IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: **13.04.2023**
CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.1775 of 2023
and W.M.P.No.1890 of 2023

IndusInd Bank Limited,
New No.34, G.N.Chetty Road,
T.Nagar, Chennai – 600 017. ... Petitioner

Vs

1.The Inspector General of Registration,
Registration Department,
Government of Tamil Nadu,
Santhome High Road, Pattinamabakkam,
Chennai – 600 028, Tamil Nadu.

2.The District Registrar,
Integrated Building for Offices of the
Commercial Taxes and Registration
Department Fanepet,
Nandanam, Chennai – 600 035.

3.The Sub-Registrar,
Sub-Registrar Office,
No.47/5, Arcot Road,
Udhayam Colony,
Lambert Nagar, Virugambakkam,
Chennai – 600 083. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings dated 24.11.2022 issued by the 2nd respondent and quash the same and consequently directing the respondents to release the Document No.7632 of 2022 dated 23.09.2022 registered on the file of the 3rd respondent pursuant to the representation of the petitioner dated 07.10.2022, holding that the petitioner had paid the proper stamp duty and registration charges in terms of the G.O.(Ms)No.47, Commercial Taxes and Registration (J1) Department, dated 19.02.2020 fro the Document No.7632 of 2022, dated 23.09.2022 registered on the file of the 3rd respondent.

For Petitioner : Mr.R.Yashod Vardha, Sr. Counsel,
for Mr.K.Moorthy

For Respondents : Mr.S.Silambanan,
Additional Advocate General
Assisted by Mr.Yogesh Kannadasan,
Special Government Pleader.

ORDER

With the consent of both the parties, this Writ Petition is taken up for final disposal.

2. The brief facts of the case are as follows:

M/s.Leyland Finance Limited got merged with the petitioner Bank by virtue of the orders passed by the Madras High Court and Bombay High Court, in a Scheme of Amalgamation. Consequently, a Deed of Amalgamation was duly registered as Document No.6510/2021, dated 29.07.2021 before the Sub Registrar, Neelankarai, wherein the petitioner had paid 2% of the stamp duty amounting to Rs.39,71,384/- on the market value of all the immovable properties scheduled therein. Later it was found that the documents pertaining to certain undivided share of lands in an immovable property situated Valasaravakkam, Chennai measuring 2540 sq.ft. comprised in S.Nos.114/2A, 2B, 2C, 2D and 114/2A1, 11/2A5 (parts), were missing. The petitioner had obtained a non-traceable certificate dated 16.06.2022 for the missing documents. For inclusion of these properties in the Deed of Amalgamation, a Supplemental Deed of Amalgamation dated 23.09.2022 was presented before the Sub Registrar, Virugambakkam by paying 2% of the value of the immovable properties amounting to Rs.50,933/-. The same was duly registered as Document No.7632/2022, dated 23.09.2022. However, the registered Supplemental Deed was not released. After several representations from the petitioner, the impugned notice dated 24.11.2022 was issued claiming that the aggregate market value of the shares in the original Deed of Amalgamation No.6510/2021 was higher than the market value of the properties and therefore, claimed payment of stamp duty to the tune of Rs.41,77,491/-. The said notice is put under challenge in the present Writ Petition.

3. The learned Senior Counsel appearing for the petitioner submitted that by virtue of G.O.Ms.No.47, Commercial Taxes and Registration (J1) Department, dated 19.02.2020, the duty chargeable under the Registration Act has been reduced to 2% of the market value of the immovable property or 0.6% of the aggregate market value of the property whichever is higher in respect of instrument of transfer of property relating to a Scheme of Amalgamation or reconstruction of companies. The Government Order further states that if any other instrument is subsequently executed between the same companies under the said scheme for the sole purpose of reducing the terms of the scheme into writing and the same is also deemed to have been duly stamped. The principal instrument of Amalgamation is deemed to have been duly stamped and all other subsequent instrument executed between the same companies for the sole purpose of reducing the terms of the scheme into writing, the subsequent instrument shall be deemed to have been duly stamped. In view of this Government Order, the learned Senior Counsel submitted that the difference of stamp duty of Rs.50,933/- alone, which is 2% of the market value of the immovable properties scheduled in the Supplemental Deed which was omitted in the original Deed of Amalgamation, requires to be paid.

4. Per contra, the learned Additional Advocate General submitted that the aggregate market value of the shares in the original Deed of Amalgamation No.6510/2021 was higher than the market value of the immovable properties and therefore, the petitioner ought to have paid stamp duty at the rate of 0.6% of the market value of the shares at the rate of Rs.42,28,491/- and after deducting a sum of Rs.50,933/- paid by the petitioner in the Supplemental Deed, the petitioner is required to pay the differential stamp duty of Rs.41,77,491/- on the Supplemental Deed.

5. Rule 55-A of the Registration Rules provides for Registration of any deed of conveyance when a non-traceable certificate is produced for the missing original title deeds. This proposition is not disputed.

6. The claim of the respondents seem to be that when the Supplemental Deed was presented for registration, they had found that the present aggregate market value of the shares was higher than the market value of the immovable properties shown in the original Deed of Amalgamation No.6510/2021 and therefore, have sought for the differential stamp duty of Rs.42,28,491/-. The stamp duty at the rate of 2% on the market value of all the immovable properties payable for the Deed of Amalgamation, including the omitted properties amounts to Rs.39,71,384/-. Whereas the stamp duty calculated at 0.6% of total value of shares amounts to Rs.18,79,330/-. As per G.O.Ms.No.47, Commercial Taxes and Registration (J1) Department, dated 19.02.2020, the petitioner would be required to pay stamp duty at the rate of 2% of the market value of the immovable property, which is higher than the 0.6% on the total value of the shares. The Government Order further provides that when a Deed of Amalgamation is found to be duly stamped, all other subsequent instrument executed between the same companies under the said scheme for the sole purpose of reducing the terms of the scheme into writing shall also be deemed to have been duly stamped.

7. When the petitioner had paid the stamp duty at the rate of 2% on the market value of all the immovable properties in the Deed of Amalgamation and the same was registered as Document No.6510/2021, any supplemental document for inclusion of certain immovable properties which have been omitted alone would require to be valued at the same percentage of stamp duty that was levied on the original Deed of Amalgamation. This aspect is clarified in G.O.Ms.No.47, Commercial Taxes and Registration (J1) Department, dated 19.02.2020 itself in paragraph 3(f), which provides that when the principal instrument of amalgamation is found to be duly stamped, all other subsequent instrument executed between the same companies is also deemed to have been duly stamped. However, since the petitioner company proposes to include certain undivided shares of land measuring to an extent of 2540 sq. ft., in S.Nos.114/2A, 2B, 2C, 2D and 114/2A1, 11/2A5 (parts) in Valasaravakkam Village, through the Supplemental Deed, they would be required to pay the difference of stamp duty for these omitted immovable properties alone, which works out to Rs.50,933/-.

8. The respondents now through the impugned notice, have alleged that the original Deed of Amalgamation No.6510/2021 was under valued, since the aggregate market value of the shares was higher than the market value of the immovable properties therein and therefore, have attempted to claim the deficit stamp duty in the original deed by calling upon the petitioner to pay such deficit in the present supplemental deed. Such an attempt is not backed by any procedure contemplated either under the Registration Act or the Rules or any other regulation. If the respondents were of such a view at the time when the original Deed of Amalgamation was registered, the only option available to them would be to proceed for determination of the deficit stamp duty under Section 47(A) of the Stamp Act. Having failed to invoke these provisions for collection of the deficit stamp duty under the original Deed of Amalgamation, the original deed itself is deemed to have been duly stamped and therefore, the petitioner would be required to pay stamp duty at the rate of 2% on the immovable properties, as already paid by them in the original Amalgamation Deed.

It would be relevant to point out here that Rule 3 (5) of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, would stand as an embargo for the Registering Officer to invoke Section 47-A of the Act at this passage of time.

9. In the light of the above findings, the impugned notice allegedly claiming deficit stamp duty on the Supplemental Deed No.7632/2022, dated 23.09.2022 is illegal. Since it is not disputed that 2% of market value of the properties scheduled in the supplemental deed is Rs.50,933/-, which has already been paid by the petitioner and the document has also been registered, the respondents are bound to release the registered Document No.7632/2022, dated 23.09.2022 to the petitioner.

10. In the result, the impugned notice dated 24.11.2022 is quashed. Consequently, there shall be a direction to the third respondent herein to forthwith release the Supplemental Deed registered as Document No.7632/2022 dated 23.09.2022 to the petitioner, within a period of twelve (12) weeks from the date of receipt of a copy of this order.

11. This Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

13.04.2023

Index: Yes / No
Speaking order / Non-Speaking Order

hvk / vsm/DP

Note:Issue today.

To

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M.S.RAMESH,J.

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