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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) No. 1154 OF 2016

Asset Reconstruction Company)
(India) Limited, A Company incorporated)
under the Companies Act, 1956 having)
office at The Ruby, 10th Floor, 29, Senapati)
Bapat Marg, Dadar (West), Mumbai, acting)
in its capacity as a Sole Trustee of Arcil -)
SBPS-024-I Trust … Petitioner

Vs.

1. M/s. Alpha & Omega Diagnostics (India))
Ltd., a company registered under the)
Companies Act, 1956 having its)
registered office at, 13, Raj Mahal, 1st)
floor, Bhuleshwar Road, Mumbai 400 002)

2. Arunkumar Durgaprasad Parasrampuria,)
Director, Guarantor and Legal Representative
of late Shri Durgaprasad Parasrampuria and)
late Smt. Shakuntala Parasrampuria B-2,)
11th Floor, Matru Ashish Co-Op. Housing)
Society, Nepean Sea Road, Mumbai 400 026

3. Mrs. Sudhadevi Satyanarain Berlia,)
Director, Guarantor and as legal)
Representative of late Shri Durgaprasad
Parsrampuria and late Smt. Shakuntala
Parsrampuria residing at Prem Kutir,)
Ground Floor, 178, Netaji Subhash)
Road, Mumbai 400 020.)

4. Mrs. Neetadevi P. Singhania, as legal)
representative of late Shri Durgaprasad
Parsrampuria and late Smt. Shakuntala
Parsrampuria of Mumbai, residing at)
73, Sunita, Cuffe Parade, Mumbai – 5)

5. Mrs. Rashmidevi R. Padia, as heir &)
legal representative of late Shri)
Durgaprasad Parsrampuria and late)
Smt. Shakuntala Parsrampuria residing
at Queens Palace, 202 Waterfield)
Road, Bandra West, Mumbai 400 050)

6. Mrs. Umadevi A. Jain, as heir & legal)
representative of late Shri Durgaprasad
Parsrampuria and late Smt. Shakuntala
Parsrampuria, residing at K-56, Anna)
Nagar, Chennai – 66102.)

7. Mrs. Neetadevi P. Singhania, heir &)
Legal Representative of late Shri)
Durgaprasad Parsrampuria and late)
Smt. Shakuntala Parsrampuria,)
residing at 73, Sunita, Cuffe Parade,)
Mumbai 400 005.)

8. Mrs. Ushadevi R. Jhunjunwala, heir &
Legal Representative of late Shri)
Durgaprasad Parsrampuria and late)
Smt. Shakuntala Parsrampuria,)
residing at M. P. Udyog Ltd. 117/K/13)
Gutaiya, Kanpur, Uttar Pradesh … Respondents

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Dr. Birendra Saraf a/w Phiroze Merchant i/b Apex Law Partners, for the Petitioner.

Mr. Aspi Chinoy, Sr. Counsel a/w Sharan Jagtiani a/w Ms. Sheetal Shah i/b M/s. Mehta and Girdharlal, for the Respondents.

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CORAM : V. M. KANADE, &
Smt. SWAPNA S. JOSHI, JJ.

DATE : AUGUST 19, 2016

<u>ORAL JUDGMENT</u> [Per : V. M. KANADE, J.]

1. Heard the learned counsel appearing on behalf of the

Petitioner and the learned senior counsel appearing on behalf of the Respondents. The Petitioner in this petition is aggrieved by the judgment and order passed by the Debts Recovery Appellate Tribunal, Mumbai (for short the "DRAT") dated 16th December, 2015 in Miscellaneous Appeal No. 24 of 2012 alongwith Misc. Appeal Nos. 578/2015 and 930/2013.

2. Rule. Rule is made returnable forthwith. By consent of parties, petition is taken up for final hearing.

3. The Petitioner is a public financial institution, as defined under the provisions of the Recovery of Debts due to Banks and Financial Institutions Act, 1993. The Oriental Bank of Commerce had advanced various amounts to Respondent No. 1, who had guaranteed the repayment of the said amount and had mortgaged their properties with the Bank. Since the Respondents were unable to repay the said amount, which was due and payable to the Bank, the Bank filed Original Application No. 89 of 2005 against the Respondents before the Debts Recovery Tribunal-II, Mumbai (for short the "DRT"). The debts, which were due and payable to the Oriental Bank of Commerce, were assigned to the Petitioner Company, and therefore, the

Petitioners were substituted as applicant in the original application. The Petitioner filed the claim affidavit alongwith the original document. The Respondents / Defendants also filed their claim, reiterating what they had stated in the written statement.

4. The Petitioner / Applicant filed an Interim Application No. 384 of 2011, requesting the Presiding Officer to impound the said documents since they were not properly stamped. The Respondents opposed the said application. The DRT, however, allowed the application filed by the Petitioner, and passed an order that the documents tendered by the Petitioner should be returned to the Petitioner, and that the Petitioner should get these documents properly stamped from the competent authority.

5. The Respondents challenged the order of DRT by filing Miscellaneous Appeal No. 24 of 2012 before the DRAT. During pendency of the appeal all the documents, which were returned to the Petitioner were duly stamped as per the order passed by the competent authority, were filed before the DRT.

6. The learned Chairperson of the DRAT allowed the appeal

filed by the Respondents and directed the DRT to consider the documents as if they were unstamped and gave a direction to follow the procedure, established under the Bombay Stamp Act, 1958 and more particularly, under Section 33, 34 and 37 of the said Act.

7. The Petitioner being aggrieved by the said order has filed this petition under Article 226 of the Constitution of India. Mr. Saraf, the learned counsel appearing for the Petitioner has taken us to the impugned order passed by the DRAT. He submitted that since the documents were duly stamped during the pendency of the appeal and refiled before the DRT, the appeal had become infructuous and the DRAT should not have given a direction to the DRT to decide the matter afresh. He further submitted that the relevant provisions, viz. Sections 33, 34 and 37 of the Bombay Stamp Act, 1958 (for short the "said Act") were incorporated only with an intention to protect the interest of the revenue. He submitted that since the stamp duties have been paid, the said intention has been fulfilled, and therefore, there are no occasions for the DRAT to give a direction to follow the procedure under Section 33 and 37 sub-section (2) of the said Act. He also relied on the judgment of the Apex Court in the case of – ***Hindustan Steel***

Ltd., Appellant Vs. M/s. Dilip Construction Co., Respondent [AIR 1969 Supreme Court 1238].

8. On the other hand, the learned senior counsel Mr. Aspi Chinoy, appearing for the Respondents invited our attention to Section 37 sub-section (2) of the said Act, and submitted that the procedure laid down under Section 37 sub-section (2) is mandatory and that was the only way a document unstamped or inadequately stamped had to be impounded and the adjudication regarding payment of stamp duty to be made by the competent authority. He submitted that the DRAT was, therefore, justified in remanding the matter back to the DRT by holding that the payment of stamp duty by the Petitioner was not in accordance with law. He submitted that therefore the DRAT had correctly given a direction to decide the matter afresh after treating the said document as inadequately or not properly being stamped. In support of the said submission, he relied upon a judgment of the Single Judge of this Court in the case of – ***Santosh Anant Raut, Petitioner Vs. Pukharaj Chogmal Rathod & Anr., Respondents [2010 ALL MR (Supp.) 529]***.

9. We have given our anxious consideration to the

submissions made by the counsel appearing for the Petitioner and the Respondents. Before we consider the rival submissions, it would be appropriate to take into consideration the relevant provisions under the Bombay Stamp Act, 1958. It is not in dispute that the said provisions have been made solely for the purpose of protecting the interest of the revenue and the said provisions, therefore, have to be taken into consideration in the light of the objects and reasons of the Bombay Stamp Act, 1958. The relevant provisions in this case are, Sections 33, 34 and 37. These sections are reproduced hereunder:

> **33. Examination and impounding of instruments.-**
> **(1)** Subject to the provisions of section 32-A, every person having by law or consent of parties authority to receive evidence and every person in charge of a public office, except an officer of police or any other officer, empowered by law to investigate offences under any law for the time being in force, before whom any instrument chargeable, in his opinion, with duty, is produced or comes in the performance of his functions shall, if it appears to him that such instrument is not duly stamped, impound the same irrespective whether the instrument is or is not valid in law.
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> **(2)** For that purpose every such person shall examine

every instrument so chargeable and so produced or coming before him in order to ascertain whether it is stamped with a stamp of the value and description required by the law for the time being in force in the State when such instrument was executed or first executed :

Provided that, -

(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do any instrument coming before him in the course of any proceeding other than a proceeding under Chapter IX or Part D of Chapter X of the Code of Criminal Procedure, 1973;

(b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court may appoint in this behalf.

(3) For the purposes of this section, in cases of doubt, -

(a) the State Government may determine what offices shall be deemed to be public offices; and

(b) the State Government may determine who shall be deemed to be persons in charge of public offices.

33A. Impounding of instruments after registration.- When through mistake or otherwise any instrument which is not duly stamped is registered under the Registration Act, 1908, the registering officer may call for the original instrument from the party and, after giving the party an opportunity of being heard and recording the reasons in writing and furnishing a copy thereof to the party, impound it. On failure to produce such original instrument by the party, a true copy of such instrument taken out from the registration record shall, for the purposes of this section, be deemed to be the original of such instrument :”

“**34 . Instruments not duly stamped inadmissible in evidence, etc.-** No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer unless such instrument is duly stamped or if the instrument is written on sheet of paper with impressed stamp such stamp paper is purchased in the name of one of the parties to the instrument. Provided that,-

(a) any such instrument shall, subject to all just exceptions, be admitted in evidence on payment of, -

(i) the duty with which the same is chargeable, or in the case of an instrument insufficiently stamped, the amount required to make up such duty, and

(ii) a penalty at the rate of 2 per cent of the deficient portion of the stamp duty for every month or part thereof, from the date of execution of such instrument;

(b) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp; the contract or agreement shall be deemed to be duly stamped;

(c) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter IX or Part D of Chapter X of the Code of Criminal Procedure 1973;

(d) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act;

(e) nothing herein contained shall prevent the admission of a copy of any instrument or of an oral admission of the contents of any instrument, if the stamp duty or a deficient portion of the stamp duty and penalty as specified in clause (a) is paid."

“**37. Instruments impounded how dealt with.-** (1) the person impounding an instrument under section 33 has by law or consent of parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by section 34 or of duty as provided by section 36, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.

(2) In every other case, a person so impounding the original instrument shall prepare an authentic copy of such instrument and where it is a true copy or an abstract referred to in section 31 or true copy referred to in section 33A, he shall send such authentic copy or, true copy or, as the case may be, an abstract to the Collector, for the purpose of taking action on the authentic copy or a true copy or, as the case may be, an abstract as if it were the original instrument and endorsing thereon a certificate with reference to the instrument under clause (a) of sub-section (1) of section 39 or under sub-section (1) of section 41, as the case may be. On receipt of the authentic copy, the true copy or, as the case may be, an abstract with the certificate as aforesaid endorsed thereon, the person who had impounded the original instrument shall copy on the

> original instrument the certificate endorsed on the authentic copy and shall authenticate such certificate; and where it is a true copy or an abstract on which the certificate as aforesaid is endorsed, the registering officer who had forwarded the true copy or an abstract shall make appropriate entries in respect of the instrument of which it was a true copy or an abstract, in the relevant register maintained by him and on an application made in this behalf issue under his signature a certificate to the effect that the proper duty or, as the case may be, the proper duty and penalty (stating the amount of each) have been levied in respect of that instrument, and the name and residence of the person paying such duty and penalty."

10. Section 34 of the said Act in terms states that any document which is not improperly stamped is inadmissible in evidence. The purpose for making it inadmissible is to ensure that the document is stamped in accordance with law. The said document cannot be relied upon in evidence unless stamp duty is paid on the said document. As a result of the aforesaid provision, a care has been taken to ensure that the revenue receivable by the State is protected. The provisions for impounding the document, which is not a stamped document or which is inadequately stamped, is made to ensure that

unless the revenue is received by the State Government, the said document should not be released to the person, who has tendered that document. The purpose behind impounding the document is therefore abundantly clear. It is a mechanism, which has been evolved in order to ensure that the person, who has tendered that document, does not escape from the clutches of the State, and the revenue is paid in the form of stamp duty by such a person. The second obvious reason for impounding the document is to further ensure that even if suit is withdrawn, the payment can be secured by ensuring that it is impounded, so that the person who wishes to get back document will have to first pay the stamp duty, and thereafter, he can claim return of the document.

11. The procedure of impounding of the document has been laid down under Section 37 of the said Act. In the present case, Section 37(2) of the Act will apply, and therefore, the Court before whom the document is presented which is not stamped or inadequately stamped has to impound the document and send it for adjudication to the competent authority, and only after the stamp duty is adjudicated and paid by the person who has tendered the document, the said

document becomes admissible in evidence. In the present case, application was made by the Petitioner for impounding the documents, which were 27 in number. The Court can send them for adjudication before the competent authority. It is not in dispute that these documents were not admitted in evidence. The Presiding officer of the DRT, though allowed the the application filed by the Petitioner, further passed an order directing the return of the documents to the Petitioner / Applicant with a further direction that the same should be presented after they were duly stamped. Accordingly, the Petitioner took the documents and presented them before the competent authority. The fact that they were presented before the competent authority is not in dispute. The fact that thereafter they were duly stamped is also not seriously disputed by the Respondents. Thirdly, it is also not in dispute that the procedure of stamping of the documents was completed during pendency of the appeal before the DRAT.

12. The DRAT, however, came to a conclusion that the provisions of Sections 33 and 37(2) were not complied by the DRT, and therefore, it was of the view that the said procedure should be followed, and for that purpose remanded the matter back to the DRT,

and set aside the order passed by the DRT.

13. In our view, upon a conjoint reading of Sections 33, 34 and 37 sub-section (2) of the said Act, there is no manner of doubt that the correct procedure which has to be followed by any Court who receives unstamped or inadequately stamped document is to impound the document and send it for adjudication. In the present case, however, though this procedure has not been followed, the DRAT should have taken pragmatic and practical view of the matter and considered the fact that during pendency of the appeal, these inadequately stamped or unstamped documents were now duly stamped before the competent authority, and therefore, there was no occasion for the DRAT who have interfered with the order passed by the DRT. In our view, there is no point in turning the clock back, when the purpose for which documents are to be impounded is served, viz. the revenue was secured in the form of payment of stamp duty. It has been nowhere stated by the Respondents that the documents have been inadequately stamped or that the documents were not produced before the competent authority, viz. the Collector.

14. The Apex Court in the case of *Hindustan Steel Ltd.*

(supra) has observed in paragraph 5 as under:

> "5. The Stamp Act is a fiscal measure enacted to secure revenue for the State on certain classes of instruments: it is not enacted to arm a litigant with a weapon of technicality to meet the case of his opponent. The stringent provisions of the Act are conceived in the interest of the revenue. Once that object is secured according to law, the party staking his claim on the instrument will not be defeated on the ground of the initial defect in the instrument. Viewed in that light the scheme is clear. Section 35 of the Stamp Act operates as a bar to an unstamped instrument being admitted in evidence or being acted upon; section 40 provides the procedure for instruments being impounded, sub-section (1) of Section 42 provides for certifying that an instrument is duly stamped, and sub-section (2) of Section 42 enacts the consequences resulting from such certification."

A litigant therefore cannot use this provision as a weapon of technicality to meet the case of his opponent. The stringent provisions of the Act are conceived in the interest of the revenue, and once the object is secured according to the law, the party staking its claim on the instrument will not be defeated on the ground of initial defect of the instrument.

15. In the present case, the Oriental Bank of Commerce had filed an application before the DRT for recovery of Rs. 4,43,70,739/-. The said application was filed in the year 2005. More than 10 years have passed and it is obvious that the Respondents, with a view to prolong the decision in the case, have been raising these technical objections to defeat the claim made by the Petitioner. The purpose of securing the interest of the revenue having been served. In our view, no useful purpose would be served in sending the matter back since the further time will be lost in carrying out the said process. The impugned order passed by the DRAT, therefore, will have to be set aside. Mr. Aspi Chinoy, the learned senior counsel appearing for the Respondents has relied upon judgment of the Single Judge of this Court in the case of *Santosh Anant Raut (supra)*. In the said case, a document was filed by the plaintiff in a suit for recovery of a sum of Rs.6,19,000/- together with interest. Since the document was not properly stamped and instead of executing the document on a stamp of Rs.50/-, the same was executed on a stamp paper of denomination of

denomination of Rs. 20/-. The trial court by an order dated 3rd December, 2008 impounded the said document and proceeded to adjudicate the amount which was to be paid by the Plaintiff, and directed the Plaintiff to pay stamp duty of Rs. 90/-, which included the deficit stamp duty and penalty. The said order was challenged before the learned Single Judge and it was argued that the Court should not have adjudicated the amount of deficit stamp duty, since under the Act no power was conferred on the Court to determine the stamp duty, chargeable in respect of any instrument. It was argued that in view of Sections 31 and 32 of the said Act, the said power was vested with the Collector, and the jurisdiction of the civil court was confined to recording a finding on the question whether an instrument is duly stamped or not.

16. In our view, there cannot be any dispute regarding the ratio of the judgment, on which reliance is placed by the learned senior counsel Mr. Aspi Chinoy, appearing on behalf of the Respondents. In the said case, however, the Court had determined an amount of deficit stamp duty and the penalty to be paid, and therefore, the Court was justified in setting an order and directing the parties to

approach the competent authority, viz. the Collector for adjudication of the stamp duty. The ratio of the said judgment, however, will not apply to the facts of the present case, since in the present case it is not in dispute that the deficit stamp duty was paid after it was adjudicated by the competent authority. It is also not in dispute that the Petitioner had paid the inadequate stamp duty. The ratio of the said judgment, therefore, is of no assistant to the Respondents.

17. We, therefore, set aside the impugned order passed by the DRAT. We would like to note that in the peculiar facts and circumstances of the case, we do not propose to interfere with the order passed by the DRT, and therefore, we set aside the order passed by the DRAT since the interests of the revenue have already been secured. We would, however, like to clarify that the decision taken by the DRT should not be considered as a precedent in such cases, and the appropriate course of action is to follow the procedure laid down under the said Act for the purpose of impounding the document and sending it for adjudication before the competent authority. We are, therefore, of the view that the ratio of the judgment in the case of *Hindustan Steel Ltd. (supra)* will squarely apply to the facts of the

present case. The Respondents against whom the claim application has been filed cannot protract the proceedings on technicalities to defeat the claim of the opponent / Petitioner herein. In the result, the impugned order is set aside. The proceedings before the DRT-II, Mumbai are expedited. The writ petition is made absolute in the aforesaid terms and is accordingly disposed of.

18. At this stage, the learned counsel appearing on behalf of the Respondents seeks stay of the order passed by this Court. We decline to accede to the request for grant of stay. We have by our detailed order already given reasons why we feel that the impugned order has to be set aside. The proceedings before the DRT are pending since 2005, we are, therefore, not inclined to grant the stay, as requested by the learned counsel for the Respondents. Request for stay of this order is therefore declined.

Sd/-	Sd/-
[Smt. SWAPNA S. JOSHI, J.]	[V. M. KANADE, J.]

Vinayak Halemath