



W.P.No.36458 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 05.08.2022

PRONOUNCING ORDERS ON : 10.08.2022

Coram:

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

W.P.No.36458 of 2007
and MP.Nos.1 of 2007 and 1 of 2011

Madurai Power Corporation Pvt.Ltd.,
Flat No.G1, 1, Seshadri Road,
Alwarpet, Chennai 600 018.

..Petitioner

.Vs.

1.Inspector General of Registration
Registration Department
Santhome High Road, Chennai 600 028.

2.Joint Sub-Registrar-I
District Registrar Cadre
Chennai Central, 70, Chamier's Road
Chennai 600 018.

... Respondents

Prayer: Writ Petition under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, quashing the impugned order/letter of the 1st respondent bearing no.51383/LP 1/2006 dated 19.11.2007 and the demand letter no.13992/ORB/2006 dated 22.11.2007 of the 2nd respondent by calling for the entire records leading to the issue of the same.

For Petitioner : Mr.R.Venkatavaradan

For Respondents : Mr.J.Ravindran
Additional Advocate General
Asst.by: Mr.U.Baranidharan
Additional Government Pleader



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ORDER

The Petitioner Company has challenged the impugned proceedings dated 19.11.2007 issued by the 1st respondent and the communication dated 22.11.2007 issued by the 2nd respondent directing the petitioner to remit a sum of Rs. 81,58,000/- towards the deficit registration fee.

2.The brief facts of the case is that the petitioner executed a deed of mortgage in favour of ICICI Bank under an indenture of mortgage dated 24.10.2000 and this document was registered as Document No.475 of 2002. Pursuant to the payment of certain loans and facilities availed from a new set of lenders, the petitioner executed a deed of modification to indenture of mortgage on 20.10.2004. This document was registered as Document No.63 of 2005. By virtue of these two documents, ICICI Bank apart from acting as a lender, was also acting as the security trustee.

3.The Reserve Bank of India came up with a regulation whereby it prohibited a Bank from acting as a security trustee. By virtue of this regulation, the original security trustee viz., ICICI Bank was substituted by WITCO Ltd., as the successor security trustee and a second deed of modification to indenture of mortgage was executed by the petitioner on 30.5.2006. This document was registered as Document No.770 of 2006.

4.The further case of the petitioner is that after nearly five months after the registration of the document dated 30.5.2006, the 2nd respondent, through letter dated



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11.10.2006, called upon the petitioner to pay the deficit registration fee of Rs.81,58,000/- in the light of an internal audit objection, failing which, action will be initiated under Section 80A of the Registration Act. The petitioner on receipt of this communication gave a detailed reply on 31.10.2006 and explained as to how the demand is not sustainable.

5.The 2nd respondent through letter dated 10.10.2007, once again reiterated that the security interest of the retiring security trustee was transferred to the incoming security trustee and such transfer of interest secured by a mortgage deed is covered under Article 62(c) of the Indian Stamp Act and hence, the petitioner is bound to pay the deficit registration fee. The subsequent explanation given by the petitioner was not accepted and ultimately, the impugned demand came to be made directing the petitioner to pay the deficit registration fee within a week. Aggrieved by the same, the present Writ Petition has been filed before this Court.

6.The respondents have filed a counter affidavit. The relevant portions in the counter affidavit are extracted hereunder:

“11. With regard to the Grounds alleged in Para 3.9 of the affidavit, it is submitted that :-

11.1) The order of the 2nd Respondent is in accordance with Section 80-A of the Registration Act, 1908.

11.2) The Petitioner was issued show cause by the 2nd Respondent to offer his explanation why a sum of Rs.81,58,000/-



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being the deficit registration fee should not be levied. The Petitioner ought to have demanded for personal enquiry on receipt of the said show cause notice. The Order was passed by the 2nd Respondent only after obtaining explanation from the Petitioner. Hence he cannot say that the order is not based on principles of natural justice.

11.3) The Deed of Modification has to rectify any clerical error or supplying omissions to the principle deed and such errors or supply of omissions should not extinguish, limit, relinquish, create any new right. In the impugned document, a new right has been created in favour of M/s. WITCO by transfer of mortgage by the Mortgagor/Petitioner and one of the Mortgagees and Security Trustee, ICICI Bank Ltd. Hence the document squarely falls under Article 62 (c) of Schedule - 1 to the Indian Stamp Act, 1899. The Said Article provides as under :-

Article 62. Transfer whether with or without consideration-

- (a)xxx xxx
(b)xxx xxx
(c) of any interest secured by a bond,
mortgage deed or policy of insurance

(i) If the duty on such bond, mortgage deed or policy does not exceed forty rupees	The duty with which bond, mortgage deed or policy of insurance is chargeable.
(ii) in any other case	Forty rupees

Like wise Article 1 (b) of the Table of Fees under Section 78 of the Registration Act, 1908 provides as under in respect of levy of registration fees:

"1 (b) Unless it is specifically provided in various Articles



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mentioned below, the consideration expressed in a document shall generally be taken to its value for determining the registration fees. Where no consideration expressed, value of the property dealt with shall be taken. In the case of conveyance, exchange, gift or release, the registration fee shall be levied on the value or amount on which stamp duty under the Indian Stamp Act, 1899 (Central Act II of 1899) is payable".

The above said Article provides for levy of fee on the consideration amount and 62 of Schedule -1 to the Indian Stamp Act, 1899 provides, whether there is consideration or not, if it is transfer of mortgage, duty is to levied as laid down in clause (c). Hence the 2nd Respondent was rightly called for payment of deficit registration fee of Rs.81,58,000/- in terms Article 1 (b) of the Table of Fees.

11.4) Section 33-A of the Indian Stamp Act, 1899, as well as Section 80-A of the Registration Act, 1908 provides for recovery of deficit Stamp duty and deficit registration Fee respectively after registration. Hence the averments that the 2nd Respondent cannot classify the nature of the document after registration is not maintainable. The said allegation is misleading.

11.5) As per principal mortgage, ICICI Ltd is not only Security Trustee but also one of the Mortgagees/domestic lender and guarantor. Hence impugned deed can be classified as 'Deed of Transfer of Mortgage' since the transfer is made by ICICI Bank Ltd with the consent of the Petitioner/ Mortgagor.

11.6) The 2nd Respondent has not taken Audit version in its toto. Only after examining and satisfying the same, had initiated action under Section 80- A of the Registration Act.



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11.7) *The mere registration by a Registering Officer cannot be construed that the nature and charge ability of the stamp duty has been correctly determined. In order to overcome the deficit stamp duty and registration fee after registration, Section 33-A of the Indian Stamp Act, 1899 and Section 80-A of the Registration Act were inserted in the respective principal Acts for the purpose to recovery the deficit amounts.*

11.8) *The petitioner ought to have asked for enquiry when he was issued a show cause notice under Section 80-A of the Registration Act, 1908. Having failed to exercise their right(s), the Petitioner cannot now allege/attribute violation(s) as an after-thought.*

11.9) *The letter of this Respondent dated 19.11.2007 was addressed only to the 2nd Respondent and the same is not binding on the Petitioner. The Petitioner was also informed by this Respondent that the question of appeal will arise only if the certificate contemplated under Section 80-A of the Registration Act is issued.*

11.10) *The Respondents have followed the procedure laid down in Section 80-A of the Registration Act, 1908. The Petitioner has not averred how the Respondents failed to follow the procedures laid down in Section 80-A of the Registration Act, 1908. The Contrary allegations are denied.*

11.11) *The Petitioner cannot assail the letter of this respondent dated 19.11.2007 addressed to the 2nd Respondent and the same is not an order of any nature so as to bind the Petitioner.*



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11.12) It is submitted that the Petitioner has filed this Writ Petition without exhausting the Statutory Appeals provided hierarchically under Sub-section (3) of Section 80-A of the Registration Act. The Petitioner has not exhausted the effective efficacious alternate remedies available under the Statutes. Moreover the Petitioner is bound to pay the demanded deficit Registration Fees. Since the impugned deed transfers the mortgage interests of ICICI Bank Ltd, to M/s. WITCO with the consent of the Petitioner & Others.”

7.Heard Mr.R.Venkatavaradan, learned for the petitioner and Mr.J.Ravindran, learned Additional Advocate General for the respondents.

8.This Court has carefully considered the submissions made on either side and the materials available on record.

9.Before dealing with the issues raised in this Writ Petition, for completion of facts, it must be noted that this Court while entertaining the Writ Petition, granted an Order of interim stay through an Order dated 5.12.2007. In spite of the interim Order passed by this Court, the 2nd respondent proceeded to issue a certificate dated 10.12.2007 under Section 80A of the Registration Act. On receipt of the same, the petitioner through their counsel, issued a legal notice to the effect that the certificate must be withdrawn, failing which, contempt proceedings will be initiated. On receipt of this notice, the 2nd respondent through letter dated 26.12.2007, informed the petitioner as follows:

“Hence, I wish to reiterate that Sec. 80A action has been taken



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before the receipt of the court order so as to get rid of myself from the departmental disciplinary action for the alleged loss of a huge sum. I wish to bring to your kind notice that, I will soon contact the Government Pleader in this regard and plead for my exclusion from this case since the Inspector General of Registration has passed the order against my reply to the audit remark.”

10.The stand taken by the 2nd respondent in this letter runs counter to the proceedings of the 1st respondent dated 19.11.2007, since the 1st respondent does not even refer to the objection made by the 2nd respondent for the internal audit objection. The 1st respondent proceeds as if, there was no objection for the audit objection and accordingly, the audit objection was confirmed. This Court does not want to get into this issue at this length of time and this Court would rather focus on the main issue that is involved in the Writ Petition.

11.The limited issue that requires the consideration of this Court is as to whether Article 62(c) (ii) of the Indian Stamp Act, will apply to the second deed of modification to indenture of mortgage, registered as Document No.770 of 2006. For proper appreciation, Article 62(c) of the Stamp Act, is extracted hereunder:

*“62. Transfer with or
without consideration, -
(c) of any interest secured by a*



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*bond, mortgage deed or
policy of insurance-*

*(i) if the duty on such bond,
mortgage deed or policy
does not exceed [forty
rupees] ;*

(ii) in any other case ;

*The duty with which
bond, mortgage deed or
policy of insurance is
chargeable.*

[Forty rupees.]

12.A careful reading of Article 62 (c) of the Stamp Act, shows that there must be a transfer. This would mean that there must be a transferor and a transferee. The next requirement is that the transferor mortgagee should transfer their interest secured under the mortgage deed to the transferee mortgagee. Such transfer can take place with or without consideration.

13.In the present case, there is no dispute with regard to the fact that the mortgagee/lender remains the same viz., ICICI and other banks in the consortium. It is the lender who has appointed a security trustee. Before proceeding further, there must be a clarity in understanding the term security trustee. For that purpose, the relevant Clauses in the document are extracted hereunder:

“2A. Benefit of this Indenture/Declaration of Trust

The Security Trustee shall hold the Security Interest created or to be created by the Company in its favour under this Indenture over the Mortgaged Properties, including the covenants and mortgages given by the Borrower pursuant hereto, upon trust for the benefit of the Senior Lenders and the Domestic Guarantor subject to the powers and provisions contained in the Security Trustee Agreement, for the due



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payment of the Obligations.

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16. Enforcement

1) Enforceability of Security

The security created hereunder in favour of the Security Trustee for the benefit of the Senior Lenders and the Domestic Guarantor shall become enforceable by the Security Trustee upon happening of Event of Default. Notwithstanding any other provision of this Indenture, the security created in favour of the Security Trustee for the benefit of the Domestic Guarantor shall not be enforceable (whether by way of exercise of general enforcement powers herein, pursuant to Clause 18, Clause 20 or otherwise) without the prior written consent of the Senior Lenders to the extent the security created in favour of the Security Trustee for the benefit of the Senior Lenders is subsisting.

2) General Enforcement Powers

At any time after the security shall have become enforceable pursuant to the terms of any of the Financing Documents, by the terms of this Indenture, the Security Trustee may, without prejudice to any other rights it may have and without prior notice to the Borrower:

(a) declare all or part of the Mortgage Debt to be immediately due and payable (or on such dates as the Security Trustee or the Senior Lenders or the Domestic Guarantor may specify), whereupon they shall become so due and payable;

(b) sell, call in, collect, convert into money or otherwise deal with or dispose of the Mortgaged Properties or any part thereof on an instalment basis or otherwise and generally in such manner and upon such terms whatever as the Security Trustee may consider fit



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exercise any and all powers which a receiver could exercise hereunder ;

(c) exercise any and all powers which a receiver could exercise hereunder or by law ;

(d) appoint by writing any Person or Persons to be a receiver of all or any part of the Mortgaged Properties, from time to time determine the remuneration of the receiver and remove the receiver (except where an order of the courts is required therefor) and appoint another in place of any receiver, whether such receiver is removed by the Security Trustee or an order of the court or otherwise ceases to be the receiver or one of two or more receivers,

(e) substitute itself or its assignee or designee for the Borrower under any or all of the Project Documents and the Borrower's residual interest in the Trust and Retention Agreement; and

(f) enter into and upon and take possession of the Mortgaged Properties and any future assets comprised in these presents and after the taking of such action the Borrower shall take no action inconsistent with or prejudicial to the right of the Security Trustee quietly to possess, use and enjoy the same and to receive the income, profits and benefits thereof without interruption or hindrance by the Borrower or by any Person or Persons whomsoever, and upon the taking of such action, the Security Trustee shall be freed and

discharged from or otherwise by the Borrower well and sufficiently saved and kept harmless and indemnified of, from and against all former and other estates, titles,



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claims, demands and encumbrances whatsoever, unless caused by the fraud, gross negligence or wilful misconduct of the Security Trustee or that of its officers or employees or assignee or designee or agent.

(g) Operate the Accounts and appropriate all monies lying therein; and

(h) Take all such other action expressly or impliedly permitted under this Indenture and/or in law.

18. Powers of the Security Trustee

The Security Trustee shall have the authority to act upon and enforce the provisions of this Indenture in accordance with these presents or to adopt appropriate remedies in that behalf and may in that behalf adopt remedies in relation thereto and shall exercise all powers under this Indenture in accordance with law and the Financing Documents.”

14. On carefully going through the above Clauses, it is seen that a security trustee is more in the nature of an agent upon whom a trust is vested by the lender and the domestic guarantor and such a security trustee will act whenever a default is committed and will exercise all powers given under the document to ensure the collection/recovery of the amounts due to the lender. Such a security trustee does not wear the cap of a lender or a mortgagee and what is paid as a consideration to the security trustee is only a commission for performance of his duty prescribed under the document.

15. The senior lender viz., the ICICI Bank was only acting as a security trustee. The RBI came up with a Circular to the effect that the bank/lender cannot be a security trustee



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and there was a conflict of interest. Hence, the security trustee was substituted and WITCO Ltd., was made as the security trustee through document dated 30.5.2006. Such a substitution was also specifically provided in the earlier document dated 24.10.2004.

16.Keeping the above in mind, it has to be necessarily held that there is no transferor and transferee relationship between ICICI Bank and WITCO Ltd. There is also no transfer of interest in favour of WITCO Ltd. In the present case, the lender/mortgagee continues to be the same and they have not transferred that interest in favour of WITCO Ltd. The only effect of the document dated 30.5.2006, is the substitution of the security trustee and WITCO Ltd., has come in the place of ICICI Bank. WITCO Ltd., is neither a lender nor a domestic guarantor. Article 62(c)(ii) of the Stamp Act, will come into play only where the document in question had created or extinguished a right in respect of the mortgagee. The real nature of the transaction only determines the levy of stamp duty. The document dated 30.5.2006 came to be executed only because of the mandate issued by RBI and ICICI Bank did not transfer any interest in favour of WITCO Ltd.

17.The audit objection seems to have proceeded on the footing that ICICI Bank has given up its interest and had transferred/ appointed WITCO Ltd., as the successor security trustee and this has been construed as a transfer of mortgage right under Article 62 of the Stamp Act. In the considered view of this Court, this is a wrong construction of the document dated 30.5.2006. Through the modification deed, there was no change in the mortgage debt, interest, mortgaged properties and the lenders and there was a mere substitution of the



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security trustee. By no stretch, this can be construed as a transfer of interest secured by a mortgage within the meaning of Article 62 (c) of the Indian Stamp Act.

18. In view of the above discussion, there is absolutely no justification to demand for the deficit registration fee from the petitioner. Even though the learned Additional Advocate General raised the plea of alternative remedy on the ground that a certificate issued under Section 80A of the Registration Act, can be challenged by way of an Appeal before the Inspector General of Registration, the same does not merit the acceptance of this Court. The first reason is that the Inspector General of Registration has already confirmed the audit objection and directed the 2nd respondent to recover the amount through impugned proceedings dated 19.11.2007. Therefore, no useful purpose will be served in filing an Appeal before the Inspector General of Registration. That apart, this Writ Petition was entertained in the year 2007 and it has come up for final hearing after 15 years and at this length of time, alternative remedy will not come in the way of this Court exercising its jurisdiction under Article 226 of the Constitution of India and more particularly, where the present case only involves the interpretation of a particular provision vis-à-vis the terms of the document dated 30.5.2006.

19. In the result, the impugned proceedings of the respondents and the certificate issued under Section 80A of the Registration Act, is hereby quashed and this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.



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Internet: Yes
Index: Yes
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To

1. Inspector General of Registration
Registration Department
Santhome High Road
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2. Joint Sub-Registrar-I
District Registrar Cadre
Chennai Central
70, Chamier's Road
Chennai 600 018.

N.ANAND VENKATESH. J.,

KP



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**Pre-Delivery Order in
W.P.No.36458 of 2007**

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