

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2019

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.5888 of 2018
and
W.M.P.Nos.7229 & 7230 of 2018

Asset Reconstruction Company (India) Limited,
Rep. by its Chief Manager,
Mrs.Manjula Balaji K.
No.1-G, 1st Floor, Century Plaza,
560-562, Anna Salai, Teynampet,
Cennai - 600 018. ... Petitioner

Vs.

- 1.The District Registrar (Administration)
In the Cadre of Assistant Inspector
General of Registration
No.1/3, Vignesh Complex,
Near Sivan Theatre, Postal Colony,
60 Feet Road, Tiruppur - 641 602.
- 2.The Sub-Registrar,
16, Mangalam Road,
Palladam- 641 664.
- 3.The Inspector General of Registration,
No.100, Santhome High Road,
Raja Annamalaipuram,
Chennai - 600 028. ... Respondents

Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned proceedings of the 1st respondent bearing R.C.No.3391/B1/2014 dated 24.01.2018 and quash the same and also direct the 2nd respondent to register and release the pending document No. P.35 of 2012 dated 30.03.2012.

For Petitioner: Mr.V.Suresh
for M/s.Shivakumar and Suresh

For Respondents: Mr.P.P.Purushothaman,
Government Advocate

O R D E R

This writ petition is filed challenging the proceedings of the 1st respondent dated 24.01.2018, wherein and whereby, a sum of Rs.20,30,000/- was ordered to be levied/ collected from the petitioner towards deficit stamp duty in respect of the subject matter document viz., Assignment Agreement presented before the 2nd respondent for registration.

2. Heard both sides.

3. The petitioner presented an Assignment Agreement dated 30.03.2012 entered between the Catholic Syrian Bank Limited for registration before the 2nd respondent and paid necessary stamp duties towards such assignment agreement. However, the Registering Authority, taking note of Clause 10.12 of the said Agreement which deals with execution of a Power of Attorney simultaneously, demanded the excess stamp duty which is impugned in this writ petition. According to the petitioner, no such Power of Attorney was executed simultaneously and on the other hand, what is annexed in the said agreement in Schedule-3 is only a Proforma and not the original Power of Attorney itself.

4. Today, an affidavit dated 27.03.2019 is filed by the petitioner, wherein at Para Nos.4, 5 and 6, it is stated as follows:

"4. I state that by the impugned proceeding, in view of Annexure of pro-forma power of attorney to the pending document, registration department is treating the said pending document with dual nature viz., assignment agreement as well as power of attorney for consideration under Article 48 (e) of the Indian Stamp Act, thereby demanding additional stamp duty and registration fee in all totalling a sum of Rs.20,30,000/-.

5. I state that as per Clause 10.12 of the Assignment Agreement, the parties have only agreed to execute separate power of attorney and only the proforma for such proposed power of attorney has been attached in Schedule-3 of the Assignment Agreement and as such the executed Power of Attorney was never part of the Assignment Agreement.

6. I state and undertake that the petitioner will not use the said pro-forma power of attorney in Schedule - 3 of the

Assignment Agreement as executed Deed of Power of Attorney at any point of time after the registration of the said document. I further undertake that the petitioner will only treat the document as Assignment Agreement and not as Power of Attorney."

5. In view of the above affidavit, it is made clear by the petitioner that the petitioner will not use the proforma Power of Attorney annexed in Schedule - 3 of the subject matter Assignment Agreement as executed Deed of Power of Attorney at any point of time after the registration of the said assignment agreement. It is also made clear by the petitioner that they will treat the document as assignment agreement only and not as a Power of Attorney, in view of the specific undertaking given by the petitioner as stated supra. Thus, I do not think that there will be any impediment for the Registering Authority to treat the Assignment Agreement presented by the petitioner for registration as only the assignment agreement and process the same for registration, if necessary fees towards said agreement has been paid by the petitioner.

6. Accordingly, this Writ Petition is allowed and the impugned proceedings is set aside and consequently, the matter is remitted back to the 2nd respondent to take note of the undertaking given before this Court as extracted supra and register the assignment deed, if the same is otherwise in order, including in respect of payment of necessary fees, after making necessary endorsement in the said assignment agreement itself with regard to the undertaking given by the petitioner before this Court as extracted supra. Such exercise shall be done by the 2nd respondent within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

gsi/vsi

To

1. The District Registrar (Administration)
In the Cadre of Assistant Inspector
General of Registration
No.1/3, Vignesh Complex,
Near Sivan Theatre, Postal Colony,
60 Feet Road, Tiruppur - 641 602.

2.The Sub-Registrar,
16, Mangalam Road,
Palladam- 641 664.

3.The Inspector General of Registration,
No.100, Santhome High Road,
Raja Annamalaipuram,
Chennai - 600 028.

+lcc to Mr. Shivakumar & Suresh, Advocate, S.R.No. 31718

W.P.No.5888 of 2018

GJ II(CO)
GN(05/04/2019)



WEB COPY