IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08/03/2018
DELIVERED ON : 09/07/ 2020

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

CMA NO.2638 of 2012

M/s.DLF Home Developers Limited
Having registered office at DLF Centre
Sansad Marg, New Delhi-110017
and Zonal Office at No.268,
Poonamallee High Road
Kipauk, Chennai-600 010 ....Appellants
Cause title substituted vide Court
order dated 19.01.2018 made in
C.M.P.No.18582/2017 in
C.M.A.No.2638/2012

Vs

1.Chief Controlling Revenue Authority and
Inspector General of Registration
100, Santhome High road
Chennai-600 028

2.Sub-Registrar
(in the cadre of District Registrar)
Adyar, Chennai-600 020
.... Respondents

Prayer: Civil Miscellaneous Appeal under Section 47A(10) of the Stamp Act, 1899 praying to set aside the proceedings No.53964/P1/2011 dated 16.04.2012 of the first respondent confirming the order bearing I.No.2/2011 dated 12.10.2011 of the 2nd respondent.

For Appellant : Mr.T.R.Rajagopal. Senior Counsel for M/s.Aiyar and Dolia

For Respondents : Mr.S.R.Rajagopal, AAG-IX for Ms. A.Madumathi, AGP

JUDGMENT

Challenging the order of the first respondent imposing stamp duty on Security Deposit retained by the Lessor together with the property tax undertaken to be paid by the Lessee, the above appeal has been preferred.

2. The appellant is the Lessee. M/s Madras Race Club originally by a registered Lease Deed bearing document No.709/2007 executed a lease in favour of the appellant for developing shopping Malls and/or Commercial complexes for a period of four years commencing from January 2007 to 31st December 2010. The Lease was extendable at the option of the lessee for a further period not exceeding 62 years with a covenant that the extension shall be registered by a separate deed without additional cost, but as the agreed monthly lease rent specified in the deed.

3. As per Clause 7 of the lease deed a sum of Rs.60,00,00,000/-(Rupees sixty crores only) was paid by the lessee to the Lessor as interest free refundable security deposit. It is relevant to extract Clause 7, for the purpose of analyzing the impugned order.

> a) The LESSEE has paid to the LESSOR a sum of Rs.60,00,00,000 (Rupees sixty crores only) towards interest free refundable security deposit by way of demand draft bearing No.424409 dated 19.12.2006, drawn on ICICI Bank Limited, Nungambakam, Branch, Chennai, hereinafter referred to as "security deposit", the payment and receipt of which the LESSOR do hereby admit and acknowledge, on the terms and conditions enumerated herein below.
>
> b) The security deposit of Rs.60,00,00,000/-(Sixty crores only) shall be fixed for the Lease term including extensions/renewals, if any, and the Lessor shall not be entitled to demand any increase in this security deposit.
>
> c) The LESSOR agrees to furnish a conditional Bank Guarantee in favour of LESSEE for Rs.60 crores paid as security deposit valid for 18 months from 01.01.2007 to 30.06.2008 and the LESSEE shall have the right to invoke it subject to clause 15(a) only in case if the conversion of land from institutional zone to commercial zone is not received by the LESSEE from the relevant authority. It is clarified that LESSEE shall be able to encash Bank Guarantee subject to clause 15(a) only after it ha paid all the dues payable in respect of rent and on encashment of Bank Guarantee the Lessee shall hand over the SCHEDULE

PROPERTY back to the LESSOR on 'as is where is' condition however, subject to clause 13(k).

d) Subject to clause 15(d), the Security Deposit is refundable immediately at the end of the lease term or on earlier termination of lease by the LESSEE in accordance with clause 15(f), on the LESSEE handing over peaceful and vacant possession of the SCHEDULE PROPERTY to the LESSOR, subject to adjustment of any unpaid rent, charges/ deductions and statutory dues in terms of this Deed and for any actual damage cause to SCHEDULE PROPERTY.

e) In the event of any dispute as to the deductions to the refund of the Security deposit, the LESSOR shall, on the date of handing over peaceful and vacant possession by the LESSE, pay the undisputed amount to the LESSEE and deposit the disputed amount into a fixed deposit with a nationalized bank, to be held in the joint names of the LESSOR and the LESSEE. The LESSEE would hold the Fixed Deposit Receipt. The payment from the Fixed Deposit account shall be made in accordance with the Resolution/Award pursuant to the dispute resolution mechanism set out in Clause 21.

f) In the event the LESSOR fails to refund and/or deposit the Security Deposit in the manner set out above, the LESSEE shall have the right to occupy the SCHEDULE PROPERTY till such time that (i) the refund is made or (ii) the security deposit is adjusted entirely for the rent payable by the LESSEE.

4. Thereafter, a dispute arose between the parties and the matter was referred to arbitration. Before the Arbitrator, parties mutually arrived at settlement and entered into a Memorandum of Understanding dated 15.2.2011, pursuant to which the present Lease Deed to which deficit stamp duty demanded was entered into on 6.11.2011 for a period of 24 months commencing from 01.03.2011 to 28.02.2013.

5. When it was presented for registration, Sub-Registrar demanded deficit Stamp Duty for Rs.60 crores retained by the Lessor towards Security Deposit and sought a clarification from the Chief Controlling Revenue Authority/ the first respondent herein. While so, the Accountant General raised an audit objection as to the bonafide and failure of the registering officer to treat 66 years lease resulted in loss of stamp duty to the tune of Rs.242.517 Crores. However, the first respondent advised the Sub-Registrar to go by the recitals of the document. The second respondent impounded the document under Section 33 of the Indian Stamp Act,1899 (herein after called the Act) and passed final orders under section 40(b) on

12.10.2011 demanding Rs.60,00,232/- together with penalty of Rs.1000/-. Aggrieved over the same the appellant preferred an appeal to the first respondent under section 56(1) of the Act. The first respondent confirmed the orders of the second respondent and rejected the appeal on 16.04.2012. Challenging the same the above appeal has been preferred.

6. The learned senior counsel appearing for the appellant would contend that the present lease is not a continuation of the first lease nor it is a renewal. It is fresh lease and the recitals found in the document only shall be considered. Nowhere in the document had Rs.60 crores mentioned. The present lease dated 6.11.2011 is an independent lease pursuant to an MOU entered between the parties in arbitration proceedings. As per Sec 105 of Transfer of Property Act, 1882 ("T.P.Act" for short) the lease is granted for a period of two years for the monthly rent specified in the deed. The respondent shall not presume that the security deposit paid under the previous lease No.709/2007 is carried forward to the present lease deed dated 6.11.2011, which is far beyond the terms of the document and contrary to law. The Security deposit does not attract stamp duty. Even assuming that the Security deposit is carried on to the fresh lease deed by renovation and duty is leviable on the same, the security deposit a sum of Rs.60,00,00,000/- has already suffered stamp duty during the registration of the lease deed 709/07. Demanding stamp duty again amounts to double taxation. According to him, the security deposit is refundable and therefore, stamp duty cannot be levied on the same. It is akin to Sec.7 of Rent Control Act, where advance is made as security for proper performance of obligations of the contract. Once lease is terminated, the advance/security amount is liable to be refunded. It cannot be equated to fine or premium and therefore it will not fall under Art.35(c) of Sch-I of the Act. In support of his contentions, he would rely on the judgments reported in AIR 2014 KERALA 30, Mohideen Koya vs Girishkumar; AIR 1961 MAD 210; AIR 1980 DELHI 249 Chief Controlling Revenue… vs Marshall Produce Brokers & co pvt…; AIR 2006 KARNATAKA 247, K.Ramachandra Rao and others Vs Ramamohana Gupta and others; AIR 2007 RAJ 95 East India Hotels Vs State and others;

7. Denying the contentions the respondents filed a detailed counter affidavit. Learned Additional Advocate General Mr.S.R.Rajagopal would contend that the lease deed dated 6.11.2011 has been presented for registration in accordance with Sec.107 of T.P.Act. Even though it is registered afresh, it is only a renewal as it is evidenced by the letter of the appellants dated 1.8.2011 addressed to the first respondent. A further reading of the terms and conditions of the lease will disclose that the conditions contained in Clause 3 of the lease deed dated 20.12.2006 shall prevail over, which means it will

prevail over all terms and conditions including the Security Deposit. Admittedly, possession also is continuing with the appellant. Once the lease deed is not terminated but renewed, it goes without saying that the security deposit is retained by the Lessee. It is further substantiated by Clause 7 (b) of the lease dated 23.12.2006 clearly recites that the Security deposit of Rupees sixty crores is fixed for lease term including extensions/renewals and the Lessor shall not be entitled to demand any increase in this security deposit. The above deposit is retained by the Lessee towards payment of property and municipal taxes, as it is categorically undertaken by the appellant to pay the same. Only because the nomenclature is different, it cannot escape from the purview of the Indian Stamp Act, which covers if any advance made in addition to rent. He would further contend that Clause 21 stipulate the lease deed constitutes the entire understanding/agreement and it may not be altered or modified except by an instrument in writing duly signed by the parties means that the terms and conditions of the original agreement dated 23.12.2006 only governs the lease. Sec.107 of T.P.Act mandates compulsory registration for renewal of lease deed. If the lease deed is compulsorily registrable, it shall suffer payment of stamp duty for every registration. Hence, it will not amount to double taxation. In support of his contentions he would rely on the judgments reported in 2013 (139) DRJ 202 Egon Zhender International Pvt Ltd… vs Namgayal Institute for Research on Ladakhi Art & Culture(Nirlac) & ors; AIR 2004 Cal 316 Ansuman Mullick vs Mallika Investment Co.(P) Ltd and others; 2006 SCC Online All 1157 Gopal Swarup Chaturvedi vs state of U.P. and others; He would also draw the attention of the court to the meaning of the word "Security Deposit" given in BLACK'S LAW DICTIONARY(Sixth Edition), which term shall include to cover all damages, breach of trust and to cover all essential repairs required on rental property .

8. From the submissions made and the judgments referred, we have to analyse as to whether the appellant is liable to pay stamp duty on Security deposit, if so, for every registration, in spite of it being fresh and independent without recitals as to security deposit or in case of renewal, which amount has already suffered stamp duty.

9. Admittedly, as contended by the Learned Additional Advocate General the Registration of the present Lease deed requires registration as per Sec 107 of T.P.Act and there is no dispute about payment of stamp duty for the annual reserved rent. However, the amount paid under the nomenclature Security Deposit whether can be read into the present Lease deed and the impact of the terms and conditions of the original lease deed prevailing over the entire agreement.

10. It is beneficial to read Art 35 of Schedule - I of the Indian Stamp Act.

Corresponding State Sch./Art	Description of Instrument	Proper Stamp duty
35	Lease, including an under-lease or sub-lease and any agreement to let or sub-let (a) Where by such lease the rent is fixed and no premium is paid or delivered-	
	i) where the lease purports to be for a term of less than one year	The same duty as a Bond (No.15), for the whole amount payable or deliverable under such lease
	ii) Where the lease purports to be for a term of not less than one year but not ore than three years	The same duty as a conveyance (No.23) for a consideration equal to the amount or value of the average annual rent reserved
	(iii) Where the lease purports to be for a term in excess of three years;	The same duty as a conveyance (No.23) for a consideration equal to the amount or value of the average annual rent reserved
	(iv) where the lease does not purport to be for any definite term;	The same duty as a conveyance (No.23) for a consideration equal to the amount or the value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long.

Corresponding State Sch./Art	Description of Instrument	Proper Stamp duty
	(v) where the lease purports to be in perpetuity	The same duty as a conveyance (No.23) or a consideration equal to one-fifth of the whole amount of rents which would be paid or delivered in respect of the first fifth years of the lease.
	b) where the lease is granted for a fine or premium or for money advanced and where no rent is reserved	The same duty as a conveyance (No.23) for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease.

Corresponding State Sch./Art	Description of Instrument	Proper Stamp duty
	(c) where the lease is granted for a fine or premium or for money advanced in addition to rent reserved	The same duty as a conveyance (No.23) for a consideration equal to the amount or value of such fine or premium or a advance as set forth in the lease, in addition to the duty which would have been payable no such lease, if no fine or premium or advance had been paid or delivered. Provided that, in any case when an agreement to lease is stamped with the advalorem stamp required for a lease, and a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed eight annas.

Sub clause (c) specifies of fine or premium or money advanced in addition to rent received.

11. Fine means money paid or debts adjusted or outstanding cleared for getting the lease executed in favour of a Lessor. It may be in the nature of settling the debt payable to the Lessor by the Lessee or adjusting the uncleared debts of the Lessor payable to the Lessee or clearing the debts of the Lessor to get possession.

12. Premium is the price paid for parting with the interest. Mostly it depends on poshness, premier location, access, potential use of the property leased out or scarcity of space suiting the purpose. It may be paid to the Land Lord or occupier of the property. In certain places it is called Pagadi, Pugree etc.,

13. Money advanced falls under two heads namely (i) Non-refundable and (ii) Refundable with or without interest and adjustable as against rent and repairs payable by the Lessee.

14. Non-Refundable advance may be cash paid for taking possession of the property or to remove obstacles or to carry out repairs or clearing of charges to gain access like attachments, arrears of tax or Cess due to local authorities, electricity Board, Water supplies and Drainage etc., which may not be recovered back.

15. Refundable advance means money paid for proper performance of obligations, particularly by Lessee towards rent or by way of caution to appropriate expenses incurred in repairs and to restore the property to its shape. This may be called as rental advance or Security Deposit or Caution Deposit. The money deposited under any nomenclature is liable to be refunded to the Lessor as per the conditions of the Lease.

16. As such all these payments, which goes out of the pocket of the Lessor and goes in the pocket of Landlord or third parties without any chance for recovery, if covenanted, shall suffer stamp duty. Money which can be recovered or adjusted towards the dues are not liable for payment of Stamp duty.

17. In simpler terms, whatever goes into the pocket of the Lessor irretrievably and mentioned in the deed are chargeable and whatever is returned back is not chargeable.

18. The issue with regard to chargeability has already been decided by various High Courts. A Hon'ble Full Bench of Delhi High Court in AIR 1980 249 Chief Controlling Revenue… Vs MarshalProduce Brokers Co.Pvt… has held that

> 6) Under Section 105 of the Transfer of property Act 1882 a lease of immoveable property is a transfer of a right to enjoy such property. made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops. service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. The transferor is called the Lesser, the transferee is called the lessee the price is called the premium, and the money. share, service, or other thing to be so rendered is called the' rent. The consideration for the

lease is thus of two types. First one is the price paid or promised. The price paid may be cash or may be an adjustment of an outstanding debt or its payment may be deferred or made payable in Installments. It is always in the nature of a capital income when the interest of the Lesser is parted with for a price. This price is called premium. The second type of consideration is of recurring character on specified occasions, which is the indication of rent. The liability to pay rent arises at stated periods or specific occasions. When such a liability is met in advance, it will still be 'rent' and not advance in addition to rent reserved. For this reason the payment of Rs. 53.460 as advance rent under the lease of instrument is rent for which there is both liability and covenant to pay. The revenue has treated this payment of Rs. 53,460 as rcntpnd rightly so in view of the Full Bench J-.id^- ment in Union of India v M''s Caltex (India) . The deposit of Rs. 26,730 ;s not rent v.r adv,.;i:cc rent. }ts payment or liability is not of a rcclirrinK character on speci- ried occasions and this not a revenue receipt, ft cannot assume the character of price paid, bccsusc under the instrument of lease it is liable to be refunded to the lessees within seven days after the lessees have handed over the vacant possession.

(7) The consideration of lcac is only two fold 'prerniiim" ar.d 'rent'. There is no third type of consideration when the intcrcs! of the Lesser is parted with. None is provided in Section 105 of she Transfer of Pi-opcrtv Act. 1882. The Legislature, therefore, was providing under Article 35 (a) for instruments of lease. inchKim^ an underlea'se or sub-lci-.sc and any agreement to let or sublet, where- by such lease the rent is fixed and no premium is paid or "Jelivc-:.:ij according to the period of lease. Under Article 35(b) proper stamp duty is provided where the lease is granted for a fine or premium or for money advanced and where no rent is reserved. Under Article 35 (c) it provided where the lease is granted for a fine or premium or for money advanced

in addition to rent reserved. Fine is not defined in either Transfer of Property Act, 1882 or in the Indian Stamp Act, Fine in relation to leases is something which is to go irrevocably into the pocket of the landlord who requires it as a condition of consenting to a transfer of right to enjoy property. Fine is indistinguishable from premium and is money payment in consideration of a demise. Money paid as fine is money paid with the intention of passing over the property in it to the landlord so that it should become his. Fine is also given the name of "Salami" in some parts of this country. Such money payments are known by several other names, e.g. Nazrana Pugree etc. The legislature must be aware of money payments in consideration of the lease, when it sought to cover "fine or premium or for money advanced" in Articles 35(b) and (c). The words used here "for money advanced" do not connote any idea of repayment. Money advanced here is a condition for creation of an interest in the enjoyment of the property. Money advanced here is money which is not to revert to the lessee. If the advance is repayable, then it is a loan or deposit which word would have been used by the legislature in Articles 35 (b) and (c) instead of "for money advanced", if it was intended to cover such payments. Money advanced here by the lessees to the landlords is with the intention expressed by the parties that the landlords should keep the money till appropriated or refunded. Such transaction is a deposit. In my opinion, when the legislature used the word "for money advanced" after "fine or premium" it was intended that it is a sum of money in the nature of fine or premium which goes irrevocably in the pocket of the landlord. It is a rule of legal construction that general words following enumeration of particulars are to have their generality limited by reference to the preceding particular enumeration and to be construed as including all other things of the like nature and quality. Where general words immediately follow or are closely associated with specific words, their meaning has to be limited by reference to the preceding words and has to be presumed to be restricted to the same genus as those specific words. This is the rule of construction known as Ejusdem Generis and gives aid to the ascertainment of the true meaning of the statute.

(8) The contention of Mr. K. K. Sud, learned counsel for the Revenue, is that the object of the addition of the words "or for money advanced" in Article 35 (c) is apparently to rope in transac tions which are a combination of a lease and amortagage but embodied in the form of a lease providing for repayment of an advance. There are no words in the instrument before me indicating that the demised property should constitute security for the deposit or for its repayment. Unless the said property constitutes security for the debt of Rs. 26,730, it will not be a mortagage, but only a relationship of debtor and creditor is created. A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced. The essence of a transaction by way of loan on security is that the lender unwilling to rely solely on the personal liability of the borrower requires in addition to be given a right in the property to be available against any person in whose hands the property is transferred. From the language of the instrument of lease it is clear that there is no provision by which a right in property is bestowed. The Lessers are not put in possession of any property as usufructuary mortgage but have been granted only the tenancy rights which is only transfer of right to enjoy the property.

19. Thus, it is clear that for advance rental deposit or security deposit paid for monitoring proper performance of obligations of the parties, stamp duty need not be paid. In the light of the above finding, it has to be analysed as to whether the lease deed dated 06.06.2011 entails stamp duty or is exempted.

20. It is well settled that renewal of the lease is nothing but a fresh agreement. Hence it is immaterial whether the lease is renewed of entered afresh, it requires registration. Even it is accepted that it is a continuation of original lease deed dated 23.12.2006 carrying the Security Deposit of

Rs.60,00,00,000/- the issue relevant to the case is whether the said amount attracts Stamp Duty or not? For that purpose the terms and conditions, which governs the Contract has to be looked into.

21. The first respondent predominantly rely on Clause 7 (b) of the Lease deed dated 20.12.2006 for fixing the Stamp Duty. Whenever, a decision is to be taken the entire terms and conditions shall be considered as a whole and not in piece meal. As such Clause 4 specifies Extension of Lease term not exceeding 62 years shall be without any additional payment. Clause 6 specifies the monthly lease rent. Clause 7 specifies the Interest Free Refundable Security Deposit in following lines.

> a) The LESSEE has paid to the LESSOR a sum of Rs.60,00,00,000/=(Rupees Sixty Crores only) towards interest free refundable security deposit by way of demand draft bearing No.424409 dated 19.12.2006, drawn on ICICI Bank Limited, Nungambajjam Branch, Chennai, hereinafter referred to as "security deposit" the payment and receipt of which the LESSOR do hereby admit and acknowledge, on the terms and conditions enumerated below.
>
> b) The security deposit of Rs.60,00,00,000/- (Rupees Sixty Crores only) shall be fixed for the lease term including extensions/renewals, if any, and the LESSOR shall not be entitled to demand any increase in this security deposit.
>
> c) The LESSOR agrees to furnish a conditional Bank Guarantee in favour of LESSEE for Rs.60 crores paid as security deposit valid for 18 months from 01.01.2007 to 30.06.2008 and the LESSEE shall have the right to invoke it subject to clause 15(a) only in case if the conversion of land from institutional one to commercial zone is not received by the LESSEE from the relevant authority. It is clarified that LESSEE shall be able to encash Bank Guarantee subject to clause 15(a) only after it has paid all the dues payable in respect of rent and on encashment of Bank guarantee the LESSEE shall handover the SCHEDULE PROPERTY back to the LESSOR on as is where is condition however, subject to clause 13(k).
>
> d) Subject to clause 15(d), the security deposit is refundable immediately at the end of the lease term or on earlier termination of lease by the LESSEE in accordance with clause 15(f), on the LESSEE handing over peaceful and vacant possession of the SCHEDULE PROPERTY to the LESSOR, subject to adjustment of any unpaid rent, charges/deductions and statutory dues in terms of the deed and for any actual damage caused to SCHEDULE PROPERTY.

e) In the event of any dispute as to the deductions to the refund of the security deposit, the LESSOR shall, on the date of handing over peaceful and vacant possession by the LESSEE, pay the undisputed amount to the LESSEE and deposit the disputed amount in fixed deposit with a nationalized bank, to be held in the joint names of the LESSOR and the LESSEE. The LESSEE would hold the Fixed Deposit Receipt. The payment from the Fixed Deposit account shall be made in accordance with the resolution/Award pursuant to the dispute resolution mechanism set out in clause 21.

f) In the event the LESSOR fails to refund and/or deposit the security deposit in the manner set above, the LESSEE shall have the right to occupy the SHEDULE PROPERTY till such time that (i) the refund is made or (ii) the security deposit is adjusted entirely for the rent payable by the LESSEE.

Sub-Clause (b) as stated supra determines the Security Deposit at Rs.60,00,00,000/- without any hike during Extensions or Renewals.

22. But a reading of Sub-Clause d, e, and f clearly indicate the deposit made is a refundable Security Deposit and conditions of refund.

23. The Learned Additional Advocate General would vehemently contend that Clause 13 of the Lease Deed dated 6.6.2011 Viz Termination clause categorically spells out that in the event of termination of the lease, the terms and conditions of Lease Deed dated 20.12.2006 bearing No.709/2007 will govern the rights of the parties retrospectively. In that event as per Clause 15 of the Lease deed dated 20.12.2006, the Security Deposit is not refundable to the Lessee, if he commits any breach. Clause 18-Severability of the terms conditions and Clause 21 - Entire Agreement fortifies the governing force of the original lease dated 20.12.2006. If Security Deposit is not refundable, Stamp Duty is leviable on the same. But, the said contention cannot be accepted for the reason that Art 35 of Sch-I of Indian Stamp Act, 1899 specifically spells out chargeability of Stamp duty under three distinguishing circumstances.

24. Sub-Clause (a) only when lease granted for rent fixed, where no premium paid or delivered.

(b) When lease is granted for a fine or premium or for money advanced where no rent is reserved and

(c) When lease granted for a Fine or Premium or for Money advanced in addition to rent reserved.

25. In the previous paragraphs, we have clearly discussed the nature of payment which constitutes Fine, Premium and Money

advanced in addition to rent. Payment of money under the above heads is considered as consideration for grant of lease and not for extinguishing the lease. The payment made under the above heads is like walking into a blind alley without any hope for progress or refund. It irretrievably goes into the pocket of the Lessor, unless specifically covenanted. As held by the Full Bench in AIR 1980 SC 249.

> " It is a rule of legal construction that general words following enumeration of particulars are to have their generality limited by reference to the preceding particular enumeration and to be construed as including all other things of the like nature and quality. Where general words immediately follow or are closely associated with specific words, their meaning has to be limited by reference to the preceding words and has to be presumed to be restricted to the same genus as those specific words."

26. In the instant case admittedly there is no payment of Fine or Premium. As interpreted the Money advanced was not for grant of the Lease, but it is in the nature of Security or Caution deposit at the time of grant for proper performance of the obligations. The contingencies mentioned under Termination clause is an aftermath, which may happen or may not happen. Either of the parties may commit breach and the quantum of liability cannot be assessed at the threshold. The purposive construction of the terms of the lease deed impounded, leads us to an unassailable inference that the money advanced therein is clearly meant for grant of lease for the entire period of the lease including renewal and extensions and not on the contingencies for termination of lease.

27. The language employed in conditions a-f of Clause 7 gives an unassailable impression that the amount paid is refundable. It is in the nature of Security / Caution deposit, which cannot be appropriated by the Lessor. There are several contingencies mentioned as to adjustment towards rent/charges, deduction towards damages. There are default clauses for the breach committed by either side. All these contingencies are not meant for grant of Lease, but rights, duties and liabilities for due performance of their obligations. Hence, the money advanced towards Refundable Security Deposit cannot be brought under the purview of Article 35 (c) of Sch-I of The Indian Stamp Act, 1899 to make it chargeable.

28. The order passed by the first respondent relying on Clause 7 (b) extracted above in isolation for the purpose of levying duty cannot be accepted. The clause shall be read as a

whole and not bits and pieces. In that view of the matter, as discussed above the Security deposit is not chargeable. Further when there is no recital as to payment of advance amount, the authorities shall not read in to clauses of the agreement to hammer the circle into square or square into circle. In the light of the above discussions and the judgment of Hon'ble Full Bench of Delhi High Court in Chief Controlling Revenue Authority Vs Marshal Produce Brokers Co.Pvt…supra., followed in various other in judgments, the order of the respondents is not sustainable in law and accordingly set-aside.

In fine the order of the first respondent in proceedings no No.53964/P1/2011 dated 16.04.2012, confirming the order bearing I.No.2/2011 dated 12.10.2011 of the 2nd respondent stands set aside. The respondents are directed to register and release the document to the appellant within a period of four weeks from the date of receipt of the certified copy of this order. In fine Civil Miscellaneous Appeal is allowed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To
1.The Chief Controlling Revenue Authority and
Inspector General of Registration
100, Santhome High road
Chennai-600 028

2.The Sub-Registrar
(in the cadre of District Registrar)
Adyar, Chennai-600 020

CMA NO.2638 OF 2012

VGII(CO)
SP(08/12/2020)