In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No. 23792 of 2023

Saregama India Limited and Anr.
Vs.
State of West Bengal and Ors.

For the petitioners	:	Mr. Ratnanko Banerjee, Mr. Sankarsan Sarkar, Mr. Debdut Mukherjee, Ms. Pritha Basu, Ms. Patrali Ganguly
For the State	:	Mr. Anirban Ray Mr. Biswabrata Basu Mallick Ms. Parna Ray Choudhury
Hearing concluded on	:	05.12.2023
Judgment on	:	14.12.2023

Sabyasachi Bhattacharyya, J:-

1. The scope of the present writ petition is limited. The respondent-State demanded stamp duty on a music licence agreement entered into between the petitioner no.1, Saregama India Limited, which is a music company, and a third party by the name of Triller Inc., a Delaware Corporation of the United States. The stamp duty charged was on the premise that the agreement was an instrument of conveyance as opposed to an agreement as urged by the petitioners.

2. Learned senior counsel for the petitioners argues that to come within Article 23 of Schedule IA of the Indian Stamp Act, 1899 (as amended in West Bengal), an instrument has to be a conveyance as defined in Section 2(10) of the said Act. It is argued that the said definition necessarily indicates that there must be a final transfer of right, title and interest akin to a sale with regard to a movable or immovable property. Analogies are sought to be drawn with Sections 5 and 54 of the Transfer of Property Act. On the other hand, the present agreement involves a mere grant of licence as defined in Section 52 of the Indian Easements Act, 1882, as per which where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license.

3. Learned senior counsel then highlights certain clauses of the agreement, in particular Clauses 2(a), 2(b), 2(d), 3(c), 7(a), 7(c), and 13(c).A comprehensive perusal of the said clauses, it is argued, indicates that the transfer is limited to non-exclusive and non-transferable rights and does not constitute a transfer of the ownership. The ownership and title are retained by the petitioner no.1-Company. It is argued that mere creation of rights which are remunerative does not automatically make an agreement a conveyance. It is argued that at best, stamp as stipulated in Article 5(e) of Schedule IA chargeable for an 'agreement' can be imposed on the present music licence agreement. Hence, the document-in-question ought to have been charged as an agreement and not as a conveyance.

4. It is argued that during pendency of the writ petition, the petitioners had to pay the stamp duty claimed by the respondents under compulsion to the tune of 61,66,185/-. Such payment was made on October 12, 2023 during pendency of the writ petition, which was filed on September 30, 2023. It is argued that the same ought to be directed to be refunded.

5. Learned senior counsel cites an unreported judgment of this Court in *WPA No. 20581 of 2022 + CAN 1 of 2022 [Millennium Projects Private Limited and others Vs. State of West Bengal and others]* for the proposition that no appeal is maintainable under Section 47A of the Stamp Act at this stage.

6. Learned senior counsel also cites *Hameed Joharan (dead) and others Vs. Abdul Salam (dead) by Lrs. and others*, reported at *(2001) 7 SCC 573*,for the proposition that a true fiscal statute in nature is to be strictly and not liberally construed.

7. Learned senior counsel also relies on *Shriram EPC Limited Vs. Rioglass Solar SA*, reported at *(2018) 18 SCC 313* for the proposition that the Indian Stamp Act is a fiscal statute which must be construed literally and any ambiguity in the statue would enure to the benefit of the assessee who has to pay stamp duty.

8. Lastly, learned senior counsel cites *Yazdani International Private Limited Vs. Auroglobal Comtrade Private Limited and others*, reported at *(2014) 2 SCC 657*, where the Supreme Court, by referring to the Easements Actheld, by referring to the Easements Act,that a licence by definition does not create any interest in the property.

9. Learned counsel for the respondents controverts such submissions and argues that the concerned agreement between the parties constitutes conferment of rights to earn revenue. As such, it is argued that the same is a conveyance for all practical purposes. It is contended that the expression "conveyance" is not restricted to sale or absolute transfer of title but also takes within its purview transfer of lesser rights. In the present case, the agreement-in-question clearly depicts that huge revenue was to be earned by the transferee. Hence, the agreement is nothing else but a conveyance, although couched as an agreement for licence and, as such, was rightly stamped as a conveyance under Article 23 of Schedule IA.

10. To decide the issue involved, we have to peruse first Section 2(10) of the Stamp Act, which defines conveyance in an inclusive manner. As per the said provision, conveyance includes a conveyance on sale and every instrument by which property whether movable or immovable is transferred *inter vivos*and which is not otherwise specifically provided for by Schedule I.

11. In the West Bengal Amendment, sub-clauses (a) and (b) have been incorporated in Section 2 (10). Sub-clause (b) substitutes, instead of the words "is transferred", the expression "or any estate or interest in any property is transferred to or vested in any other person”. Thus, we have to consider whether the present instrument falls within the said definition.

12. A close scrutiny of the definition of conveyance indicates that a *sine qua non* of the same is a transfer of the property and/or vesting of the same in any other person, be it a movable or an immovable property.

13. Although inclusive, the definition of the word “conveyance” in Section 2 (10) of the Stamp Act begins with the expression “conveyance on sale” which marks an indicator of the nature of transfer envisaged under the said section. The rule of Ejusdem Generis applies. Hence, in order to constitute a vesting or a transfer, there has to be an element of permanence, both in terms of tenure and the nature of the rights conferred.

14. Clause 2a of the document relates to grant of rights. It is clearly stipulated therein that the grant envisaged by the said agreement constitutes a *non-exclusive*, *non-transferable* right and licence with regard to the concerned music clips and videos and compositions to be made on the basis of the same.

15. There are two sorts of rights transferred under the agreement – one, use of the products so licensed out in their original form and secondly, making permutations and combinations out of the same, creating a different composition. The latter, obviously, would use the original products as components and tools of a new creation being made by the licensee and be a new product created by the transferee. Yet, the non-exclusivity and non-transferability terms apply to the said products as well and can be terminated as per the agreement. Insofar as the transfer of the original products are concerned, the same are, by dint of Clause 2a, non-exclusive and non-transferable. The moment it is said that the rights are not exclusive, there cannot arise any question of vesting of the right in the licensee. The non-transferability implicit in the said clause also prevents it from being construed as a transfer in the first place, since if the receiver does not have the right to transfer, the original passage of interest is limited and cannot be labelled as a transfer.

16. Clause 2b speaks about ownership and, in unambiguous terms, provides that the licensor remains the sole and exclusive owner or licensee of all right, title and interest in and to the content, including, without limitation, all copyrights and other intellectual property rights contained therein except for the limited rights granted to the licensee.

17. Clause 2d speaks about restrictions. Sub-clause (iii) provides that the content shall not be sub-licensed or redistributed by the licensee to any third party.

18. Clause 3c speaks about takedown rights and stipulates that an item of the content, or the service generally, or in a particular country or jurisdiction due to loss of applicable rights, a bona fide artist or label related concern or otherwise, can be taken down by the licensor by notifying the licensee via e-mail about the same. In terms of Clause 7a the tenure of the service is restricted, unless earlier terminated by the parties, to two years, which may be extended for additional periods pursuant to a further written agreement signed by the parties at least 30 days prior to the end of the current term.

19. Clause 7b, in sub-clause (i), provides that the licensor may immediately terminate the agreement upon written notice to the licensee upon certain conditions. Clause 7c stipulates that upon expiration or termination of the agreement, the licensee shall as promptly as practicable and in any event within seven days of expiration or termination remove all content.

20. Lastly, Clause 13c provides that each party is an independent contractor and solely responsible for all of its own employees, sub-contractors, labour costs, etc. and nothing in the agreement shall be considered as creating a partnership, joint venture or agency relationship between the parties or as authorising either party to act as an agent of the other.

21. Hence, upon a comprehensive reading of the keynote features of the licence, the only plausible conclusion which a reasonable person can arrive at is that the contemplation of the licence agreement is extremely limited on point of transfer of rights as well as on tenure. The agreement is restricted to two years. For extension, there has to be a further written agreement between the parties thirty days before expiry of the current term.

22. Insofar as the rights are concerned, as enumerated above, the conferment is extremely limited, non-exclusive, non-transferable and subject to the absolute authority and title of the licensor. Hence, no semblance of vesting or transfer of rights as contemplated in Section

2(10)(b), of any estate or interest, is envisaged therein. As per Article 23 of Schedule IA, to be a conveyance, an instrument has to come within the connotation of Section 2(10). The said test is not satisfied in the present case. Rather, as rightly argued by the petitioners, the governing provision is Article 5(e) of Schedule IA which speaks about agreement or memorandum of an agreement if relating to matter not otherwise provided for, except matters relating to cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies or receipts. The present agreement is an agreement for licence of musical rights and does not come within the ambit of any of the other sub-clauses of Article 5 than (e).

23. Hence, the stamp duty payable is in terms of Article 5(e) and not Article 23 as wrongly charged.

24. Accordingly, WPA No. 23792 of 2023 is allowed on contest, thereby setting aside the impugned order of the Collector dated September 26, 2023 (at page 84 of the writ petition) and the communication dated August 21, 2023 (at page 97 of the writ petition), whereby stamp duty was imposed on the petitioners on the premise that the music licence agreement was a conveyance under Article 23 of Schedule IA of the Indian Stamp Act (as amended in West Bengal), and directing the respondents to refund the stamp duty and penalty of Rs. 61,66,185/- which has been paid by the petitioners in terms of the said decision of the authorities within December 22, 2023, by deducting the stamp duty payable by the petitioners in terms of Article 5(e) of Schedule IA of the said Act.

25. There will be no order as to costs.

26. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)