IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09 / 07 / 2018

PRONOUNCED ON : 17 / 09 / 2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

CMA NO.261 OF 2009
AND MP NOS.1 AND 2 OF 2009

M/s.A.G.Neuro Hospitals (P) Ltd.,
through its Managing Director Dr.P.Sundararajan
166-F, Ammachi Gounder Street,
Salem - 636 007. ...Appellant

.Vs.

1. The Inspector General of Registration
 and Chief Controller of Revenue Authority
 Santhome High Road,
 Chennai - 600 004.

2. The District Registrar
 Salem West,
 Salem - 636 001.

3. The Sub Registrar
 Sooramangalam,
 Salem - 636 005. ...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Schedule 23 of the Indian Stamp Act, 1899, against the proceedings in Revision Petition D.Dis.57776/P1/2004 dated 25.04.2008 received on 04.05.2008 of the Inspector General of Registration, Chennai.

For Appellant : Mr.V.Bhiman
for M/s.Sampathkumar & Associates

For Respondents: Mr.S.R.Rajagopal
Additional Advocate General (IX)

Assisted by Ms.A.Madhumathi
Additional Government Pleader (CS)

J U D G M E N T

Challenging the order of the first respondent / Inspector General of Registration, in fixing the stamp duty for assignment of mortgage as per Article 23 of Schedule-I to Indian Stamp Act, 1899, dated 25.04.2008, the appellant has preferred the above appeal.

2.According to the appellant, one ASA John Diviyanathan borrowed a sum of Rs.35,00,000/- from the Egmore Benefit Society Limited and executed a Mortgage Deed registered as Document No.1005/1995 at the Office of the Sub Registrar, Sooramangalam, Salem. The creditor insisted for repayment of principal and interest to the tune of Rs.1,37,70,033.15. It appears that the borrower had entered into an Understanding with the appellant and requested him to get the Mortgage assigned in his favour and also an agreement to sell the property to the appellant. Accordingly, the appellant got the Mortgage assigned in his favour by a Deed of Assignment of Mortgage dated 26.06.2003. When the said instrument was presented for registration, the second respondent demanded deficit stamp duty at Rs.7,99,900/- and penalty of Rs.50,000/-. He had referred the matter to the Deputy Inspector General of Registration for clarification wherein the document was directed to be treated as one of "Conveyance" chargeable to duty under Article 23 of Schedule I to the Indian Stamp Act, 1899 (8% on One Crore). Aggrieved over the order passed by the second respondent, the appellant has preferred an appeal to the first respondent. The contents of the order passed by the first respondent dated 25.04.2008 reads as under:

> "5) The file of the District Registrar, the contents of the revision petition and the written argument of the revision petitioner has been examined by me carefully. The argument of the revision petitioner is not acceptable. The judgment does not deal with transfer of debt. A letter authorizing a person to receive from a third party a sum of money due to the executant amount to a conveyance (Nandubai Vs Gau 27 Bom 150). An order for payment of money out of a debt due to the person who executes the instrument may constitute an equitable assignment of the debt as a chose in action (Buck Vs Robson 1878 (3) QBD). Section 2(17) of the Indian Stamp Act, 1899 defines "Mortgage deed" includes every instrument whereby, for the purpose of securing money advanced or to be advanced, by way of loan, or an existing or

future debt, or the performance of an engagement, one person transfers, or creates to, or in favour of, another, a right over or in respect of a specified property is to be created to treat it as a Mortgage. Whereas in the case of the deeds relating to property is deposited as a security for the debt and no right or charge is created in the property, it cannot fall under the definition of section 2 (17). To apply Article 62(c) it must be a transfer whether with or without consideration of any interest secured by mortgage deed. The word mortgage deed refers only to Article 40 and not Article 6 of schedule-I to the Indian Stamp Act, 1899. Assignment of debt is different from transfer of mortgage. As regards transfer of registered mortgage, duty is chargeable under article 62(c) and assignment of debt obtained by promissory note and deposit of title deed is chargeable as conveyance under article 23 of schedule-I to the Indian Stamp Act, 1899. In the instant case the assigned amount of Rs.1 Crore does not have the break up details in the document in question. The deed is classified as "Conveyance" chargeable under Article 23 of Schedule - I of the Indian Stamp Act, 1899."

3.According to the appellate authority, the assignment of debt is different from transfer of mortgage. As regards transfer of registered mortgage, duty is chargeable under Article 62(c) and assignment of debt obtained by promissory note and deposit of title deed is chargeable as "Conveyance" under Article 23 of Schedule I to the Indian Stamp Act, 1899 (Shortly "the Act"). Since there was no break up between the assignment and conveyance, the first respondent passed the above order treating the document as one of "Conveyance" chargeable to duty under Article 23 of Schedule - I to the Indian Stamp Act, 1899.

4.The learned counsel appearing for the appellant would rely on the following judgments in support of his contention:

(i) Judgment of the High Court of Bombay in THE HITVARDHAK COTTON MILLS CO. LIMITED VS. SORABJI DINSHAW KARAKA [MANU/MH/0142/1909]

(ii) Judgment of the High Court of Calcutta in BANK OF BENGAL VS. WILLIAM ARRATOON LUCAS AND OTHERS [AIR 1924 CAL 578]

(iii) Judgment of the High Court of Allahabad in RAM SWARUP VS. JOTI AND ANOTHER [AIR 1933 ALL 321]

(iv) Full Bench judgment of this Court in CHIEF CONTROLLING REVENUE AUTHORITY VS. RUSTOM NUSSERWANJI PATEL [AIR 1968 MADRAS 159 (VOL.55, C.36)]

(v) Judgment of this Court in LAKSHMI PRADEEP AND ANOTHER VS. THE INSPECTOR GENERAL OF REGISTRATION AND OTHERS [2011 (3) LW 92]

(vi) Judgment of this Court in PURUSHOTHAM NATH RALLAN VS. INSPECTOR GENERAL OF REGISTRATION CUM CHIEF CONTROLLING REVENUE AUTHORITY AND OTHERS [2018 (1) CTC 309]

(vii) Full Bench judgment of the High Court of Allahabad in KOTAK MAHENDRA BANK LTD., VS. STATE OF U.P. AND OTHERS [2018 (2) CTC 39]

5.The learned Additional Advocate General Mr.S.R.Rajagopal appearing for the official respondents would contend that the document is not an assignment of debt, but however, something more is attached to it. As per Clause 11 of the deed of Assignment of debt, it was agreed between the Assignee and the Mortgagor that the Assignee desired to purchase the schedule mentioned property and that they have entered into a Sale Agreement dated 29.11.2000. Once the Assignee had entered into a Sale Agreement to purchase the schedule mentioned property, which involves the Mortgagor, who is transferring his title in favour of the Assignee the document attracts stamp duty. In that event, a transfer of title of immovable property is involved, which shall be considered as “Conveyance”. Further, he would contend that the appellant has played fraud by introducing a different deed of Assignment of Mortgage dated 11.07.2003 wherein the above said clause of agreement to purchases schedule mentioned property was deleted and it was presented for registration. Such a conduct of the appellant is not legal and that by suppressing the actual transaction, he cannot seek exemption of stamp duty under Article 62 (c)(ii) of Schedule-I of the Act.

6.I have considered the rival submissions.

7.Even though the learned counsel for the appellant relied on various judgments, I would prefer to rely on the judgment of the Full Bench of High Court of Allahabad in KOTAK MAHINDRA BANK's case (cited supra), wherein the Full Bench has held as under:

"6. A single instrument may embody several purposes. But what is relevant for the purpose of the Stamp Act, is the dominant purpose of the instrument. If we look at the Instrument, before us, it is clear that the dominant purpose was to transfer/assign the debts along with the underlying securities, thereby, entitling the Assignee to demand, receive and recover the debts in it own name and right. The question that would arise is under which Article of Schedule 1-B of the Stamp Act, as amended in its application to Uttar Pradesh, the instrument would be charged to stamp duty i.e. Conveyance {No. 23} or Transfer {No. 62(c)}.

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10.Debt is purely an intangible property, like, intellectual property right or goodwill, as against documentary intangibles, viz., bill of lading, promissory note or bill of exchange, which has to be claimed or enforced by action and not by taking physical possession thereof, in contrast to immovable and movable property.

11.On a plain reading of Article 23, it is evident that the said Article is applicable in the cases where any immovable or movable property is sought to be transferred. The restricted applicability of Article 23 is explicitly clear from opening words of the entry, whereby, transfers charged or exempt under Article 62 of Schedule 1-B are excluded from the purview of Article 23. Thus, where a transaction does not affect the transfer of any immovable or movable property under Article 23 of Schedule 1-B cannot have any applicability. Article 62(c) deals with chargeability of stamp duty on transfer of an interest secured by a bond or mortgage deed. In the instant case, debt along with underlying securities is an interest secured by bonds and/or mortgages. Thus, transfer of debts along with underlying securities would, in our considered opinion, be chargeable under Article 62(c).

12.The next argument of the State that is required to be considered is whether transfer of debts, accompanied by underlying securities is sale/transfer of immovable property. The agreement in the instant case, is an "Instrument" defined in Section 2(14) of the

Stamp Act, seeks to transfer the debts along with rights/interest in the security underlying such debts. No immovable property has been transferred or sold. Merely the right under the contract to recover the debts has been transferred by way of assignment deed. The Assignor could have transferred only those rights, it had in the underlying securities. Since the borrower(s) had never transferred the title in the immovable property given in security to the Assignor, therefore, the latter, (by the instrument in question), could merely transfer its rights i.e. mortgagee's rights in the property to recover the debts.

13.The Assignor never had any title to the underlying securities. It merely had the right to enforce the security interest upon default of the borrower(s) in repayment of secured debts on being classified by the Assignor as Non Performing Asset (NPA). In assigning the debts with underlying security, the Assignor only transferred that asset for a particular price whereafter it no longer remained entitled to enforce it's rights or recover anything from the borrower(s) against the debt/s. The right so transferred was primarily the right to recover the debts, in accordance with law, by proceeding against the underlying security furnished by the bonds/mortgage-deed(s). Under the Instrument that right could be exercised only in the event of default committed by the debtor to discharge the debt, to the Assignor. "

From the above judgment, it can be seen that the debt is an intangible property, it can be enforced only by action and it does not transfer any physical possession of the immovable property in favour of the assignee.

8.A reading of the deed of Assignment of Mortgage would clearly show that the Assignor assigned the entire rights of the mortgage, vide a deed of Assignment of Mortgage dated 09.03.1995, registered as Document No.1005/1995 at the Office of the Sub Registrar, Sooramangalam, Salem, in favour of the Assignee. The primordial consideration of the deed of Assignment of Mortgage is only to assign the rights under the Mortgage deed and does not transfer or grant absolute title over the immovable property which is mortgaged under the deed.

9.The chargeability of the document of these types can be determined in the following manner:-

(a)Those documents absolutely transfer the title to the property taking away the rights of the transferor, irretrievably, to deal with the property;

(b)Transfer of rights / interest such as to secure the debt, or recover the debt over the property, without detrimental to the right of the debtor to retrieve the same.

10.In the former, the stamp duty is chargeable as conveyance under Article 23 of Schedule - I of Indian Stamp Act and in the latter, as per Article 62 of the Indian Stamp Act. In the present case on hand, the assignment deed, assigns only the right to recover the debt under the mortgage deed. There is no absolute conveyance of the title of the immovable property found in the Schedule and therefore, it cannot be construed as a document, which falls under the definition of "Conveyance" and chargeable to duty under Article 23. Hence, it is very clear that the right to recover the debts over the mortgage deed, being the interest over the property, will fall under the exempted clause under Article 62(c)(ii) of Schedule - I of the Act. Therefore, the excess stamp duty demanded by the respondents is not sustainable.

11.It is submitted by the learned counsel for the appellant that the appellant have deposited, without prejudice to their rights, remitted the stamp duty as demanded by the respondents. In that event, the appellant is entitled to refund of stamp duty paid in excess.

12.Without going into the quantification of the excess stamp duty, a general direction is issued to the respondents (i) to release the document to the appellant, within a period of four weeks; and (ii) refund the excess stamp duty collected from the appellant, within a period of twelve weeks from the date of receipt of a copy of this order.

13.In fine, the Civil Miscellaneous Appeal is allowed with the above observation. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Inspector General of Registration
   and Chief Controller of Revenue Authority
   Santhome High Road,
   Chennai - 600 004.

2. The District Registrar
   Salem West,
   Salem - 636 001.

3. The Sub Registrar
   Sooramangalam,
   Salem - 636 005.

+1cc to the Government Pleader, Sr.No.30492
+2cc to M/s.Sampathkumar and Associates, Advocate, Sr.No.30288

JUDGMENT MADE IN
CMA NO.261 OF 2009

rr ii (18/11/2020)