

IN THE HIGH COURT OF JUDICATURE AT MADRAS
JUDGMENT RESERVED ON:11.08.2017
JUDGMENT PRONOUNCED ON: 22.08.2017
CORAM:
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.168 of 2016 and CMP Nos.1403 &1404 of 2016
CMA No.169 of 2016 and CMP.Nos.1409 & 1410 of 2016

Mrs.G.Mary Chellathai ... Appellant in CMA No.168 of 2016/Appellant

M/s.M.G.M.Diamond Beach Resorts (P) Ltd.,
Rep. by its Director,
No.1,9th Street, Dr.Radhakrishnan Salai,
Mylapore, Chennai 600 004. ... Appellant in CMA No.169 of 2016/
Appellant

Vs

1. Tamilnadu Inspector General of Registration
& Principal Revenue Authority,
Office of the IG of Registration
Santhome High Road, Chennai 600 028.
2. The District Revenue Officer (Stamps)
Office of the DRO, Chennai
Chennai Collectorate,
Rajaji Salai, Chennai 600 001.
3. The Sub Registrar,
Office of the Sub Registrar,
Thiruporur, Chenglepet Taluk,
Kancheepuram District. ... Respondents in both the
Appeals/Respondents

Prayer: These appeals are filed under Section 47A (10) of the Indian Stamp Act, 1899 R/W Rule 9(5) (a) of the Tamil Nadu Stamps (Prevention of Under Valuation) Rules, 1968, to set aside the order of the 1st respondent bearing Nos.PA.Mu.No.34450/N.1/2014 and PA.Mu.No.34451/N.1/2014 dated 15.10.2015 respectively, for the aforesaid grounds and for other grounds and arguments that would be raised at the time of hearing of the above appeals.

For Appellant : Mr.K.Bijay Sundar
(in both the appeals)

For Respondents : Mr.Venugopal
(in both the appeals) Special Govt. Pleader

C O M M O N J U D G E M E N T

Both Appeals are filed under Section 47-A (10) of the Indian Stamp Act. challenging the order of the 1st respondent namely the Inspector General of Registration/Chief Controlling Revenue Authority passed in an Appeal under Section 47-A (6) of the Indian Stamp Act.

The brief facts that led to the filing of these appeals are as follows:

2. The appellants have entered into the agreements for purchase of certain properties situate at Muttukadu Village of Chengalpet District with one Sudir on 06.05.1997 and 08.05.1997. Under the agreement dated 06.05.1997, the total sale consideration was fixed at Rs.22,95,000/- and an advance of Rs.10,00,000/- was also paid on the date of the said agreement. Under the agreement dated 08.05.1997, the total sale consideration was fixed at Rs.22,00,000/- and an advance of Rs.20,00,000/- was paid on the date of the agreement. A fixed time frame was also agreed between the parties for performance of the obligations under the agreements. While so, it appears that the Debt Recovery Tribunal, Chennai, had, at the instance of State Bank of Hyderabad, Thousand lights Branch, granted an order of injunction restraining the vendor under the agreements of sale referred to above from alienating the property that was the subject matter of the agreements on 13.05.1997. Therefore, the vendor could not perform his obligations under the agreements. On coming to know about the injunction order, the appellants filed separate applications for impleading themselves in the proceedings before the Debt Recovery Tribunal in Original Application No.2 of 1996 and sought for vacating the order of injunction. By order dated 17.03.1998, the Debt Recovery Tribunal, Chennai, allowed the applications for impleading in IA.Nos. 373 of 1997 and 4 of 1998 and the applications for vacating the orders of injunction were directed to be posted for hearing. After stiff contest by the Bank, the applications for vacation of injunction filed by the appellants in IA Nos.374 of 1997 and 5 of 1998 were finally allowed by the Debt Recovery Tribunal on 30.01.2004. This order of the Debt Recovery Tribunal was challenged by the Bank before the Debt Recovery

Appellate Tribunal, Chennai, in MA.Nos.89 and 90 of 2004. These appeals were eventually dismissed by the Appellate Tribunal on 10.12.2004.

3. Since the agreement vendor, namely V.Sudir, did not come forward to execute the sale deed after the conclusion of the proceedings before the Debt Recovery Appellate Tribunal, the appellants were forced to file Civil suits seeking specific performance of the agreements in C.S.Nos.40 of 2006 and 41 of 2006 before this Court. The said suits were decreed on 24.04.2008 and thereafter, sale deeds came to be executed by the 1st Assistant Registrar of this Court on 24.01.2013 pursuant to an order passed in Execution Petition Nos.2794 and 2795 of 2009. When the said sale deeds were sought to be registered, the Sub Registrar took a view that the valuation as on the date of presentation of the document for registration should be taken into account for payment of Stamp duty and thus referred the matter under Section 47-A(1) of the Indian Stamp Act to the 2nd respondent. The 2nd respondent thereafter commenced to proceed under Section 47-A by issuing a Form 1 notice on 09.12.2013. After following the procedure prescribed under the Rules by issuing a Form 2 notice and provisional order, the 2nd respondent passed final orders on 13.06.2014, fixing the value of the property at Rs.1,600/- per sq.foot and demanding a deficit stamp duty of Rs.42,34,230/- from the appellant in CMA No.169 of 2016 and deficit stamp duty of Rs.39,96,720/- from the appellant in CMA No.168 of 2016.

4. Aggrieved by the above fixation of the value of the properties and demand of deficit stamp duty, the appellants filed appeals before the 1st respondent under Section 47-A(5) of the Indian Stamp Act. The 1st respondent dismissed the appeals by an order dated 15.10.2015, thereby confirming the fixation of value by the 2nd respondent. The said orders of dismissal passed by the 1st respondent dated 15.10.2015 are under challenge in these appeals.

5. I have heard Mr.K.Bijay Sundar, learned counsel appearing for the appellant in both the appeals and Mr.M.Venugopal, learned Special Government Pleader (CS) appearing for the respondents in both the appeals.

6. Mr.K.Bijay Sundar, learned counsel appearing for the appellants would raise three contentions:

- i). Relying upon the judgment of the Hon'ble Supreme Court in V.N.Devadoss v. Chief Revenue Control Officer-cum-Ins. and Ors. reported in 2009 (3) LW 236, he would contend that unless it is shown that there is an intention to under-value the property with an object to pay the lesser stamp duty, the question of reference under Section 47-A would not arise. According to the learned counsel, the delay that had occurred in the registration was beyond the control of the appellants and therefore it cannot be presumed that there was an intentional under-valuation of the property.
- ii). Relying upon Rule 7 of the Tamil Nadu Stamp (Prevention of undervaluation of Instruments) Rules, 1968, the learned counsel would submit that it is incumbent upon the Original Authority to have passed final order within three months from the date of the first notice, namely the Form -1 notice. Pointing out that the said time limit has been breached by the 2nd respondent inasmuch as the final order came to be passed only on 13.06.2014, whereas the Form 1 notice was dated 09.12.2013, the learned counsel would contend that the entire proceedings are vitiated.
- iii). The learned counsel would further contend that when an agreement purchaser is prevented from taking the sale deed by virtue of an order of injunction of a Competent Court or a Tribunal and thereafter he has been forced to sue for specific performance of the contract, it is the value of the property as on the date of the agreement that should be taken into account and not the value on the date of the actual execution of sale deed by the Court. In support of the third ground, the learned counsel would rely upon the Judgment of the Hon'ble Supreme Court in Residents Welfare Association, Noida v. State of Uttar Pradesh and Ors. reported in 2009 (14) SCC 716, wherein according to the learned counsel, the judgment of the Division Bench of this Court in S.P.Padmavathi v. State of Tamil Nadu and others, reported in AIR 1997 Madras 296, was quoted with an approval.

7. Per contra Mr.Venugopal, learned Special Government Pleader appearing for the respondents would contend that the question of under- valuation does not arise in this case. According to him, it is the date of the presentation of the

document that should be taken into account for the purposes of valuation and determination of stamp duty. In this regard, he would invite my attention to the Judgment of the Hon'ble Supreme Court in State of Rajasthan and Ors. v. Khandaka Jain Jewellers, reported in 2008 (1) CTC 60 and contend that the Hon'ble Supreme Court has in fact laid down that the pendency of the litigation cannot be taken into consideration for interpreting the provision of taxing statute and the Stamp Act is in the nature of a taxing statute not dependent on any contingency. Claiming that the said decision of the Hon'ble Supreme Court would apply squarely to the facts of this case, the learned Special Government Pleader would contend that the valuation as on the date of the presentation of the document alone should be taken into account and if so, the demand of the Department is justified. As regards the non compliance of Rule 7 of the Rules, namely the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, the learned Special Government Pleader would contend that the delay occurred due to administrative reasons and that cannot be put against the Revenue. On the question of intentional under-valuation, the learned Special Government Pleader would submit that the judgment of the Hon'ble Supreme Court in V.N.Devadoss v. Chief Revenue Control Officer-cum-Ins. and Ors., referred to supra, would not apply, inasmuch as the sale in the appeals on hand is between two individual parties and not through a public auction.

8. I have considered the rival submissions. The following questions arise for determination in these appeals.

- 1. Whether it could be said that there was a willful under-valuation of the properties at the instance of the appellants, so as to attract Section 47-A of the Indian Stamp Act?
- 2. Whether the non-compliance with time frame fixed under Rule 7 of the Tamil Nadu Stamp (Prevention of Under Valuation of Instruments) Rules, 1968, would vitiate the proceedings of the authorities ?
- 3. Whether the currency of the order of injunction issued by the Competent Court or Tribunal and the fact that the appellants were forced to seek specific performance of the agreement, could be taken into account while determining the question of valuation under Section 47-A of the Indian Stamp Act?

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Point No.1:

9. The facts are not in dispute. The agreements in question are dated 06.05.1997 and 08.05.1997 respectively. The appellants were also put in possession of the properties agreed to be purchased by them on 09.05.1997 and 10.05.1997. It is seen from the agreements that a substantial part of the consideration was paid even at the time of the entering into the agreements or within a short span of time thereafter. It is not in dispute that the Debt Recovery Tribunal, Chennai, granted orders of injunction restraining the agreement-vendor from alienating the properties on 13.05.1997. The orders of injunction were vacated by the Debt Recovery Tribunal only on 30.01.2004. The said orders were appealed against by the Bank and the appeals came to be dismissed on 10.12.2004. The appellants were forced to institute suits for specific performance of the agreement in CS.Nos.40 and 41 of 2006 before this Court which came to be decreed on 24.04.2008. Justifying the saying that the troubles of a decree holder starts only after the decree, the Execution proceedings which were launched in 2009, ended in an execution of sale deeds on 24.01.2013. The sale deeds were presented for registration and the Sub-Registrar promptly referred the matters under Section 47-A. In this background, it has to be tested as to whether it could be said that there was willful under-valuation of the property with an intention to avoid Stamp duty on the part of the appellants. In V.N.Devadoss v. Chief Revenue Control Officer-cum-Ins. and Ors., refer to supra, the Hon'ble Supreme Court has observed as follows:-

"7. A bare perusal of the rules make the position clear that sub-Rule (4) enumerates procedure on receipt of reference under Section 47-A. Rule 5 speaks about the principles for determination of market value. Sub-clause (a) refers to lands; (b) house sites; (c) buildings and (d) properties other than lands, house sites and buildings. Sub Sections (1) and (3) of Section 47-A clearly reveal the intention of the Legislature that there must be a reason to believe that the market value of the property which is the subject matter of the conveyance has not been truly set out in the instrument. It is not a routine procedure to be followed in respect of each and every document of conveyance presented for registration without any evidence to show lack of bona fides of the parties to the document by attempting fraudulently to under value the subject of conveyance with a view to evade payment of proper stamp duty and thereby cause loss to the revenue. Therefore, the basis for exercise of power under Section 47-A of the Act is willful under valuation of the subject of transfer with fraudulent intention to

evade payment of proper stamp duty."

10. The above observations of the Hon'ble Supreme Court came after having noticed the provisions of Section 47-A of the Stamp Act and the Rules made thereunder. Therefore, essential requirement to enable a Registering Officer to make reference under Section 47-A is the presence of willful under-valuation with fraudulent intention to evade payment of proper stamp duty.

11. From the facts narrated above, it could be seen that the appellants were not contributories to the delay that had occasioned in execution of the sale deeds. Admittedly, the agreements are of the year 1997 and it is not the case of the Revenue that even as per the guideline valuation on the date of the agreements, there is an under-valuation. The main basis on which the proceedings under Section 47-A has been launched and continued, is only on the footing that the valuation on the date of the presentation of the instrument for registration, should be taken into account for the purposes of levy of stamp duty and not the price agreed between the parties on the date of the agreements. Mr.K.Bijay Sundar, learned counsel appearing for the appellants would emphasise the fact that in the absence of subjective satisfaction expressed by the referring Sub Registrar that there has been a willful under-valuation, proceedings for determination of Stamp duty under Section 47-A cannot be launched.

12. Per contra, Mr.Venugopal, learned Special Government Pleader appearing for the respondents would contend that the judgment in V.N.Devadoss v. Chief Revenue Control Officer-cum-Ins. and Ors., cited supra, should be confined only to the cases where there was a public auction of the property and involvement of third party element. In other cases, the said principle will not stand attracted. I am unable to see any logic or reason in the distinction proposed by the learned Special Government Pleader. It is clear from the pronouncement of the Hon'ble Supreme Court that the requirement regarding willful under-valuation with a fraudulent intention to evade payment of stamp duty, was held to be essential based on the language used in Section 47-A and the Rules made thereunder and it does not depend on the facts of each case. A proper understanding of the dictum of the Hon'ble Supreme Court would, in my opinion, be that it must be shown that the referring officer, namely the Sub Registrar had a reason to believe that there was a willful under-valuation or that the market value of the property has not been truly set- forth in the instrument.

13. The impact of the decision of the Hon'ble Supreme Court in V.N.Devadoss v. Chief Revenue Control Officer-cum-Ins. and Ors., cited supra, rendered by a three-Judge Bench would be, unless it is shown that the Registering Officer has reason to believe that there was a willful under-valuation, there is no scope for further proceedings. The said reason to believe should be expressed in the order of reference. Unless these essential conditions are satisfied, I do not think that a reference under Section 47-A would be available to the Revenue as a matter of course. Therefore, unless it is shown that the referring officer had expressed that there was a willful under-valuation with a fraudulent intention to evade payment proper stamp duty, there is no question of exercise of power under Section 47-A of the said Act.

14. From the facts narrated above, it will be clear that there was no scope for any willful under-valuation of the property with a fraudulent intention to evade payment of proper stamp duty. As already pointed out, it is not the case of the Revenue that the value reflected in the agreements of sale dated 06.05.1997 and 08.05.1997 is less than the guideline value as on that date. It is also not shown that the delay in execution and registration of the sale deeds was in any manner contributed by the appellants. Therefore, the first question has to necessarily be answered in favour of the appellants.

Point No.2:

15. Mr.K.Bijay Sundar, learned counsel appearing for the appellants would invite my attention to Rule 7 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, and contend that it is incumbent upon the Original Authority, namely the 2nd respondent to conclude the proceedings and pass final orders within a period of three months from the date of the 1st notice. He would also contend that the said requirement is mandatory and any violation would result in the entire proceedings being vitiated. On the other hand, Mr.Venugopal, learned Special Government Pleader would submit that the requirement cannot be said to be mandatory and in any event, the delay was occasioned due to administrative reasons and hence the same cannot be taken as a vitiating factor. Rule 7 of the Tamil Nadu Stamp (Prevention of undervaluation of Instruments) Rules, 1968, reads as follows:-

7. Final order determining the market value:-

(1) The Collector shall, after considering the representations received in writing and those urged at

the time of hearing or in the absence of any representation from the parties concerned or their failure to appear in person at the time of hearing in any case after careful consideration of all the relevant factors and evidence available with him pass an order within three months from the date of first notice determining the market value of the properties and the duty payable on the instrument, and communicate the order so passed to the parties and take steps to collect the difference in the amount of stamp duty, if any.

(2) A copy of the order shall be communicated to the registering officer concerned for his record.

(3) The difference in the amount of duty determined by the Collector shall be paid within two months from the date of final order passed under Sub-section (2) or sub-section (3) of section 47-A.

(4) The Collector shall, after collecting the difference in amount of stamp duty and interest, if any, under section 47-A, give a certificate in Form III by endorsement on the instrument.

16. A reading of the above Rule would make it clear that a duty is imposed on the Original Authority, namely the Deputy Collector (Stamps) to pass a final order within a period of three months from the date of the 1st notice. The 1st notice is the Form I notice. From the order of the 2nd respondent dated 13.06.2014, it is seen that the Form I notice was issued on 09.12.2013 and the period of three months which is to be reckoned from the said date, expires on 09.03.2014. Admittedly, the final order was passed on 13.06.2014, which is well beyond the period of three months prescribed under the Rules.

17. In *Tata Coffee v. State of Tamil Nadu*, reported in 2008 (3) CTC 614, this Court, after elaborately discussing the procedure to be followed by the Authorities under the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, has observed as follows:

"2. As it is stated above the procedure for such suo motu power is also contemplated in Rules 4 to 7 of the Rules, however it is also relevant note that in respect of the powers of the Collector to conduct enquiry under Section 47A (2) and also in respect of the time within which of the registering authority

should refer the matter for determination for market value to the Collector, nothing stipulated under the Act, either Under Section 47 A (1) or 47 A(2), even though the Rules as stated above namely Rules 4,5,6 and 7 the Collector is bound to give 21 days notice while asking for representation in Form-1: the Collector, after assessment of the provisional market value while sending Form 2, can fix the date of its choice calling for objection in respect of provisional market value, the Collector has pass final order determining the market value, within three months from the date of 1st notice namely notice in Form I.

18. The above decision of this Court was cited and followed in Vijayalakshmi v. Chief Controlling Revenue Authority cum Inspector Genral of Registration, reported in 2012 (3) LW 27, Hon'ble Mr.Justice B.Rajendran, in the said decision had, after referring to Tata Coffee v. State of Tamil Nadu, cited supra, concluded that the non completion of the proceedings within a period of three months as mandated by Rule 7 would vitiate the entire proceedings. Therefore, the second question has also to be necessarily answered in favour of the appellants.

Point No.3:

19. Mr.Bijay Sundar, learned counsel appearing for the appellants would rely upon the judgment of a Division Bench of this Court in S.P.Padmavathi v. State of Tamil Nadu and othes, reported in AIR 1997 Madras 296 and the judgment of the Hon'ble Supreme Court in Residents Welfare Association, Noida v. State of Uttar Pradesh and Ors. reported in 2009 (14) SCC 716 and contend that the valuation as on the date of the agreement alone should have to be taken into account and not the market value of the property on the date of the presentation for the document on the registration.

20. Per contra, Mr.Venugopal, learned Special Government Pleader would rely upon the judgment of the Hon'ble Supreme Court in State of Rajasthan and others v. Khandaka Jain Jewellers, reported in 2008 (1) CTC 60, wherein another two-Judge Bench of Hon'ble Supreme Court, has taken the view that date of value on the date of the presentation of sale deed, should be taken into account for the purpose of the Stamp Duty. In Residents Welfare Association, Noida v. State of Uttar Pradesh and Ors., cited supra, the Hon'ble Supreme Court framed the following question for determination among other questions.

"4. Whether the relevant date for determining the consideration entered in the document would be the market value of the property on the day of entering into the agreement for sale and not the date of presentation of the documents for registration?"

The Hon'ble Supreme Court answered the said question as follows:

"27. Having decided the aforesaid questions raised in this case, we now proceed to deal with the question as to the date of determination of the consideration mentioned in the document. The respondents contended that the consideration mentioned should be the market value of the property on the date of execution of the deed and not on the date when the agreement to sell the land was executed. The appellants on the contrary argued that the relevant date in order to calculate the consideration would be the market value on the date when the agreement to transfer the land was entered and registered. We have heard the argument of the parties and referred to various cases dealing with this matter. In this regard, we would like to observe that there cannot be a straightjacket formula devised for determining the same. It would depend on the various facts and circumstances of a particular case. In situations where the delay is caused on the part of a party intentionally while executing a deed after entering into an agreement of sale or lease as the case may be, the market value should be determined on the date when the deed is executed and not when an agreement to sale the property or lease the property had been registered. But in cases where a person is not at fault and the delay is caused due to the lessor as in this case, the market value should be determined on the date when the agreement to lease the property was entered. The lessee or the sub lessee should not suffer due to the inability of the lessor in handing over transfer memorandums as is required under the lease. For this, a reference can be made to the case of S.P.Padmavati v. State of Tamil Nadu and Ors. MANU/TN/0042/1997: AIR 1997 Mad 296, which is similar to the present case and to which we are in respectful agreement where the property could not be registered due to no fault of the transferee and where the consideration was frozen earlier, as in the current

case. The Madras High Court held that the relevant date for calculation of market value and the stamp duty is the date on which the consideration was frozen."

21. While doing so, it could be seen from the above extract that the judgment of the Division Bench of this Court S.P.Padmavathi v. State of Tamil Nadu and others, cited surpa, was accepted and affirmed by the Hon'ble Supreme Court. No doubt, the learned Special Government Pleader would rely upon the judgment of another two-Judge Bench of Supreme Court in State of Rajasthan and others v. Khandaka Jain Jewellers, cited supra, wherein the Hon'ble Supreme Court had held that the date of presentation of the document alone should be taken into account. While deciding the question, the Hon'ble Supreme Court had held that the being a fiscal statue, it should be interpreted in favour of the Revenue and therefore, it is the date of the presentation of the document that should be taken into account for fixing the market value for the purpose of the determination of Stamp duty. Though the decision in State of Rajasthan and others v. Khandaka Jain Jewellers, cited supra, is dated 16.11.2007, the same does not appear to have been brought to the notice of the Hon'ble Supreme Court in Residents Welfare Association, Noida v. State of Uttar Pradesh and Ors., cited supra, case which was decided on 15.04.2009. Thus, we are faced with a situation where there are conflicting decisions, of coequal benches of the Hon'ble Supreme Court on the same point of law. The question as to what is the duty of the High Court when it is faced with a situation like the present one, is no longer a res integra.

22. I had an occasion to deal with the similar situation in M.Krishnamurthi v. K.Pondeepankar & others, reported in 2017 (2) LW 818, wherein I had concluded that it will be open to the High Court to follow the judgment which appears to state the law more elaborately and accurately and therefore, with due respect to the learned Judges who decided Khandaka Jain Jewellers case. I would prefer to follow the judgment in Residents Welfare Association, Noida v. State of Uttar Pradesh and Ors., (cited supra) which in my considered opinion, states the law more elaborately and the same is also in tune with that of the three-Judge Bench decision of the Hon'ble Supreme Court in V.N.Devadoss v. Chief Revenue Control Officer-cum-Ins. and Ors., case (cited supra). In the light of the above, the third point is also answered in favour of the appellants.

23. For the forgoing reasons I find that the proceedings under Section 47-A of the Stamp Act are vitiated due to non-compliance of the mandatory requirements of the Rules as well as the material date for valuation. It is not seen from any of the orders of the authorities that the valuation reflected in the sale deeds can be said to be a willful under-valuation on the date of the agreements, namely 06.05.1997 and 08.05.1997. Therefore, the appeals are allowed and the orders passed by the authorities are set aside.

24. Mr.Bijay Sundar, learned counsel appearing for the appellants would submit that the sale deeds have not been returned. There will be a direction to the authorities to return the sale deeds after complying with the formalities of registration, if any that may be pending forthwith. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

jv

To

1. Tamilnadu Inspector General of Registration
& Principal Revenue Authority,
Office of the IG of Registration
Santhome High Road, Chennai 600 028.
2. The District Revenue Officer (Stamps)
Office of the DRO, Chennai
Chennai Collectorate,
Rajaji Salai, Chennai 600 001.
3. The Sub Registrar,
Office of the Sub Registrar,
Thiruporur, Chenglepet Taluk,
Kancheepuram District.

+2 ccs to Mr.K.BijaySundar Advocate sr 60102,60101
+1 cc to the Government Pleader sr 60176

CMA.No.168/2016 & CMP Nos.1403 &1404/2016
CMA No.169/2016 & CMP.Nos.1409 & 1410/2016

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