IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2021

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.7444 of 2012

M/s.Golden Star Assets Consultants
Private Limited,
Rep. by its Director
M.Rajamani
Having its registered office at
No.5, 6th Main Road, Dhandeeswaram,
Velacherry, Chennai - 600 042. ... Petitioner

Vs

1. Inspector General of Registration and
Chief Controlling Revenue Authority,
No.100, Santhome High Road,
Chennai - 600 028.

2. The Sub-Registrar (District Cadre),
Royapuram,
Chennai North District,
Chennai - 600 001.

3. M/s.The Express Carriers Limited,
Rep. by its Director,
K.Gopalakrishnan,
Having its registered office at
No.73, Armenian Street,
Chennai - 600 001. ... Respondents

Prayer :- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus, calling for the records in the impugned order dated 12.12.2011 vide Pa.Mu.No.61460/P1/2009 on the file of the first respondent and quashing the same and further directing the first respondent to release the deed of assignment of debt.

For Petitioner : Mr.AR.L.Sundaresan, Senior Counsel
for M/s.AL. Gandhimathi

For R1 & R2 : Mr.Richardson Wilson
Government Advocate

For R3 : Notice served - NA

ORDER

This Writ Petition is filed to issue a writ of certiorarified mandamus, calling for the records in the impugned order dated 12.12.2011 vide Pa.Mu.No.61460/P1/2009 on the file of the first respondent and quashing the same and further directing the first respondent to release the deed of assignment of debt.

2. The case of the petitioner is that the third respondent entered into a loan agreement with one A.L.Vadivelu. On 25.10.2000, as per the said loan agreement, the third respondent contributed loan to him to the tune of Rs.25,00,00,000/- (Rupees Twenty Five Crores only). As per the said loan agreement dated 25.10.2000, the said A.L.Vadivelu agreed to assign rights against assets and properties which may devolve upon him after settlement of the deposit holders and other creditors to the third respondent. Therefore, the third respondent could not recover the loan contributed by it from the said A.L.Vadivelu. Therefore, difficulties encountered by the third respondent herein in recovering the loan amount from the said A.L.Vadivelu agreed to assign the debts in favour of the petitioner.

3. The third respondent executed a deed of conveyance as assignment of debts dated 26.03.2009 thereby assigning the debts recovery rights to the petitioner, which is the subject matter of the said debt. As per the assignment of debts the purchase consideration for the assignment of debts was fixed at Rs.25,00,000/- (Rupees Twenty Five Lakhs only) and the same was paid to the third respondent. Thereafter, it was presented for registration. The second respondent impounded the assignment of debts under Section 33 of the Indian Stamp Act and issued a notice dated 11.08.2009 thereby seeking as to why stamp duty should not be calculated on the entire debt amount of Rs.25,00,00,000/-.

4. The petitioner submitted a detailed explanation stating that the Article 23 Note 9 of the Tamil Nadu Stamp Manual, stamp duty chargeable on an instrument of assignment of debt is only on the purchase consideration. However, the second respondent rejected the explanation submitted by the petitioner and passed an order on 09.11.2009 holding that the stamp duty is to be charged on the entire debt amount of Rs.25,00,00,000/-. Aggrieved by the said order, the petitioner preferred a review petition before the first respondent. The

first respondent also confirmed the order passed by the second respondent by an impugned order dated 12.12.2011 vide Pa.Mu.No.61460/P1/2009.

5. Mr.AR.L.Sundaresan, the learned Senior Counsel appearing for the petitioner submitted that the impugned order cannot be sustained on the sole ground in the light of the provisions under Section 47A of Tamil Nadu Stamp Act, 1967. The debt of assignment ought not to have been impounded under Section 33 of the Indian Stamp Act when an amendment of Section 47A is specifically enacted to deal with under-valued instrument of conveyance. As per Section 33 of the Indian Stamp Act empowers a person in charge of a public office to impound a document only if it is not duly stamped. Whereas, adjudicated upon what is the market value of the instrument of conveyance can be done only under Section 47A of the Tamil Nadu Stamp Act.

6. He further submitted that the debt was of the year 2000 and the third respondent assigned the same to the petitioner since the third respondent was unable to recover the debt amount. Unfortunately, the first respondent misinterpreted Article 23 of Schedule I of the Stamp Act. The market value of the property which is subject matter of conveyance can only be the price which a willing buyer is prepared to pay to a willing seller. The assignment of debt will have to takers in popular mercantile sense. In the light of the Judgment of this Court reported in AIR 1980 Madras 171 in the case of The Chief Controlling Revenue Authority and another Vs. K.S.Dwarkanathan held that a decree being a final pronouncement of a cause of action, which is a legally enforceable document valued by the Court for the purpose of saleability/marketability in mercantile sense with no market value to the value of the decree amount but fixes the market value only on the consideration paid for the decree. Therefore, an assignment of debt where the recovery of the debt amount is not assured as that of a decree, the market value could not be valued on par with debt amount but only to the purchase consideration.

7. Per contra, the second respondent filed a counter stating that as per Section 33 of the Indian Stamp Act, 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 before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his function shall, if it appears to him that such instrument is not duly stamped, impound the same. Accordingly, in the subject document, the principal debt being Rs.25,00,00,000/-, the petitioner executed the document in the non-judicial stamp paper of the value of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) at the rate of 6% on the consideration amount of

Rs.25,00,000/- instead on the value of Rs,25,00,00,000/-. Since, the instrument in question is not duly stamped it is rightly impounded by the second respondent. In the Judgment cited by the learned Senior Counsel, this Court held that the assignment of decree has no market value. But in the present case, the principal debt due to the third respondent from the said A.L.Vadivelu is Rs.25,00,00,000/-. Therefore, the value of the claim of the assignment of debt can be taken only as Rs.25,00,00,000/- and not the consideration amount of Rs.25,00,000/-. Therefore, the respondents rightly rejected the claim of the petitioner and dismissed of the petition.

8. Heard, Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the petitioner and Mr.Richardson Wilson, learned Government Advocate appearing for the first and second respondents.

9. The third respondent executed a deed of conveyance as assignment of debts dated 26.03.2009 thereby assigning the debts recovery rights to the petitioner. It was presented for registration with the office of the second respondent. As per the assignment of debts, the purchase consideration for the assignment of debt was fixed at Rs.25,00,000/-. It is also not in dispute that the consideration was duly received by the third respondent. The deed for the purchase consideration of Rs.25,00,000/- and paid stamp duty of Rs.1,50,000/- at the rate of 6% on the consideration passed to the third respondent herein. The second respondent impounded the document for the reason that the petitioner has not duly stamped under Section 33 of the Indian Stamp Act.

10. The learned Senior Counsel relied upon the Judgment reported in AIR 1980 Madras 171 in the case of The Chief Controlling Revenue Authority and another Vs. K.S.Dwarkanathan. In the cited case, the decree has been assigned by the decree holder in favour of the another person. The amount of the decree together with costs as indicated in the schedule to the document was Rs.20,296/-. But the consideration for the assignment, which was admitted to have been conveyed is Rs.10,000/-. The question for reference, as already excerpted, is whether the stamp duty on the instrument should be worked out or on the actual consideration received by the another person as a result of the transfer of the decree, this Court held that the decree has no market value, then it follows that the consideration recited in a deed of assignment or conveyance, as the instrument may be called, when the decree holder conveyed his right and interest in the decree to the assignee/decree holder, such a value is the foundation for assessing the value of such an instrument of assignment. The consideration which is shown in such deeds of conveyance being the bargain between

the parties, it represents the price which a willing party is prepared to pay to a willing seller in case the latter as decree holder is inclined to assign the decree in favour of the assignee decree holder.

11. Therefore, an assignment of debt where the recovery of the debt amount is not assured as that of a decree, the market value could not be valued on par with debt amount but only to the purchase consideration. It is also relevant to extract Article 23(1) of the Stamp Act, which reads as follows :

> " 23. Conveyance
>
> (a) of immovable property situated within the Chennai Metropolitan Planning Area and the Urban agglomeration of Madurai, Coimbatore, Salem and Tiruchirappalli and the City of Tirunelveli (Five rupees for every Rs.100 or part thereof of the market value of the property which is the subject matter of conveyance)
>
> b) Of any other property (Five rupees for every Rs.100 part thereof of the market value of the property which is the subject matter of conveyance)"

12. Therefore, the respondents 1 and 2 misinterpreted the above Article as that the market value of the property which is subject matter of conveyance can only be the price which a willing buyer is prepared to pay to a willing seller. Therefore, the assignment of debt has no market value. The learned Senior Counsel relied upon the Judgment of this Court reported in AIR 1980 Madras 171 in the case of The Chief Controlling Revenue Authority and another Vs. K.S.Dwarkanathan, wherein it was held that,

> "In the above background can it be said that the decree as such which is yet to be executed in accordance with law has a market value. Prior to the amendment of Article 23, Schedule I of the Indian Stamp Act, there is no reference to the market value of the property which was the subject matter of the conveyance under the article. Old Article 23, Schedule I of the Indian Stamp Act explains conveyance and fixes the stamp duty on the amount or value of the consideration for such conveyance and prescribes a varied rate according to the value. This was substituted by Tamil Nadu Act 14 of 1958 and further amended by Tamil Nadu Act 24 of 1967. Under the amended provision in the Stte of Tamil Nadu, the fee on a conveyance is payable on the market value of the property which is the subject matter of the conveyance and here again a varied rate has been prescribed.

Therefore, in 1967, the Tamil Nadu Act 24 of 1967, has substituted the market value for the words 'consideration for conveyance' as the criterion for computation of duty with effect from 22.04.1968. In our view, a decree has no market, it is not saleable freely. There may not be a willing buyer in all cases to purchase a decree and put it in execution with all hazards involved in it.”

In the year 1967, the Tamil Nadu Act has substituted the market value for the words 'consideration for conveyance' as the criterion for computation of duty with effect from 22.04.1968. In view of the above, the said judgment is squarely applicable to the case on hand.

13. In view of the above discussion, the impugned order dated 12.12.2011 vide Pa.Mu.No.61460/P1/2009 passed by the first respondent is hereby set aside and the Writ Petition is allowed. The second respondent is directed to register the deed of assignment of debt and release the same forthwith. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. Inspector General of Registration and
   Chief Controlling Revenue Authority,
   No.100, Santhome High Road,
   Chennai - 600 028.

2. The Sub-Registrar (District Cadre),
   Royapuram, Chennai North District,
   Chennai - 600 001.

+1cc to M/s.AL.Ganthimathi, Advocate, S.R.No.41316
+1cc to the Government Pleader, S.R.No.41343

W.P.No.7444 of 2012

PM(CO)
SU(21/09/2021)