the file has also been withdrawn. However, considering the nature of dispute, Shri Baghel was permitted to assist the Court on legal issues.

2. This petition, under Article 226/227 of the Constitution of India has been filed by the petitioner seeking writ in the nature of certiorari for quashing letters dated 31/05/1995 (Annexure P/1), 28/06/1995 (Annexure P/2) and 16/03/2002 (Annexure P/3).

3. The petitioners have prayed for restraining the respondents from collecting an additional stamp duty of Rs.1 Lakh by requiring the petitioner to execute supplementary agreement in respect of enhancement of credit facility in continuation of loan already availed by the petitioner by creation of mortgage by creating charge over the property with the respondent / bank.

4. Briefly stated, relevant facts which are in narrow encompass, are that the petitioner is a company incorporated under the Company's Act. Petitioner No.2 is one of the share holders and one of the Managing Directors of the Company, which carries on the business of manufacturing Round CTD Bars, Angles, Channels, Square, Flats, Crow Bars etc at Raipur.

5. In order to avail various credit facilities from respondent No.4 / bank, the petitioner company created charge over its properties situated in plot No.8 and 9 of industrial area, Raipur. At the time of creating charge over those properties, stamp duty, as leviable under the then existing law was paid. The petitioner / company, however, requested the bank to enhance cash credit limit of Rs.75 lakhs and bank guarantee limit of Rs.40 lakhs. Though the bank accepted the request, vide letter dated 13/03/2002, the bank required the petitioner to accept terms and conditions. It followed another letter dated 16/03/2002 (Annexure P/3) by which, the bank required the petitioner to execute a supplementary agreement of deposit of title deeds towards security of the additional credit facility and bank guarantee limits. It required the petitioner to make payment of Rs.1 lakh, which was protested. When the bank insisted on execution of further agreement for creation of mortgage by creating charge over the property which were already mortgaged earlier for availing the benefit of cash credit facility of bank guarantee, petitioners approached this Court.

6. Learned counsel for the petitioner argued that the petitioner had earlier applied for grant of loan and towards repayment of loan and in order to secure such repayment, the petitioner had already created charge over immovable property by creating mortgage by deposit of title deeds. At that time, the then leviable stamp duty was also paid. Later on, when the petitioner prayed to increase the loan of cash credit facility and bank guarantee, the bank accepted the request without requiring the petitioner to deposit title deeds of any other property but it permitted the petitioner to avail additional facility only on those title deeds which were already deposited with the bank. Therefore, in these circumstances, insistence on the part of the bank to seek execution of a fresh deed of charge by notionally depositing the title deeds already deposited, is unwarranted.

The other submission of learned counsel for the petitioner is that the letter (Annexure P/1) issued by the Director General, Stamps is also illegal because in respect of creation of mortgage by deposit of title deeds, requirement of additional stamp duty under Section 75 of the Panchayat Act, 1993 is not leviable under the law. He submits that the additional stamp duty could be made leviable only in respect of simple mortgage and no other mortgage, much less deposit of title deeds.

7. On the other hand, learned State counsel submits that in the absence of there being any challenge laid to the legality and validity of statutory scheme of the Indian Stamp Act, 1899 and Section 75 of the Panchayat Act, 1993, all kinds of agreement relating to deposit of title deeds are leviable to stamp duty and when the immovable property happens to be situated within the territorial limits of Panchayat, additional duty is leviable in respect of mortgage, irrespective of its nature. The next submission of learned State counsel is that the petitioner had earlier created a charge over the property by depositing title deeds only towards security of repayment of amount earlier taken by way of loan and not the additional facility allowed by the bank. Therefore, in order to create charge over the property, in addition to the charge, in respect of the loan already taken, a new agreement is required to be executed and therefore, bank cannot be said to be unjustified in requiring the petitioner to execute a supplementary agreement creating a charge over the property in respect of additional loan provided to the petitioner.

8. In so far as leviability of stamp duty on an agreement relating to deposit of title deeds is concerned, the same is leviable to stamp duty under Article 6 of Schedule 1-A of the Indian Stamp Act, 1899 which provides as follows -

Description of Instruments	**Proper Stamp - duty**
1. xxxxxxx	xxxxxxx
2. xxxxxxx	xxxxxxx
3. xxxxxxx	xxxxxxx
4. xxxxxxx	xxxxxxx
5. xxxxxxx	xxxxxxx
6. Agreement relating to deposit of title deeds, pawn or pledge, that is to say, any instrument evidencing an agreement relating to -	
(1) The deposit of title deeds or instruments constituting or being evidence of the title to any property	

whatever (other than a marketable security), or	
(2) The pawn or pledge of movable property, where such deposit, pawn or pledge has been made by way of security for the repayment of money advanced or to be advance by way of loan or existing or future debt :-	
(a) If such loan or debt is repayable on demand or more than three months from the date of instrument evidencing the agreement.	2% of the amount of loan or debt.
(b) If such loan or debt is repayable not more than three months from the date of such instrument.	Half the duty payable under sub-clause (a) of this article.

Explanation – For the purposes of clause (1) of this article, notwithstanding anything contained in any judgment, decree or order of any Court or order of any authority, any letter, note, memorandum or writing relating to the deposit of title deeds whether written or made either before or at the time when or after the deposit of title deeds is effected, any whether it is in respect of the security for the first loan or any additional loan or loans taken subsequently, shall, in the absence of any separate agreement or memorandum of agreement relating to deposit of such title deeds, be deemed to be an instrument evidencing an agreement relating to the deposit of title deeds.

9. Explanation to the aforesaid provision is indicative of a very wide meaning and import relating to deposit of title deed and takes within its encompass, undoubtedly, an agreement of deposit of title deed intended to be a charge in respect of a loan taken. Therefore, it would incidentally includes a mortgage by deposit of title deeds.

Section 75 of the Panchayat Act makes special provision for levying additional stamp duty in respect of immovable property situated within the block and in respect of which, an instrument relating to sale, gift or mortgage has been executed. The provision reads thus -

> **"Section 75. Duty on transfer of property within block** – The duty imposed under the Indian Stamp Act, 1899, on instrument relating to sale, gift (or mortgage) of immovable property situated within the block be increased by one percent on the value of such property or in the case of mortgage on the amount secured by the instrument.

> [Provided that such extra stamp duty levied in respect of mortgage shall not exceed the amount of stamp duty thereon;
>
> Provided further that no extra stamp duty is livable in respect of any instrument exempted from stamp duty under the Indian Stamp Act, 1899 or the rules made thereunder]"

10. The legality and validity of such provision are not under challenge in this petition. Therefore, conjointly read, when an agreement relating to deposit of title deed is in the nature of creation of mortgage by deposit of title deeds, it will not only fall within the mischief of Article 6 of Scheduled 1-A but simultaneously, under Section 75 of the Panchayat Act, where immovable property happens to be situated within the block of Panchayat. Obviously, in such a case, an additional stamp duty, to the extent of 1% shall be payable in addition to the normal stamp duty payable in respect of such document as per provision contained in Article 6 of Schedule 1-A of the Stamp Act.

11. All that Annexure P/1 seeks to clarify is to say that creation of a mortgage by deposit of title deeds is well included in mortgage as provided under Section 75 of the Panchayat Act. This clarification does not appear to be contrary to the provision of the statutory scheme of Section 75 of Panchayat Act inasmuch as, legislature in its wisdom, while making the provision, has chosen not to restrict mortgage to particular class or category. Otherwise, nothing prevented the legislature from clearly specifying that in respect of particular category of mortgage alone, additional 1% stamp duty would be charged. Use of word "mortgage' in the absence of contrary intention appearing in the provision itself or in the Panchayat Act, 1993, include mortgages of all kind including mortgage by deposit of title deeds. Therefore, there is no force in the contention that Annexure P/1 issued by the Registrar, Stamp Registration is contrary to the provision contained in Article 6 of Schedule 1-A of the Stamp Act or Section 75 of the Panchayat Act.

12. It takes me to consider another issue. At the time when the petitioner had initially obtained loan from the bank, it was required to create a charge over the property by entering into an agreement by deposit of title deed in respect of certain properties. However, the agreement created charge over the property only in respect of that amount which is specifically mentioned in the agreement earlier executed. Once the petitioner intends to enhance the cash credit loan and bank guarantee, even if the bank agrees to accept the same title deed for the purposes of giving additional facility, nevertheless, it will require execution of a supplementary agreement containing recital that a charge is created over the same property in respect of additional cash credit facility and bank guarantee limit. If that is not done, there would be no any agreement creating a right in favour of the bank to secure loan by creating charge over the property. Therefore, viewed from this angle, there appears no illegality on the part of the bank to require the petitioner to execute supplementary agreement creating charge over the property in respect of additional facility extended to the petitioner by the bank on certain conditions. May be that now, the petitioner will be required to pay stamp duty as provided under Article 6 Schedule-A read with Section 75 of the Panchayat Act i.e. additional stamp duty of 1 % over and above what is payable under the Stamp Act because the property in respect of which, charge is being created is one situated in the Panchayat area.

13. In view of above, I do not find any merit in this petition. The petition is accordingly, dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Deepti