IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2023

CORAM

**THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM**

W.P.No.8247 of 2023
and
W.M.P.No.8458 of 2023

1. Trinity Colour India (P) Limited,
   Rep. by its Director,
   Mr.A.Yogesh Kumar,
   S/o. C.Ayyakkannu,
   No. 24/1, Annamalai Layout,
   Off- Mettur Road,
   Erode-638 011. ... Petitioner

**Vs.**

1. The Inspector General of Registrations,
   Mylapore, Chennai.

2. The Sub Registrar,
   Annur, Coimbatore district. ... Respondents

**Prayer :-** Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, directing the respondents 1 and 2 to refund the entire 2% additional stamp duty collected from the petitioner company for registering the Sale Certificate dated 22.11.2021 presented by the petitioner company and registered as Doc. No. 5356/ 2022, dated 22.04.2022, before the 2nd respondent.

For Petitioner : Mr.E.J.Ayyappan

For Respondents :
(for R1 to R2) : Mr.R.Ramanlal, A.A.G.

**ORDER**

The writ of Mandamus has been instituted to direct the respondents one and two to refund the entire 2% additional stamp duty collected from the petitioner company for registering the sale certificate dated 22.11.2021, presented by the petitioner company and registered a Document No.5356/2022 dated 22.4.2022.

2.The petitioner company is engaged in manufacture and export of lingerie and nightwear having its registered officer at Erode District. The petitioner company is the auction purchaser, purchased the property through an auction sale conducted by the authorised Officer of Bank of Baroda. The petitioner company presented the sale certificate for registration on 22.04.2022 before the second respondent Sub Registrar and the document was registered as Document No.5356/2022 dated 22.04.2022.

3.On presentation of the sale certificate for registration, the petitioner company was directed to pay a stamp duty of 7 % (5% Stamp Duty + 2% Surcharge) on the value of the sale certificate. Accordingly, the petitioner company paid the charges and the document was registered and released.

4.Subsequently, the petitioner company filed the present writ petition on the ground that for registration of sale certificate, 2% surcharge could not be recovered and therefore, submitted an application for refund of the said surcharge amount.

5.The learned counsel for the petitioner mainly relied on the judgment of this Court in the case of the ***Bell Tower Enterprises LLP Vs. The State of Tamil Nadu*** *dated* ***12.09.2022*** *passed in* ***W.P.No. 23237 of 2018***. The following paragraphs are relied on:

> *9.Countering the said submissions of the learned Special Government Pleader based on the judgement of the two Divisional Benches and the Full Bench of this Court, Mr.Sharath Chandran, learned counsel would submit that the judgments of the Division Bench and the Full Bench in*

***The Inspector General of Registration v.Kanagalakshmi Ganaguru's** case over ruled by the judgement of the Larger Bench of the Hon'ble Supreme Court in **Esjaypee Impex Pvt Ltd v. Assistant General Manager and Authorised Officer, Canara Bank, reported in 2021 (11) SCC 537,** the learned counsel would place considerable reliance on the following passage in **Esjaypee Impex Pvt Ltd,** in support of his contention:*

> *.. "16. We are of the view that the mandate of law in terms of Section 17(2) (xii) read with Section 89)4) of the Registration Act, 1908 only required the authorised officer of the Banch under the SARFAESI Act to hand over the duly validated sale certificate to the auction-purchaser with a copy forwarded to the registering authorities to be filed in Book I as per Section 89 of the Registration Act."*

...

*25.From the above discussion, it could be seen that in view of the pronouncement of the Hon'ble Spreme Court in **Esjaypee Impex Pvt Ltd v. Assistant General Manager and Authorised Officer, Canara Bank,** the law as it stands today is that an Authorised Officer, who conducts a sale under the provisions of the SARFAESI Act, would be Revenue Officer and the certificate issued by hi in evidence of such sale, would be a document which is not compulsorily registrable under Section 17(2)(xii) of the Registration Act. It would be sufficient, if the document is lodged with the Registrar under Section 89(4) to be filed by him in the Book-I maintained by him. The decisions of this*

*Court in* ***the Inspector General of Registration v. K.K.Thirumurugan,*** *(Division Bench,)* ***The Inpector General of Registration v. Kanagalakshmi Ganaguru,*** *(Division Bench),* ***Dr.R.Thiagarajan v. Inspector General of Registration,*** *(Full Bench) and* ***The Inspector General of Registration v. Prakash Chand Jain,*** *(Division Bench) are no longer good law, in view of the pronouncement of the Hon'ble Supreme Court in* ***Esjaypee Impex Pvt Ltd v. Assistant General Manager and Authorised Officer, Canara Bank.***

*26. The next question that would arise is to the amount of stamp duty and registration charges payable, if such certificate is presented for registration. Article 18 of the Stamp Act, provides for Stamp Duty payable on a certificate of sale granted by a Civil or Revenue Court or Collector or other Revenue Officer. Clause (c) of Article 18 makes the duty payable for a conveyance would apply to a sale certificate also. Under Article 23 of the Stamp Act, the Stamp Duty payble on a sale is 5% as per G.O.Ms.No.46-CT and All Department dated 27.03.2012. As already pointed out since the document would not be a conveyance there is no question of payment of any surcharge either under Section 116-A of the Tamil Nadu District Municipality Act 1920 or under Tamil Nadu Duty on Transfer of Property (In Municipal Areas) Act (32 of 2009)*

*27. Insofar as the registration charges are concerned, the State Government has fixed the registration charges at 1% under Section 78 of the Registration Act and the same has been published in the Tamil Nadu Government Gazette, as required under Section 79 of the Registration Act. By G.O.Ms.No.49 dated 08.06.2017, the following proviso was added to Article 1 of the table of the fees:*

> *"Provided further that notwithstanding anything contained in his Table, in case of deeds of conveyance, exchange, gift and settlement among non-family members, the Registration Fee shall be levied at the rate of Rupees four per Rupees hundred or part thereof on the value or amount on which stamp duty under the Indian Stamp Act, 1899, (Central Act II of 1899) is payable."*

6.Relying on the above findings in the judgment, the learned counsel for the petitioner reiterated that the said order was based on the judgement of the Hon'ble Supreme Court of India in the case of ***Esjaypee Impex Pvt Ltd v. Assistant General Manager and Authorised Officer, Canara Bank*** reported in 2021 (11) SCC 537.

7.The learned Additional Advocate General, appearing on behalf of the state, strenuously objected the same on the ground that there is no findings in the case of ***Esjaypee Impex Pvt Ltd*** regarding waiver of 2 %

surcharge. In the absence of any specific exemption, the judgment of the Hon'ble Supreme Court has been referred for seeking exemption and therefore, the writ petition is devoid of merits.

8.The learned Additional Advocate General raised a concern that the judgment of the Hon'ble Supreme Court has been wrongly understood by the petitioners as if the Supreme Court granted exemption from payment of 2% of surcharge as contemplated under the provisions of the Act. However, the Hon'ble Superme Court has not granted any such exemption and more so, in the present case, the petitioner had opted for registering the said certificate under Section 17 of the Registration Act. Thus, he is not exempted from payment of registration charges and surcharge and therefore, the writ petitioner is not entitled to claim any refund.

9.Even in the order relied on by the petitioners, the procedures contemplated under Section 89(4) of the Registration Act has been considered. **Section 89** of the Registration Act enumerates *"Copies of certain orders, certificates and instruments to be sent to registering officers and filed"*. **Sub Section (4) of Section 89** stipulates that "*Every Revenue Officer granting a certificate of sale to the purchaser of* *immovable property sold by public auction shall send a copy of the certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immovable property comprised in the certificate is situate, and such officer shall file the copy in his Book No. 1 or get it scanned".*

10.In unequivocal terms, Section 89(4) explicitly provides that the sale certificate shall be sent by the Revenue Officer to the Registering Officer within the local limits of whose jurisdiction the whole or part of the property comprised in the certificate is situate. Therefore, on completion of auction sale, the Revenue Officer concerned, granting a certificate of sale to the purchaser of immovable property, shall send a copy of the certificate to the Registering Officer. If such a procedure have been adopted in compliance with Section 89(4) of the Registration Act, then alone the surcharge is exempted and if any person has opted to present the document for registration under Section 17 of the Registration Act, then the document presented attracts registration charges and surcharge as contemplated .

11.Citizens are provided with options to deal with the documents. If any person has decided to register a document in a particular manner and chosen the same, he cannot turn around and claim exemption by citing other provisions available under the statute. A person cannot approbate and reprobate.

12.In the present case, the petitioner has chosen to present a document for registration under Section 17 of the Registration Act. Accordingly, it was registered by collecting the registration charges and surcharge. After registering the document and after release of the same, the petitioner cannot now turn around and claim that he is not liable to pay surcharge in view of the Section 89(4), wherein the procedures contemplated are distinct and different.

13Admittedly in the present case, the procedures contemplated under Section 89(4) of the Registration Act has not been followed by the Revenue Officer who granted sale certificate. That being the factum, the petitioner is not entitled for the relief as such sought for in the present writ petition.

14. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(sha) 05.07.2023

Index : Yes
Speaking Order
Neutral Citation : Yes

To

1. The Inspector General of Registrations,
   Mylapore, Chennai.

2. The Sub Registrar,
   Annur, Coimbatore district.

**S.M.SUBRAMANIAM. J.,**

(sha)

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