

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

201+202 (3 cases)

1. **CWP No.13346 of 2020 (O&M)**
DATE OF DECISION: 26th OCTOBER, 2021

Edelweiss Asset Reconstruction Company Ltd.

.... Petitioner

Versus

State of Punjab and others

.... Respondents

2. **CWP No.5836 of 2021 (O&M)**

Edelweiss Asset Reconstruction Company Ltd.

.... Petitioner

Versus

**Chief Revenue Controlling Authority-cum-Financial Commissioner
(Revenue), Punjab and another**

.... Respondents

3. **CWP No.13762 of 2021 (O&M)**

Edelweiss Asset Reconstruction Company Ltd.

.... Petitioner

Versus

State of Punjab and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Ms. Munisha Gandhi, Senior Advocate with
Mr. Vaibhav Sharma and Ms. Vedika Gandhi, Advocates
for the petitioner.

Mr. Pradeep Singh Bajwa, Addl. Advocate General, Punjab.

Mr. Ashwani Chopra, Senior Advocate with
Mr. Vidul Kapoor, Advocate,
for the respondent-Winsome Yarns Limited.

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RAJBIR SEHRAWAT, J.

This judgment shall dispose of three writ petitions, i.e. CWP

No.13346 of 2020, CWP No.5836 of 2021 and CWP No.13762 of 2021.

Since, CWP No.13346 of 2020 contains the facts in details, therefore, it is appropriate to take the main facts involved in the matter from this petition. Accordingly, the main facts involved in the dispute are taken; as are pleaded in CWP No.13346 of 2020.

As per the pleadings of the parties, the gamut of facts as contained in the writ petitions are that the borrower company, namely, Winsome Yarns Limited had availed loans from the Financial Institutions i.e. Punjab National Bank and Dena Bank which remained outstanding to the extent of Rs.1,76,38,15,484/-. Since, the financial institutions were not able to recover the loan from the borrower company, therefore, the financial institution assigned the loan to the petitioner, herein, which is an Asset Reconstruction Company. The said loans were assigned by the financial institutions to the petitioner-reconstruction company, vide two assignment agreements, which were registered on 05.02.2016 (in CWP No.13346 of 2020 and CWP No.5836 of 2021) and on 13.05.2016 (in CWP No.13762 of 2021). At the time of registration, the requisite registration fee and stamp duty is stated to have been paid by the petitioner. Since, even after assignment of the loan to the petitioner-company, the borrower company failed to make the payment as per the schedule, therefore, the petitioner had preferred a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016, in the year 2018. The National Company Law Tribunal (for short, NCLT) was proceeding upon that. Beside this, the proceedings were initiated before the Debts Recovery Tribunal (for short, DRT) under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. It is at this stage that the borrower company started raising

complaints against the petitioner-company that the petitioner-company had not paid the appropriate stamp duty on the assignment deeds. Accordingly, the Deputy Commissioner, Ludhiana wrote a letter dated 16.10.2019 to all Sub Registrars and Joint Sub Registrars in the District to look into the issue of registration of assignment agreements, registered between the period from 01.04.2015 till 06.09.2016, where lesser stamp duty was paid. Further, the Deputy Commissioner Ludhiana designated the Additional Deputy Commissioner-1, Khanna to be the Nodal Officer for this exercise; with a further direction to submit a report before 25.10.2019. It is thereafter that the authorities started working at breakneck speed. Accordingly, the Naib Tehsildar, Mullanpur Dhakan, District Ludhiana sent his report dated 18.11.2019 disclosing therein that six assignment deeds were registered during the above said period. This letter was sent by the Naib Tehsildar, Mullanpur Dhakan to the Additional Deputy Commissioner, Khanna, who was designated as Nodal Officer by the Deputy Commissioner, Ludhiana. There is stated to be another letter dated 15.11.2019, which has been separately supplied by the State counsel to the Court today, written by the Additional Deputy Commissioner (G), Ludhiana suggesting that it shall be appropriate to write to all the three Additional Deputy Commissioners, in District Ludhiana to make inquiry and submit report in that regard. Even this letter was stated to have been written by Additional Deputy Commissioner (G), Ludhiana in response to the above said letter of the Deputy Commissioner, Ludhiana dated 16.10.2019.

After the Additional Deputy Commissioner, Khanna intimated this information to Deputy Commissioner, Ludhiana, a letter

dated 18.11.2019 is issued, statedely on behalf of the Deputy Commissioner, Ludhiana, however, not specifying therein as to who has issued this letter. The copy of that letter has been placed on record as annexure to the writ petition, as supplied under the RTI Act from the office of Naib Tehsildar Mullanpur Dhakan. Vide this letter, Sub Registrar, Ludhiana (East and Central) and Joint Sub Registrar Mullapur Dhakan were directed to initiate proceedings for recovery of the deficient stamp duty and the registration fee; in accordance with the alleged report of Additional Deputy Commissioner, Khanna. However, the said report does not form part of the record in either of these cases. In pursuance to the said direction, Naib Tehsildar, Mullanpur Dhakan issued notice dated 18.11.2019 to the petitioner-company to deposit the alleged deficient stamp duty of Rs.1,45,85,000/- within seven days from the date of receipt of the notice. However, since the petitioner-company had not deposited that amount, therefore, the Naib Tehsildar, Mullanpur Dhakan vide letter dated 04.12.2019 requested the Deputy Commissioner, Ludhiana to declare the recoverable amount from the petitioner as the arrears of land revenue for effecting recovery under Section 48 of the Indian Stamp Act, 1899 (for short, the Act) and for permitting initiation of proceedings for that purpose.

In the meantime, the borrower company had made an application before the Deputy Commissioner, Ludhiana that the assignment deeds registered in favour of the petitioner-company, be not acted upon the same having been sufficiently insufficient. A copy of the said application was marked by the Deputy Commissioner to the Financial Commissioner, Punjab; as well. The Financial Commissioner

(Revenue) Punjab; acting as Chief Controlling Revenue Authority under the Indian Stamps Act, converted the said letter as a miscellaneous application and issued notice to the petitioner-company to explain as to why the deficient stamp duty be not recovered from the petitioner. Additionally; while issuing notice, the Chief Controlling Revenue Authority-cum-Financial Commissioner (Revenue), Punjab (for short, the Chief Controlling Revenue Authority) also made observations that it expected that no authority shall act upon the said registered assignment deeds till the petitioner-company paid the appropriate stamp duty upon the assignment deeds and the no objection certificates were issued by the Revenue Department. These observations were, allegedly, meant to be used by the borrower company in the proceedings initiated by the petitioner before NCLT and the DRT. Therefore, challenging all these actions, the petitioner-company filed the first petition, i.e. CWP No.13346 of 2020. During the arguments on the writ petition, the petitioner raised an objection that the Chief Controlling Revenue Authority was not having any authority to initiate the adjudicatory proceedings to assess the alleged deficient stamp duty, the same having been barred by limitation, as well as, due to the said authority lacking jurisdiction to entertain any such adjudicatory proceedings. Finding some substance in the arguments of the petitioner-company, this Court passed an order dated 07.12.2020; directing the Chief Controlling Revenue Authority, to decide the issue of maintainability, which was already agitated by the petitioner-company before the Chief Controlling Revenue Authority. Accordingly, the Chief Controlling Revenue Authority, Punjab passed the order dated 18.12.2020, holding that the said authority

had the jurisdiction and authority to initiate and continue with the adjudicatory proceedings for recovery of the deficient stamp duty under Section 56 of the Act. For challenging this order, the second petition bearing CWP No.5836 of 2021 was filed by the petitioner. Similarly, the third petition, i.e. CWP No.13762 of 2021 was filed for challenging the similar orders of recovery of alleged deficient stamp duty passed by the Deputy Commissioner qua the loan and assignment deeds pertaining to Dena Bank. Accordingly, the above said three writ petitions have come up for decision before this Court.

Although initially the defaulting borrower company was not impleaded as a party in this petition, however, subsequently on an application having been made by that company, they were ordered to be impleaded as party in the petition.

Arguing the case, it is submitted by learned counsel for the petitioner that the deeds involved in the case pertain to assignment of loans only, which were secured in favour of the financial institutions by mortgagees and bonds. Therefore, the case of the petitioner is covered under Article 62 (c) of the Schedule 1-A of the Act, as applicable to the State of Punjab. Accordingly, the appropriate stamp duty already stood paid by the petitioner on the assignment deeds. It is further submitted by the counsel that the entire basis for the State to raise the additional demand of stamp duty from the petitioner is by treating the assignment deeds as conveyance deeds; as per Article 23 of the Schedule 1-A of the Act. However, since no right title or interest in any immoveable or movable property, as such, was transferred by the financial institutions in favour of the petitioner-Reconstruction Company; and it was only the

right to recover the loan; which was assigned to the petitioner-company, therefore, the matter would be covered under Article 62 (c) of the Schedule and not under Article 23 of the above said Schedule. To support her arguments, learned counsel for the petitioner has relied upon the judgment of the Full Bench of the Allahabad High Court rendered in the case of ***Kotak Mahendra Bank Limited Versus State of U.P. and others, 2018 (2) RCR (Civil) 805***. It is also argued by the counsel that the said judgment has been followed even by Madras High Court in the case of ***Easun Products of India Pvt. Ltd. Vs. The Inspector General of Registration and Chief Controller of Revenue Authority and others***, by holding that it is only right to recover the loan which is being transferred by the financial institutions; and not any right title or interest in the property, as such. The counsel for the petitioner has further submitted that any proceedings for recovery of alleged deficient stamp duty could have been initiated by the State authorities only within three years from the date of registration of the deed, as per the provision contained in Section 47-A of the Act, as applicable in the State of Punjab. Beyond three years, no recovery proceedings could have been initiated against the petitioner. The counsel has relied upon the judgment of the Hon'ble Supreme Court rendered in the case of ***State of Punjab and others Versus Mahajan Sabha, Gurdaspur and others, AIR 1996 Supreme Court 2153***. To the same effect, the counsel for the petitioner has also relied upon the judgment of this Court rendered in the case of ***Vikas Vs. State of Haryana and others, 2008 (2) RCR (Civil) 526***. The counsel has further submitted that although the respondents have tried to allege fraud on the part of the petitioner at the time of registration of the deed to avoid

the bar of limitation of three years, however, even in case of fraud, bar of three years is very much applicable. The counsel has relied upon the judgment of Hon'ble Supreme Court rendered in the case of ***State of Bihar and others Vs. Tetra Devi, 2018 (3) PLJR 136*** to support this contention.

The counsel for the petitioner has also submitted that, in any case, there was no fraud involved in the matter. The deeds which were presented for registration before the authorities contained all the material aspects; giving the details qua the consideration for which the said deeds were being registered, as well as, the value of the loans, which were being assigned; and also the complete list of the securities, which were available with the financial institutions and which were being assigned to the petitioner-company. In that situation, there cannot be any allegation against the petitioner that the petitioner has committed any fraud. It was for the Sub Registrar; or on a reference, for the Collector to assess the appropriate stamp duty being paid, if they perceived the same to be deficient. However, that exercise had to be carried out by them within three years. Since, the respondents have initiated the proceedings after the statutory bar of three years, therefore, they are alleging a fraud by the petitioner only as an excuse to avoid the bar of limitation. Learned counsel has further submitted that, otherwise also; the entire exercise is initiated by the respondent-authorities for total mala fide reason; and in collusion with the defaulter borrower, who; even as per the record of the respondents; have initiated the authorities against the petitioner. In their overzeal to help the defaulter borrower, the respondent-authorities have not even bothered to see that their conduct should, at least, appear to be

genuine. Their bad intention and collusion with the defaulter borrower is clear from the fact that the Collector had written the letter to the Sub Registrar in the year 2019 saying that it came to his knowledge now that the deficient stamp duty has been paid by the petitioner, whereas in the written statement it is asserted by the respondents that the deficiency in the stamp duty had come to the knowledge of the Sub Registrar at the time of the registration of the deed in the year 2015-2016. Still further, it is submitted that although the letter written by the Deputy Commissioner, Ludhiana is dated 16.10.2019, however, he has written in the same letter that he came to know of the alleged deficiency in stamp duty on 17.10.2019. It is surprising how the Deputy Commissioner, Ludhiana could have written letter on 16.10.2019; when he came to know of the alleged deficiency only on the next date, i.e., on 17.10.2019. The counsel has also submitted that the intention of the authorities is clear from the fact that the petitioner has never been granted any opportunity of hearing before assessing the alleged deficiency in stamp duty. Although, the order passed by the Collector refers to some inquiry report by Additional Deputy Commissioner, however, neither that report has been produced on record by the respondents, nor has the petitioner been ever associated with any such inquiry. Moreover, although the Deputy Commissioner had issued directions to recover the deficient amount of the stamp duty, however, even the amount of Rs.1,45,85,000/- was not mentioned in the said order. The inconsistency in the case of the State is also clear by the fact that, before this Court the respondents are arguing that the petitioner committed fraud by not paying the appropriate stamp duty, however, none of the orders passed by the authorities allege any fraud on the part

of the petitioner. Therefore, the concept of fraud has been invented and introduced by the respondents only as an after-thought; just to avoid answering the bar of limitation and to acquire the jurisdiction which; otherwise; does not vest in the authorities.

On the issue of maintainability of the proceedings before the Chief Controlling Revenue Authority, the counsel has submitted that there is no such jurisdiction or authority available with the Chief Controlling Revenue Authority to assess the deficiency in stamp duty. The said proceedings were initiated by the said authority only in collusion with the defaulter-borrower-company; and specifically on the application moved by them. Otherwise, under Section 56 of the Act, the said authority has a limited power of revision, only while exercising authority to answer a reference, if the same is made by the Collector. The Chief Controlling Revenue Authority does not have any omni-present and inherent powers to entertain any proceedings or to *suo moto* assess the alleged deficiency in stamp duty. The power to take *suo moto* cognizance by the Chief Controlling Revenue Authority is limited to the matter; when he intends to make a reference to the High Court for seeking answer on a law point. Beyond that the Chief Controlling Revenue Authority does not have any power to initiate *suo moto* proceedings for assessing the alleged deficiency in stamp duty. In the present case, even any revision was not filed by any party before the Chief Controlling Revenue Authority, Punjab nor any reference on any law point was made by the Collector. Therefore, there was no reason or occasion for the said authority to issue notice to the petitioner, and to make observations intended to help the defaulter borrower company in

other proceedings initiated against them for recovery of the loan. The entire exercise was *void ab initio* and initiated with mala fide intention; just to help a defaulter of the payment of huge amount of public money. Learned counsel has also submitted that while passing the order qua the maintainability of the proceedings initiated by the Chief Controlling Revenue Authority, the reliance upon the judgment of the Supreme Court is totally misplaced. That judgment nowhere lays down that the Chief Controlling Revenue Authority has any power to undertake adjudicatory exercise through revision or to initiate *suo moto* proceedings for assessment of deficient stamp duty. Hence, the entire exercise by the respondents is totally uncalled for; and is liable to be set aside.

Replying to the arguments raised by the counsel for the petitioner, the learned State counsel has submitted that the assignment deeds in favour of the petitioner are liable to be charged the stamp duty as conveyance deeds. The term 'conveyance' has been defined by Section 2 (10) of the Act, as conveying right title or interest in moveable or immoveable property. Clause 2.2.3 of the assignment deeds assign the immovable properties as well to the petitioner, therefore, the said assignment deeds have to be treated as a conveyance deeds. Referring to the written statement filed by the respondents, learned State counsel has further submitted that under the provisions of Section 75 of the Act, the State has the power to make rules. The State has issued a Manual of Audit; under which the definition of 'conveyance' has been supplemented by including the 'transfer of book debts'. Hence, the present assignment deeds, in any case, would be covered under the definition of the 'conveyance deed', as applicable in the State of Punjab.

Hence, the duty chargeable upon the said assignment deeds is as provided under Article 23 and not the Article 62 (c) of the Schedule 1-A of the Act, as applicable in the State of Punjab. On the question of the action of the State being barred by limitation provided under Section 47-A of the Act, the counsel for the State has submitted that the said Section pertains only to shortage of stamp duty on account of 'under-valuation' of the deed by the parties. That Section does not cover the cases of fraud, which can be detected even after the period of three years. In the present case, the assertion of the State is that the petitioner had committed a fraud by describing the assignment deeds as an agreement of assignment instead of describing the same as a conveyance deed. Hence, the action of the authority is within limitation. The counsel for the State has further submitted that applicability of Section 47-A of the Act stands excluded because of the fact that the State is not alleging 'under-valuation' by the petitioner. In fact, the value of consideration is rightly written even in the deeds. The State is not disputing the amount of consideration paid in lieu the assignment deeds. Hence, it is not a case based upon 'under-valuation' contemplated by Section 47-A. Rather, this is a case of fraud; which shall be covered under Section 73 of the Act, under which the authorities has got power to initiate the proceedings for recovery of deficient stamp duty on discovery of a fraud. Regarding the process followed by the respondents, the counsel for the State has submitted that due process has been followed in the matter. The recovery was sought to be effected only after the inquiry conducted by the Additional Deputy Commissioner, Khanna. While defending the order passed by the Chief Controlling Revenue Authority, wherein the observations were made that

no authority was expected to act upon the said registered assignment deeds, the counsel for the State has submitted that Section 56 of the Act gives ample powers to the Chief Controlling Revenue Authority to take action either on a reference made by the Collector or *suo moto*, if the matter comes to the knowledge of that authority; by any other means. In the present case, the Deputy Commissioner had marked the copy of the application made by the borrower-company to the Chief Controlling Revenue Authority. Therefore, the matter had come to knowledge of the Chief Controlling Revenue Authority; and accordingly the proceedings were rightly initiated against the petitioner. The observations were rightly made by the Chief Controlling Revenue Authority because Section 35 of the Act prohibits all the Courts and Public Authorities from acting upon any deed which is not sufficiently stamped. Accordingly, it is submitted that all the writ petitions deserve to be dismissed; being devoid of any merits.

Supplementing the arguments raised by the counsel for the State, learned counsel for the added respondent, the borrower company, i.e., Winsome Yarns Limited; has submitted that limitation of three years is not attracted in the present case because the action of the authorities is not under Section 47-A of the Act. Rather, the action of the respondent-authorities is under Section 73 of the Act, which deals with fraud. Since, the Deputy Commissioner had come to know of the fraud committed by the petitioner-company; at the time of registration of the deeds in question, therefore, the proceedings were rightly initiated by the Collector and the deficiency in stamp duty was rightly assessed.

Referring to the terms of the assignment deeds, learned counsel for the

respondent-borrower-company has also submitted that the assignment deeds, talk of transfer of 'title' 'right' or 'interest' in moveable and immoveable properties, therefore, the same has rightly been treated as the conveyance deed by the authorities and the duty has rightly been held to be chargeable under Article 23 of the Schedule 1-A of the Act. Article 62 (c) of the Act, under which the petitioner is taking shelter; talks only of transfer of 'interest' and not transfer of 'title' and 'rights'. Hence, the case of the petitioner is beyond the scope of Article 62 of the Act. The counsel has further submitted that Article 62 of the Act, covers only the 'interest' secured by mortgage, whereas, the assignment deeds of the petitioner also talk of transfer of 'rights' under hypothecation and pledge. Therefore, transfer by the financial institutions in favour of the petitioner-company was more than a mortgage. Hence, this was outside the scope of the Article 62 of the Schedule and, therefore, bound to be assessed for duty payable under Article 23 of the Act. On maintainability of the proceedings before the Chief Controlling Revenue Authority, the counsel for the respondent-borrower has submitted that Section 35 of the Act, which prohibits acting upon a deed registered with insufficient stamp duty uses the word 'shall' and so it is mandatory for every court and public officer not to act upon such a deed; whenever the same is produced before such authorities. Since, the Collector and the Chief Controlling Revenue Authority also come within the definition of the public officer, therefore, it was incumbent upon the Chief Controlling Revenue Authority, as well, not to act upon that, and also to inform the other authorities not to act upon the same; because of the deficiency in payment of stamp duty. The counsel has also supported the argument of

the State counsel that the Chief Controlling Revenue Authority had due powers to take *suo moto* notice and cognizance of the factum of deficiency in stamp duty. Hence, the proceedings were rightly initiated by the Chief Controlling Revenue Authority and the order was rightly passed, wherein the observations were made that the other authorities were expected not to act upon the said registered assignment deeds.

Since, the parties have referred to various provisions of the Act, therefore, it is appropriate to have reference to the said provisions, which are reproduced herein below.

“Section 2 (10) for Punjab

(10) “Conveyance” – “Conveyance” includes a conveyance on sale and every instrument by which property, whether moveable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule I or by Schedule I-A [or by [Schedule I-B or] Schedule 1-C], as the case may be;”

“Section 2 (14)

Instrument. – “instrument” in includes –

- (a) every document, by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded;*
- (b) a document, electronic or otherwise, created for a transaction in a stock exchange or depository by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded; and*
- (c) any other document mentioned in Schedule I,*
But does not include such instruments as may be specified by the Government, by notification in the Official Gazette;”

“Section 2 (17)

Mortgage-deed —

“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 specified property;”

“Section 35 Instruments not duly stamped inadmissible in evidence, etc.-

No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped :

Provided that—

- (a) any such instrument [shall] be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;*

Proviso (a) for Punjab and Haryana

- (a) any such instrument not being an instrument chargeable [with a duty not exceeding ten naye paise,] only or a bill or exchange or promissory note, or acknowledgement or delivery order, shall subject to all just exceptions, be admitted in evidence on payment of the stamp duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;*

- (b) *where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;*
- (c) *where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and anyone of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;*
- (d) *nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898.*
- (e) *nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government, or where it bears the certificate of the Collector as provided by Section 32 or any other provisions of this Act.”*

“36. Admission of instrument where not to be questioned.—

Where an instrument has been admitted in evidence, such admission shall not, except as provided in Section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.”

“38. Instruments impounded, how dealt with. —

(1) When the person impounding an instrument under Section 33 has by law or consent of parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by Section 35 or of duty as provided by Section 37, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of duty and penalty levied in

respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.

(2) In every other case, the person so impounding an instrument shall send it in original to the Collector.”

“Section 47-A for Punjab

47-A Instruments under-valued how to be dealt with –

(a) If the market value of any property, which is the subject of any instrument on which duty is chargeable on market value as set forth in such instrument, is less than even the minimum value as determined in accordance with the rules made under this Act, the Registering Officer appointed under the Registration Act, 1908, shall, after registering the instrument, refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon; and

(2) On receipt of reference under Sub-section (1), the Collector shall, after giving the parties reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules under this Act, determine the value or consideration and the duty as aforesaid, and the deficient amount of duty, if any, alongwith interest at the rate of twelve per cent per annum on such deficient amount, shall be payable by the person liable to pay the duty from the date of registration of the instrument relating to such property to the date of payment of deficient amount of the duty:

Provided that a person shall also be liable to pay penal interest at the rate of three per cent per annum, if there was an intentional omission or lapse on his part in note setting forth the correct market value of such property.

(3) The Collector may, suo moto, or on the receipt of a reference from the Inspector General of Registration or Registrar of a District appointed under the Registration Act, 1908 (Central Act No.16 of 1908), in whose jurisdiction the property or any portion thereof which is the subject matter of the instrument is situated or on the receipt of a report of audit by the Comptroller and Auditor General of India or by

any other authority authorized by the State Government in this behalf or otherwise, within a period of three years from the date of the registration of an instrument, call for and examine any instrument for the purposes of satisfying himself as to the correctness of the value of the property or of the consideration disclosed and of all other facts and circumstances affecting the chargeability of the instrument or as to the true character and description thereof and the amount of the duty with which it was chargeable and if after such examination, he was reason to believe that proper duty has not been paid, he may, after giving the person concerned reasonable opportunity of being heard and after holding an enquiry in the manner provided under sub-section (2), determine the value of the property or the consideration or the character or description of instrument and the duty with which it was chargeable and the deficient amount of duty, if any, alongwith interest at the rate of twelve per cent per annum on such deficient amount, would be payable by the person liable to pay the duty from the date of registration of the instrument relating to such property to the date of payment of deficient amount of the duty;

Provided that a person shall also be liable to pay penal interest at the rate of three per cent per annum, if there was an intentional omission or lapse on his part in note setting forth the correct market value of such property.

(4) Any person aggrieved by an order of the Collector under sub-section (2) or sub-section (3) may, within thirty days from the date of that order, prefer an appeal before the [Commissioner] and all such appeals shall be heard and disposed of in such manner as may be prescribed by rules made under this Act.

Explanation.-For the purpose of this section, value of any property shall be estimated to be the price which in the opinion of the Collector or the appellate authority, as the case may be, such property would have fetched, if sold in the open market on the date of execution of the instrument relating to the transfer of such property.”

“Section 48 for Punjab

48. Recovery of duties and penalties. — *All duties, penalties interest, penal interest and other sums required to be paid under this Chapter may be recovered by the Collector by distress and sale of the movable property of the person from whom the same are due, or by any other process for the time being in force for the recovery of arrears of land-revenue.”*

“56. Control of, and statement of case to, Chief Controlling Revenue-authority. —

(1) The powers exercisable by a Collector under Chapter IV and Chapter V and under clause (a) of the first proviso to section 26 shall in all cases be subject to the control of the Chief Controlling Revenue-authority.

(2) If any Collector, acting under section 31, section 40 or section 41, feels doubt as to the amount of duty with which any instrument is chargeable, he may draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue-authority.

(3) Such authority shall consider the case and send a copy of its decision to the Collector, who shall proceed to assess and charge the duty (if any) in conformity with such decision.”

“57. Statement of case by Chief Controlling Revenue-authority to High Court. —

(1) The Chief Controlling Revenue-authority may state any case referred to it under Section 56, Sub-section (2), or otherwise coming to its notice, and refer such case with its own opinion thereon,

(a) if it arises in a State, to the High Court for that State;

(b) if it arises in the Union territory of Delhi, to the High Court of Delhi;

(bb) -

(c) if it arises in the Union Territory of Arunachal Pradesh or Mizoram, to the Gauhati High Court (the High Court of Assam, Nagaland, Meghalaya, Manipur and Tripura);

(d) if it arises in the Union territory of the Andaman and Nicobar Islands, to the High Court at Calcutta;

(e) if it arises in the Union territory of the [Lakshadweep] Islands, to the High Court of Kerala;

(ee) if it arises in the Union territory of Chandigarh, to the High Court of Punjab and Haryana;

[(f) if it arises in the Union territory of Dadra and Nagar Haveli, to the High Court of Bombay.

(2) Every such case shall be decided by not less than three Judges of the High Court to which it is referred, and in case of difference the opinion of the majority shall prevail.”

“73. Books, etc., to be open to inspection. —

Every public officer having in his custody any registers, books, records, papers, documents or proceedings, the inspection whereof may tend to secure any duty, or to prove or lead to the discovery of any fraud or omission in relation to any duty, shall at all reasonable times permit any person authorized in writing by the Collector to inspect for such purpose the registers, books, papers, documents and proceedings, and to take such notes and extracts as he may deem necessary, without fee or charge.”

Having heard the arguments of the counsel for the parties, this Court finds substance in the arguments raised by the counsel for the petitioner. Undisputedly, the respondents have initiated the action for recovery of alleged deficiency in stamp duty; after a period of three years; from the date of registration of the assignment deeds in question. Section 47-A of the Act, as applicable in the State of Punjab, contains a specific provision dealing with the situations when, where and how the

authorities can initiate action for recovery of alleged deficiency in stamp duty. The said Section provides the outer limit of three years for the authorities to initiate any action for recovery of alleged stamp duty. Hence, on the fact of it, the action of the respondents in initiating the action of recovery of alleged deficiency in stamp duty is barred by the provisions of Section 47-A of the Act, as applicable in the State of Punjab. Although, to avoid the bar of Section 47-A of the Act, the respondents have claimed that they are not disputing the valuation disclosed by the petitioner in the deeds; and, therefore, it is not a case of under valuation contemplated by Section 47-A of the Act, rather, it is a case of detection of the fraud; for which there cannot be any limitation, however, this argument is totally devoid of any merit. Undisputedly, the assignment deeds in question mention the consideration, for which the deeds have been executed. These deeds disclose all the aspects which are being transferred through the deeds. The complete details of the goods and properties furnish as security to the lending financial institutions have been mentioned in the deeds. Hence, there is no question of any fraud being committed by the petitioner, as such. At the most, it could be a failure of the Sub-Registrar to properly understand the nature of the deed; at the time of registration of the same. The nutshell assertion of the respondents now is that the deeds were wrongly described as agreements instead of conveyance deeds, and thereby fraud was committed by the petitioner. However, Sub Section (3) of Section 47-A of the Act clearly stipulates for such a situation, as well. Under section 47-A (3), the Collector is fully authorized to determine the nature, character and description of the deed, as well. Hence, Section 47-A of the Act not only

deals with the under-valuation as disclosed in the deed presented for registration, rather, it also deals with all the possible situations through which an attempt can be made to avoid payment of full stamp duty. Therefore, even if the respondents allege wrong description of the deed by the petitioner as 'assignment deed' instead of 'conveyance deed', the said situation also falls within the scope of Section 47-A of the Act. Hence, the bar of limitation provided by Section 47-A of the Act would be applicable; even qua the recovery of the alleged deficient stamp duty on the ground of wrong description of a deed. Hence, even the proceedings of determining true character or description of a deed has to be initiated within the time limit prescribed by Section 47-A of the Act. Therefore, this Court finds merit in the arguments of the counsel for the petitioner that the action initiated by the respondents is barred by limitation. The reliance of the counsel for the petitioner upon the judgment of the Hon'ble Supreme Court rendered in the case of ***Mahajan Sabha, Gurdaspur*** (supra) and the judgment of this Court rendered in the case of ***Vikas*** (supra) is found to be well placed.

There is another aspect involved in the matter. Although during the arguments, the counsel for the respondents have tried to present the alleged deficiency in payment of duty, as a result of fraud committed by the petitioner, however, none of the orders passed by the respondents even alleged any fraud committed by the petitioner. It is only in the written statement that the respondents started alleging fraud on the part of the petitioner. However, it is well established that averments in the written statement cannot supplement the contents of the orders impugned before a Court. The express language of the orders is to be

read as it is; for adjudicating as to the basis of action of the respondents/statutory authorities. Hence the plea of fraud, now being raised by the respondents, is only and after-thought; to come out of the embargo created by the provisions of Section 47-A of the Act. Moreover, the term 'fraud' has been differently defined in different statutes. It is defined in one way under the Indian Penal Code, while it is defined differently under the Indian Contract Act. But there is no definition of 'fraud' given in the Indian Stamp Act, which could be alleged and be proved against a person. Therefore, the alleged 'fraud' as an attempt to avoid payment of proper stamp duty cannot be taken up as an independent ground by the authorities under the Act for starting fresh assessment beyond the period of limitation. Even if, a 'fraud' is claimed to have been detected by the respondent-authorities, the same has to be determined within the period prescribed by Section 47-A of the Act, being covered under one of the circumstances prescribed for assessment of deficiency in stamp duty under Sub Section 3 of Section 47-A of the Act. The general principle of law that fraud knows no limitation; would not be applicable in case of initiation of action for recovery of stamp duty merely by branding some action of the party to the deed as fraudulent. The general principle of law that fraud knows no limitation is applicable only qua the acts involving only the private actions of the private parties, which could not have been detected by any Court or Public Authority in exercise of their functions. However, the said concept would not be applicable in case the document executed by the parties is subject-matter of assessment by a Court or Public Authority and any fact contained in such a document is not even alleged to be false. Mere failure of the

authority to read such a document in a proper manner, though entitled to read it in a manner different than it is described in, would not be a fraud in the sense it is understood in the law, and therefore, such an authority would not be entitled to claim that there is no bar of limitation for reading a document properly because earlier it failed to read properly the document and failed to assess it in a manner permitted to it by the law. Legal default of a public officer cannot be branded as 'fraud' to the prejudice of a citizen. Needless to say that it is the specific case of the respondents in the present matter that they are not disputing the valuation disclosed by the petitioner in the assignment deeds and that they are disputing only the description of the deed as assignment deed/agreement instead of describing it as conveyance deed. Even if, such a lapse is there on the part of the petitioner, that does not fall in the definition of fraud; as defined under any statute; much less to speak of this Act. Moreover, the reliance of the counsel of the petitioner in this regard upon the judgment of the Patna High Court rendered in the case of ***Tetra Devi*** (supra) is well placed. The said judgment contains an observation that even qua fraud, the action has to be taken within the period of limitation.

To come out of the embargo of limitation created by Section 47-A of the Act, the respondents have vehemently argued that the initiation of the proceedings against the petitioner does not fall within the scope of Section 47-A of the Act, rather, the same is covered by Section 73 of the Act. However, this argument of the respondents is totally misconceived. A bare perusal of Section 73 of the Act shows that it is contained in Chapter 8 of the Act, which deal with only supplemental proceedings; and this section makes a provision only for permission; for

inspection of books and records; to be granted by the Collector to any person; without fees, if such an inspection tends to secure payment of any duty or tends to prove or tends to lead to the discovery of any fraud or omission in relation to payment of any duty. This provision, as such, is not a provision, which confers any substantive *quasi judicial* powers upon the Collector to adjudicate upon the insufficiency of stamp duty. This gives a limited power to the Collector to permit inspection of books and records without fees, by any person, if such a person alleges any omission to pay or less payment or fraud in payment of the stamp duty by any other person. If the Collector intends to initiate proceedings after discovery of any such omission, lesser payment of duty or avoidance of payment of duty through fraudulent means, then he has to resort to the substantive powers conferred upon him under other sections in the Statute. Obviously, such substantive power of the Collector is contained in Section 47-A of the Act, particularly, Sub Section 3 of Section 47-A of the Act. Since, the Collector under the Act is a 'persona designata', he is bound by the provisions of the Act and he can take action only as per the powers conferred upon him by the statute; and not as a general repository of inherent powers. Therefore, the provision contained in Section 73 relating to grant of permission to inspect the record by anybody can, by no means, be interpreted as conferring any substantive powers upon the Collector to initiate proceedings for assessing and recovery of alleged deficiency in stamp duty; by overlooking the mandate of Section 47-A of the Act qua the time limit prescribed for that purpose.

As mentioned above, the sole basis for the respondents for initiating the proceedings for recovery of alleged deficient stamp duty is

that the petitioner has wrongly described the deed as an assignment deed/agreement instead of describing the same as conveyance deed. Relying upon the definition of the conveyance, as contained in Section 2 (10) of the Act, the respondents have submitted that the duty payable on the said deed would be covered by Article 23 of the Schedule 1-A of the Act and not by Article 62 (c) of said Schedule. However, this argument is also to be noted only to be rejected for two obvious reasons. Firstly, as discussed above, in the worst, this was only a wrong description of the deed presented by the petitioner for registration. Any deficient stamp duty allegedly payable on account of wrong description of a deed is accessible and is liable to be determined by exercising powers under Section 47-A (3) of the Act. Hence, any such action of the respondents after the period of three years is totally time barred. Secondly, the deed itself cannot be branded as a conveyance deed. Undisputedly, the transactions involved in the deeds were regarding the transfer of right to recover the loan; for a consideration. The said loan was secured with the financial institutions involved in the present case by mortgage of immoveable properties and pledges of moveable properties. The mortgage deed as defined by Section 2 (17) of the Act includes every instrument by which right in or regarding specified property is transferred to secure repayment of loan. This definition does not make any difference between moveable or immoveable property. Hence, the mortgage as defined under the Act includes even the pledge qua moveable properties. On the contrary, the 'conveyance' as defined under this Act contemplates complete transfer of title by sale or transfer. Therefore, by any means, the financial institutions as mortgagees did not have the original and

complete title of the moveable or immoveable properties, as such. They had only an interest and right in their favour in the said properties to secure the repayment of the loan. Hence, what is being transferred through the assignment deeds in question is only the loan and the right to sue for recovery of the same by enforcing the mortgagee rights, of course for a consideration. Such an assignment or a transaction of transfer of right to recover the loan cannot be taken as transfer of the title of the moveable or immovable property, as such. Hence, the assignment deed would not fall within the definition of conveyance deed, as defined in Section 2 (10) of the Act. This Court finds the reliance of the counsel for the petitioner upon the judgment of Full Bench of Allahabad High Court rendered in the case of **Kotak Mahendra Bank Limited** (supra) and the judgment of Madras High Court rendered in the case of **Easun Products of India Pvt. Ltd.** (supra) to be well placed. The transaction involved in the assignment deeds being only the right to recover a loan secured by mortgaged of immoveable properties and pledged of moveable properties, the same would fall within the scope of Article 62 of the Schedule 1-A of the Act, as applicable in the State of Punjab. The argument of the counsel for the respondents-borrower that the deed talks of transfer of 'title' and 'rights'; as well in addition to the transfer of 'interest', therefore, it would fall outside the scope of Article 62 (c) is hyper technical and not based upon any legal concept; as such. Needless to say that whatever is written in the deed regarding the transaction is not the final word for the purpose of assessment of the stamp duty. It is substance of the transaction, which is to be seen. It is only for this reason that even the Collector has been given the power to re-determine the

description, nature and character of the deed for the purpose of assessment of the stamp duty. Hence, merely because the words 'title' and 'right' is also included in the language of the deed, that would not convert the deed as a deed involving transfer of absolute title and rights to the immoveable and moveable properties. It is only the interest and rights possessed by the financial institution in the mortgaged properties, described in the deed by whatever name, which was being transferred through the deed. Hence, it is only the Article 62 (c) of the Act, which shall cover the deed in question for the purpose of charge of stamp duty.

Although the counsel for the State has submitted that the State has modified the definition of the 'conveyance' deed in its Manual of Audit to include the transfer of 'book debts' as well, however, this argument is totally irrelevant. Once the definition of 'conveyance' is specified in the Act, then unless modified through proper amendment to the Act, the said definition has to prevail. No such amendment has been pointed out by the counsel for the State. Moreover, although the State Government has been conferred power to frame the rules, however, that power is to frame the rules to carry out the objects of the Act and not to amend the definition of 'conveyance' as given in Section 2 of the Act. The rule framing power given under an Act does not include power to amend the parent Act. Moreover, the alleged extension of definition by including the transfer of 'book debts' in definition of 'conveyance' is not even by framing the rules, under Indian Stamp Act. Hence, that alleged extended definition of 'conveyance' is totally irrelevant for the purpose of present controversy.

The next question put up for consideration of the Court is the proceedings initiated by the Chief Controlling Revenue Authority; whereby the petitioner was called upon to explain as to why the deficient stamp duty should not be recovered from the petitioner and further observations were made that no authority was expected to act upon the document, the same being insufficiently stamped. This exercise of power by the Chief Controlling Revenue Authority is absurd on the face of it. A perusal of the record shows that the Collector had already issued order for recovery of alleged deficient stamp duty and Naib Tehsildar had asked the Collector to declare the alleged deficient stamp duty as arrears of land revenue, vide letter dated 04.12.2019. Whereas, the Chief Controlling Revenue Authority converted the letter of the defaulting borrower as miscellaneous application and issued notice in the same to the petitioner for explaining as to why the stamp duty should not be recovered from them, only on 03.02.2020. Once the alleged deficient stamp duty already stood determined by the Collector, as per the respondents, then it is beyond understanding, for what consideration the Chief Controlling Revenue Authority entered upon the adjudication for the same purpose. The obvious purpose was to make the observations contained in second part of the order; wherein it is written that no authority was expected to act upon the said registered deed. Since, this entire exercise was being carried out on an application of the defaulting borrower, therefore, it is obvious that this action was taken just to help the defaulting borrower to take an objection before the NCLT and the DRT against admissibility of the said deed in the proceedings before those authorities. Needless to say; that otherwise also those authorities

could have taken cognizance of the fact of factum of alleged deficiency in stamp duty and would have referred the matter to the Collector for proper adjudication of the stamp duty, in case they were convinced that it was insufficiently stamp. Even the respondent-borrower had the opportunity to raise this issue before those authorities. However, by passing the order containing the said observations, the Chief Controlling Revenue Authority positively prejudiced the mind of those statutory authorities and put a pressure upon them to arrive at a decision in a particular manner, intended by the Chief Controlling Revenue Authority in favour of the defaulting borrower. Surprisingly, the deed was duly registered. It was not impounded by any authority. Therefore, there was absolutely no reason or occasion for the Chief Controlling Revenue Authority to make the observations that it should not be acted upon by any authority. Any such observations, if at all could have been made, would have been permissible to be made only after the Chief Controlling Revenue Authority, would have arrived at a conclusion; qua deficiency in stamp duty; after hearing the petitioner. However, even before any such conclusion by the Chief Controlling Revenue Authority, the uncalled observations were made just to help the defaulting borrower company and to cause prejudice to the case of the petitioner-Re-construction company before the NCLT and DRT. Although, the counsel for the respondents have referred to Section 35 of the Act to stress upon the aspect that section uses word 'shall', requiring mandatorily, all the Courts and public officer, not to act upon the insufficiently registered deed, however, a reading of this section shows that this duty is enjoined upon those Courts and public officers, where the said document is sought to be

adduced in evidence or where such public officer is called upon to act upon such document. It is not even the case of the respondents that the petitioner had ever moved the Chief Controlling Revenue Authority to act upon the registered deed involved in the case. Therefore, that authority had no reason or occasion to make the observations in the order that no authority is expected to take cognizance of the deed in question.

A bare perusal of Section 56, under which the respondents are claiming the power to be vested in Chief Controlling Revenue Authority to re-determine the deficient stamp duty, shows that such authority does not have any such omni-present power. As observed above, all the authorities under the Act are working as *persona designata*, with specified powers and functions and, therefore, they are not repository of any residual adjudicatory powers or inherent powers, as such. They can act only in accordance with the Act and in conformity with the provisions of the Act. A *persona designata* is a creature of a statute. Such *persona designata* has to be completely reined-in by the provisions of such statute lest he should transform himself into an unruly horse and over-steps and tramples everyone here, there and everywhere. Such reins-in provisions are contained in the Stamps Act as well. A perusal of Section 56 of the Act shows that neither the Chief Controlling Revenue Authority has any power to enter into *suo moto* adjudication upon deficiency in stamp duty, nor does the Chief Controlling Revenue Authority has any revisional powers to assess the alleged deficiency in stamp duty; except upon a reference drawn by the Collector and sent to the Chief Controlling Revenue Authority with his own opinion. Therefore, under Section 56 of the Act, the Chief Controlling Revenue

Authority has the limited power to answer the reference made to it by the Collector and to re-assess the stamp duty, in pursuance to answer to such a reference made by the Collector. Therefore, the Chief Controlling Revenue Authority has very limited power of revision, so far as, adjudication upon alleged deficiency in stamp duty; is concerned. Although, Sub Section 1 of Section 56 of the Act, provides that all powers by the Collector under Chapters 4 and 5 shall be subject to the control of the Chief Controlling Revenue Authority, however, a subordinate authority working under control of a superior authority and the superior authority claiming adjudicatory power of revision under such a controlling power are altogether two different aspects. The word 'control' used in Section 56 of the Act, would mean the administrative control, the guiding providence, prescription of certain aspects consistent with the provisions of the Act; to facilitate the exercise of power by the Collector, as well as, the limited power of answering reference as contemplated under Section 56 (3) of the Act. Although, a vague and passing a reliance has been placed by the counsel for the respondents upon the Article 227 of the Constitution of India, which has been held to confer adjudicatory powers of revision upon the High Court's despite the same granting power to the High Court to exercise control and superintendence over the Courts and authorities below, however, that parlance is not available to the Chief Controlling Revenue Authority for two reasons. High Court is, otherwise also, having all the inherent powers to ensure the justice. The Chief Controlling Revenue Authority cannot be equated with the High Court; qua being repository of inherent powers of adjudication. Secondly, the adjudicatory power of High Court under

Article 227 of the Constitution of India, has not been interpreted by the Hon’ble Supreme Court on the basis of some language used in this article, rather, the same has been interpreted to include the adjudicatory powers because of the absence of some such language in this article; which was present in its predecessor provision contained in Government of India Act. Therefore, the criteria of inferring the adjudicatory power being included in ‘superintendence of control’; in case of the High Court; cannot be applied to only the ‘control’ vested with the Chief Controlling Revenue Authority under the Act. Hence, the Chief Controlling Revenue Authority had no jurisdiction to initiate the proceedings for assessing the alleged deficient stamp duty.

Resultantly, all the writ petitions are allowed. The orders impugned in the petitions are set aside.

All pending miscellaneous application(s), if any, stands disposed of as such.

26th OCTOBER, 2021
‘sandeep’

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned:	Yes	No
Whether Reportable:	Yes	No