IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2021

CORAM:

THE HON'BLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

W.P.Nos.20313 and 20314 of 2021

Repco Home Finance Limited,
Rep by its Authorised Signatory,
Mr.A.Palpandi, GM (Recovery),
Having office at
3rd Floor, Alexander Square,
New No.2 (Old No.34 & 35),
Sardar Patel Road, Guindy,
Chennai - 600 032.

...Petitioner in both W.Ps.

Vs.

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

2. The District Registrar Administration,
   Central Chennai,
   No.182, BharathiSalai,
   Chennai - 600 014.

3. The Sub Registrar,
   Ashok Nagar,
   Plot No.602-B-1, 1st Floor,
   AlagirisamySalai, Near Psbb School,
   K.K.Nagar, Chennai - 600 078.

...Respondents in both W.Ps

Common Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the 1st respondent herein to dispose of the Appeal dated 07.07.2021 send by the petitioner within a reasonable period as prescribed by this Court and consequently forbear the respondents from taking any coercive action for recovery of the alleged deficit stamp duty which is the subject matter in the appeal.

For Petitioners in both W.Ps : Mr.E.Omprakash, Senior Advocate
for Mr.A.Ilangovan

For Respondents in both W.Ps: Mr.Yogesh Kannadasan
Government Advocate

COMMON ORDER

These writ petitions have been filed for a mandamus to direct the first respondent herein to dispose of the Appeal dated 07.07.2021 sent by the petitioner within a reasonable period as prescribed by this Court and consequently forbear the respondents from taking any coercive action for recovery of the alleged deficit stamp duty which is the subject matter in the appeal.

2.The case of the petitioner company is that the petitioner company, Repco Home Finance Limited, is a public limited company incorporated under the Indian Companies Act, 1956, herein after referred as "RHFL" and being a Housing Finance Company is registered with the National Housing Bank under sub-section (5) of Section 29A of National Housing Bank Act, 1987 and duly notified by the Central Government as a "Financial Institution" to invoke SARFAESI Act vide notification dated 10.11.2003.

3.The petitioner company submits that the petitioner to augment its fund for the purpose of carrying out it objects had proposed raising money by issuing debentures by private placement and being listed, accordingly, a sum of Rs.200 crores is proposed to be raised by issuing Non Convertible Debentures (NCDs) by securing the same against specific securities and also appointing a Debenture Trustee as required under law, one M/s.Catalyst Trusteeship Limited was appointed as the Debenture Trustee in whose favour the securities are to be created to secure the NCDs.

4.The petitioner company further submits that in pursuant to the said purpose had executed a Mortgage Deed cum Debenture Trust in favour of the said Debenture Trustee, Catalyst Trusteeship Limited, for a value of Rs.200 crores on 07.10.2016 and presented the said document for registration before the Sub Registrar Ashok Nagar, the third respondent herein after paying the necessary stamp duty as provided under the Stamp Act applicable to Tamil Nadu, the petitioner company have paid Rs.40,000/- as stamp duty under Article - 40 (b) of the Indian Stamp Act.

5.The Article 40 of the Indian Stamp Act is extracted hereunder:

> 40.MORTGAGE-DEED, not being [an AGREEMENT RELATING-TO DEPOSIT OF TITLE-DEEDS, PAWN OR PLEDGE (NO. 6)], BOTTOMRY BOND (NO. 16), MORTGAGE OF A CROP (NO. 41), RESPONDENTIA BOND (No. 56), OR SECURITY BOND (NO. 57)
>
> (a) when possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given;
>
> (b) when possession is not given or agreed to be given as aforesaid; Explanation.—A mortgagor who gives

to the mortgagee a power-of-attorney to collect rents or a lease of the property mortgaged or part thereof, is deemed to give possession within the meaning of this Article.

(c) when a collateral or auxiliary or additional or substituted security, or by way of further assurance for the abovementioned purpose where the principal or primary security is duly stamped.

for every sum secured not exceeding Rs. 1,000 and for every Rs. 1,000 or part thereof secured in excess of Rs. 1,000.

Exemptions

(1) Instruments, executed by person taking advances under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loan Act, 1884 (XII of 1884), or by their sureties as security for the repayment of such advances. (2) Letter of hypothecation accompanying a bill of exchange.

6. The petitioner company submits that the said document is admittedly a Mortgage Deed cum Debenture Trust dated 07.10.2016 in consonance with the Article 40(b) of the Stamp Act, the harmonious reading of the whole document will reveal that the said document fulfills the characteristic of a Mortgage Deed cum Debenture Trust accordingly the necessary stamp duty is paid in terms of the Act.

7.According to the petitioner company, all the covenants of the document is only to aid the Trustee to secure the amounts due under NCDs and cannot be read independently as if authorizing the Trustee to act without any default or for any other purpose.

8.The petitioner company further submits that the trust created and the Trustee appointed is only for the purpose of the issuance of the NCDs and creation of the security in their favour as no security in favour individual subscribers by different documents is not contemplated in law, the third respondent without properly appreciating the contents of the said document had kept that document as pending by assigning a pending Number 153 of 2016, which is against provisions of the Registration Act and Indian Stamp Act.

9.According to the petitioner company, the said Mortgage Deed cum Debenture Trust dated 07.10.2016 was kept pending for more than three years by the third proceedings to the second respondent vide his letter dated 25.11.2019 to recover the alleged deficit stamp duty from the petitioner company, the second respondent/District Registrar (Admin), Central District Chennai without considering the entirety of the said document and tried to interpret the Clause 52 in page 33 by reading between lines and found out that the words "Only upon the happening of event of default" is missing in Clause No.12 in page 11 of the said Mortgage Deed cum Debenture Trust dated 07.10.2016.

10.According to the petitioner company, besides the second respondent also misinterpreted the words in the Clause 53 in page 33 and came to a wrong conclusion that averments should be treated as a document having dual characters of both the Power of Consideration as well as the Mortgage Deed cum Debenture Trust and therefore, the stamp duty payable in the instrument is 4% for Power for Consideration for the entire value of Rs.200 Crores in respect of the Mortgage Deed cum Debenture Trust deed dated 07.10.2016 should be charged with 4% viz., and sought to levy a sum of Rs.8,00,00,000/- (Rupees Eight Crores) under Article 48 (e) of the Stamp Act and imposed Rs.2,000/- as penalty.

11.The petitioner company submits that the second respondent issued a Show Cause Notice to the petitioner company on 08.02.2021 as to why the said sum shall be levied as deficit stamp duty on the petitioner company and granted 21 days for their explanation, however, the respondents 2 and 3 failed to see that in the said Mortgage Deed cum Debenture Trust dated 07.10.2016 in page 11 Clause 12 the "Event of Default" is clearly mentioned from pages 11 to 13 covering all the aspects.

12.The petitioner company further submits that against the said final order dated 26.03.2021 passed by the second respondent in her proceedings No.14614/A1/2019, the petitioner company filed an appeal before the first respondent on 16.04.2021, the said appeal was acknowledged by the first respondent and in fact by a letter dated 24.06.2021 called upon the petitioner company to attach the impugned order dated 26.03.2021 passed by the second respondent and to affix a stamp duty of Rs.5/- on the appeal with an additional copy and accordingly, the petitioner company herein had sent the appeal by RPAD.

13.According to the petitioner company, the petitioner company should be given a fair opportunity to defend their case before the Appellate Authority/ the first respondent herein, in the order dated 26.03.2021, the second respondent has stated that the petitioner company is having appeal remedy before the first respondent under Section 56 (1) of the Indian Stamp Act, moreover, the third respondent has slept over the matter beyond statutory period and all of sudden comes with excessive action, without any justification.

14.The petitioner company submits that the said notice dated 19.08.2021 by the third respondent is illegal and against law and therefore, the said order of the third respondent has to be necessarily stayed and further a direction has to be necessarily issued to the first respondent to dispose of the appeal within a stipulated period.

15.The petitioner company have no other alternative remedy except to approach this Court under Article 226 of the

Constitution of India. Hence, these writ petitions filed.

16.Heard, learned counsel for the petitioner company and learned Government Advocate for the respondents and perused the materials available on record.

17.In the view of the above facts and considering the submissions made by the petitioner company and without expressing any opinion on merits, this Court is of the view that if the first respondent conducts an enquiry and pass appropriate orders is sufficient and accordingly, this directs the first respondent to conduct enquiry and dispose of the appeal dated 07.07.2021 and pass appropriate orders after affording an opportunity to the petitioner company in accordance with law within a period of three months from the date of receipt of a copy of this order. Till such time, the third respondent is here directed not to take any coercive action for recovery of the alleged deficit stamp duty as well as penalty.

18.With the above direction, these writ petitions are disposed of. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

pam

To

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

2.The District Registrar Administration,
Central Chennai, No.182, BharathiSalai,
Chennai - 600 014.

3.The Sub Registrar,
Ashok Nagar, Plot No.602-B-1, 1st Floor,
AlagirisamySalai, Near Psbb School,
K.K.Nagar, Chennai - 600 078.

+1cc to Government Pleader SR. No.49764
+2ccs to Mr.A.Ilangovan, Advocate SR. Nos. 49309 & 49310

W.P.Nos.20313 and 20314 of 2021

SPD (CO)
PR (22/12/2021)