

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.21256 of 2016 (O&M)

Reserved on:13.04.2023

Date of Order: 04.05.2023

M/s Dhir & Dhir Asset Reconstruction & Securitization Company Ltd.
(now known as M/s Alchemist Asset Reconstruction Co. Ltd.

.Petitioner

Versus

M/s Converntury Coil-O-Matic Ltd. and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashwani Kumar Chopra, Senior Advocate, with
Mr. Manish Jain, Advocate,
Mr. Mayur Kanwar, Advocate
Ms. Gauri Handa, Advocate
for the petitioner.

Mr. Ashish Aggarwal, Senior Advocate with
Mr. S.S.Behl, Advocate
Mr. Sunil Goel, Advocate
Mr. Gaurav Vir Singh Behl, Advocate
Mr. Karan Singla, Advocate
for respondent no.1.

Mr. Sumit Gupta, Additional Advocate General, Punjab.

ANIL KSHETARPAL, J.

1. While requesting to issue a writ in the nature of certiorari, the petitioner *inter-alia* prays for setting aside the order dated 10.03.2016 passed by the Commissioner, Gurugram, in the exercise of appellate jurisdiction under the Indian Stamp Act, 1899 (hereinafter referred to as 'the 1899 Act').

2. After having heard the learned counsels representing the parties at length, the following question requires adjudication:-

*(i) On execution of the deed of assignment of debt
between Financial creditors and asset construction*

company (hereinafter referred to as “ARC”), whether the stamp duty is payable on the total debt assigned or the amount paid or promised to be paid by ARC to the Financial creditor?

3. In order to comprehend the issues involved in the present case, the following relevant facts, in brief, are required to be noticed:-

On 05.03.2008, a deed of assignment of debt was executed between the petitioner, IFCI Ltd. (Financial Creditor) and Asset Care Enterprises Ltd. (hereinafter “ACE”). It was provided in the assignment deed that IFCI is the absolute owner of the rights, title and interest created under the financial documents, including the receivables and security interest created thereunder. On 15.02.2007, an aggregate of Rs.84,49,38,818/- including the principal amount of Rs.2,42,99,836/- and interest of Rs.82,06,38,982/- was outstanding against the respondent. Vide agreement dated 12.09.2007, IFCI agreed to assign the financial asset to the ACE. However, before the assignment could be completed, a tripartite agreement was entered into and the petitioner (M/s Dhir & Dhir Asset Reconstruction & Securitization Company Ltd.) agreed to pay Rs.3,04,00,000/- to the IFCI and ACE. The deed of assignment was executed on stamp paper of Rs.80/-. On 16.04.2010, a complaint alleging evasion of stamp duty was submitted to the Collector-cum-Registrar, Rewari by respondent no.1 (borrower-loanee). The Collector assessed an additional stamp duty of Rs.18,24,000/- while calculating the stamp duty @ 6% on the purchase consideration of Rs.3,04,00,000/-. The petitioner deposited the amount. Respondent no.1 filed an appeal before the Appellate Authority

which was allowed by the Commissioner, Gurugram, while directing them to pay stamp duty of Rs.5,06,96,338/-. Challenging the correctness of the aforesaid order, the writ petition has been filed.

4. Heard the learned counsels representing the parties at length, perused the paper book and their written submissions.

5. The learned counsel representing the petitioner has made the following submissions:-

(i) “It is a settled principle of law that the Stamp Duty is payable only on the consideration value. In this case, the debt was assigned by IFCI to the Petitioner for Rs. 3.04 crores. The Petitioner had initially paid stamp duty of Rs. 80/-, as there was no provision under the Indian Stamp Act, (as applicable to the State of Haryana) for Assignment Deed and therefore, the same was done under the head "registration of any other document". Thereafter, in the Order passed by the Collector on 25.04.2012 (Annexure P-3, pg 65), the duty was calculated at 6% on the consideration value of Rs.3.04 crores and the ARC paid the entire stamp duty of Rs. 18,24,000/- on 04.04.2012. The said order dated 25.04.2012 was challenged by Respondent no.1 before Commissioner of Stamps, Haryana. The Commissioner vide order dated 10.03.2016 directed the Petitioner to pay stamp duty on the transaction amount, i.e. Rs. 84,49,38,818/- @6%, i.e. Rs. 5,06,96,338/- The said order dated 10.03.2016 is erroneous and needs to be set aside, as the Ld. Commissioner had calculated the Stamp Duty on the total amount of Rs. 84,49,38,818/4, i.e. on principal sum of Rs. 2,42,99,836/-plus notional amount of unpaid interest amount of Rs. 82.06,38,982/- as on 15.02.2007.

Further, it is pertinent to mention here that the amount on which the said

stamp duty was calculated was admittedly till 15.02.2007. After a span of 16 years i.e. in February 2023, the amount recoverable from the Respondent would be approximately Rs. 225 Crores including the principal and interest for the assignment entered into by the Petitioner and the Original Lender. Thus, it would be completely illogical that the Stamp Duty has to be paid on the recoverable amount which will increase on a daily basis with accrual of interest while the value of mortgaged asset remains the same and in any case the ARC would never be able to recover Rs. 225 Crores from the Defaulting Borrower.”

(ii) Section 8 F was introduced in the Indian Stamp Act 1899 on 01.09.2016 (also applicable in the State of Haryana) whereby no stamp duty is payable on agreement or document through which the assignment of rights or interest are transferred. The legislative intent behind the provision is that when an ARC acquires the debt, they should not be burdened with stamp duty to recover bad debts from an errant borrower. Section 8F is reproduced below for the ready reference of this Hon'ble Court:-

i. Agreement or document for transfer or assignment of rights or interest in financial assets not liable to stamp duty.

Notwithstanding anything contained in this Act or any other law for the time being in force, any agreement or other document for transfer or assignment of rights or interest in financial assets of banks or financial institutions under section 5 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, in favour of any asset reconstruction company, as defined in clause (ba) of sub-section (1) of section 2 of that Act, shall not be liable to duty under this Act.

(iii) Although most of the States have already implemented the said section, however, the States of Haryana, Punjab & Kerala are yet to notify

the same and the Stamp Duty on assignment deeds by an ARC is being calculated on consideration value paid by the ARC and not on the notional recoverable amount payable by the Defaulting Borrower to the ARC.

6. On the other hand, the learned counsel representing respondent no.1 has made the following submissions:-

'A' "It is pertinent to point out that this very value of the asset shown in the Deed has been made the basis for passing decree of Rs.84,49,38,818 alongwith interest @ 13.5% w.e.f. 14.5.2007 against Coventry, by Final Order dt 18.1.2016 passed by DRT-1, Delhi. So Alchemist, on one hand is asking to charge stamp duty on just Rs.3.04 crore and on other hand on the strength of same Assignment deed, Alchemist is seeking to recover Rs.84,49,38,818 alongwith interest @ 13.5% w.e.f. 14.5.2007 against Coventry, thus taking a contradictory stand. This cannot be permitted.

'B' In fact, the Collector and Commissioner are statutorily required to levy penalty equivalent to 10 times (not 'upto' 10 times, but "10 times") the deficient stamp duty, in addition to levying deficient stamp duty, as per Section 35 of the Indian Stamp Act. They have, in fact, accommodated the Petitioner by not levying such penalty.

'C' As per the definition of "conveyance" in Section 2(10) of the Indian Stamp Act 1899, the instrument by which the property, whether movable or immovable, is transferred is included in conveyance. Thus, it is not necessary that property should be immovable, to constitute conveyance. Even the transfer of a right in the debt/financial assets amounts to conveyance. There is no restriction under the law as to what transfer would

constitute conveyance. As per Section 6 of the Transfer of Property Act 1882, "property of any kind may be transferred". A transfer of a right or interest in a debt/ financial asset is also transfer of property. Section 8 of the Transfer of Property Act 1882 makes it amply clear that debt is a property. Conveyance does not necessarily mean sale of immoveable property or giving of possession of immoveable property. Even transfer of right to recover debts is a conveyance.

'D' By the Assignment Deed dated 5.3.2008, the Assignor IFCI has assigned all its rights, title, interest and benefit in the "Financial Asset" and incidental rights thereto in favour of the Assignee M/s Alchemist who, thereafter, is deemed to be the full and absolute legal owner of the Financial Asset under the said Deed/Instrument (see recitals at page 41, 39, 38, 53). The right of the assignor under the financing documents is the right to recover the amount from the borrower under the loan agreement. In Schedule 'A'(page 53) attached with the Assignment Deed, the parties i.e. Assignor and Assignee have themselves shown the value of claim against the borrower to be Rs.84,49,38,818/-. This figure is also mentioned in para 'C' at page 3 of the Assignment Deed (page 36). Thus, if the Assignment Deed is read properly alongwith its Schedules, it becomes clear that what is being transferred under the aforesaid Assignment Deed is all the rights, title and interest of the Assignor in the said amount of Rs.85,49,38,818/-. It is a matter of record that the assignee M/s Alchemist is taking a stand in various judicial forums that he is entitled to recover Rs. 85,49,38,818/- plus interest on the strength of this Assignment Deed. Infact, DRT-1, Delhi has passed decree of this very amount in favour of Alchemist. Since the value of the

right and interest being transferred under the Assignment Deed is indeed valued at Rs.84,49,38,818/- (as) on 15.2.2007) by the Applicant M/s Alchemist, the value of the transaction is Rs.84,49,38,818/- and the stamp duty is accordingly payable on the said amount.

In Asset. Reconstruction Co. (India) Ltd. (Arcil) vs. Jyoti Overseas Ltd., MANU/MP/0590/2016, The Madhya Pradesh High Court held that by Assignment Deed, rights in property are transferred and hence stamp duty is payable. The High Court observed as under:-

"10. The submission of the counsel for the petitioner that no rights in properties have been transferred by the deed of assignment, therefore, no default in respect of payment of stamp duty and registration has been committed, cannot be accepted in view of the recital in clause 2(C) of the deed of assignment as also the other clauses which reveal that the right title and interest in the secured assets which include immovable properties have been transferred to the assignee. The said aspect is also clear by perusing the provisions contained in section 5(1)(b) read with section 2 of the SARFAESI Act."

12. Since it has been demonstrated before this court that the deed of assignment, on the basis of which this winding up petition has been filed, itself is defective and if any right has accrued to the petitioner on the basis of such a deed of assignment is in dispute and the relief of winding up is a discretionary relief, therefore, considering the circumstances of the case, I am of the opinion that it would not be in the interest of justice to pass the order of winding up of the respondent-company. Hence, the company petition is rejected."

'E' The Schedule 1(A) of the Indian Stamp Act as applicable to Haryana (as amended by Haryana Act No. 10 of 2000) lays down the slabs of stamp duty payable on various instruments. The Article 23 of said Schedule 1(A) dealing with Conveyances reads as under:

23. Conveyance (as defined by Section 2(10).....	Where conveyance amounts to sale of immovable property	Other Conveyances
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Where the value of amount of the consideration for such conveyance as set forth therein does not exceed Rs.50/-	Rs.6.25/-	Rs.3/-
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Where it exceeds Rs.900/-, but does not exceed Rs.1000/-	Rs.125/-	Rs.62.50/-
and for every Rs.500/- or part thereof in excess of Rs.1000/-	Rs.62.50/-	Rs.31.25/-

Thus, if the consideration value is more than Rs.1000/-, the stamp duty payable is Rs.31.25 (for other conveyance) and Rs.62.50/- (for conveyance amounting to sale of immoveable property) for every Rs.500/, which in percentage terms comes to 6.25% and 12.5% respectively.

'F' Since the real value of transaction is Rs.84,49,38,818/-, the stamp duty payable on such Assignment Deed, as per law, is:-

Rs.5,06,96,338/- being 6%, in case the conveyance under the Assignment Deed dated 5.3.2008 is taken to be not amounting to sale of immoveable property.

'G' It may be pointed out that by virtue of this Assignment Deed, the Assignor has transferred all its rights, title and interest in favour of the Assignee in respect of the financial assets including the immoveable property described in Schedule 'D' attached to the Deed. This clearly is conveyance as contemplated under Section 2(10) of the Stamp Act. The

impugned order dated 10.3.2016 passed by the Commissioner Gurgaon Division in exercise of his powers under Section 47A(4) of the Stamp Act is a reasonable order and it does not require any interference. The petitioner has wrongly approached the High Court under Article 227 of the Constitution of India. The petition is misconceived.

'H' In similar circumstances, in State of Haryana vs Manoj Kumar (2010) 4 SCC 350, the Collector found the sale deed to be undervalued and levied stamp duty on the basis of circle rate (whereas parties had mentioned some lower amount as consideration amount and had paid stamp duty on this consideration amount) and directed the party to make payment of the difference of amount of stamp duty. Section 47- A of the Stamp Act as applicable to Haryana was directly in question. The party filed an appeal to Commissioner, Gurgaon Division, who dismissed the appeal. Party filed a petition under Article 227 of the Constitution before Punjab and Haryana High Court which said that the consideration amount mentioned in the sale deed should have been taken by the Registering authority to levy the stamp duty. The High Court's order was set aside by the Supreme Court.

'T' Also, the present Writ Petition is not maintainable on the ground that there is an alternative remedy available to the petitioner in the form of challenging the impugned order dt 10.3.2016 of Commissioner before the Financial Commissioner under Section 56 of the Indian Stamp Act as applicable to Haryana.

'J' Section 56 provides that the powers exercisable by the Collector under Chapter IV (i.e. Sections 33-48) and Chapter V (i.e. Sections 49-55) are, in all cases, "subject to the control of the Chief Controlling Revenue

Authority" (hereinafter referred to as 'CCRA'). The powers of CCRA, in Haryana, are exercised by the Financial Commissioner. "Chief Controlling Revenue Authority" is defined under Section 3(10) of General Clauses Act 1897, Thus, the impugned order which has been passed by the Commissioner under Section 47-A(4) in appeal against Collector's order passed under Section 33 and Section 47-A(2), is subject to Revision before the Financial Commissioner under Section 47-B of the Act.

'K' The petitioner also argued that 2016 amendment in Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the 2002 Act') [by insertion of Section 5(1-A)] and in the Indian Stamp Act [by insertion of Section 8F] has exempted Assignment Deed from payment of any stamp duty. However, in present case, Assignment Deed is of the year 2008, much before the said Amendment came into force. The Hon'ble Supreme Court in Asset Reconstruction Co. (India) Ltd. vs Chief Controlling Revenue Authority, MANU/SC/0546/2022, (26.04.2022) (Justices Hemant Gupta, V. Ramasubramanian) clarified that the 2016 amendment exempting Assignment deed from payment of stamp duty is prospective and not retrospective. Supreme Court also reiterated that Assignment Deed is an instrument chargeable to duty as a 'Conveyance'.

'L' There is nothing wrong with the impugned order passed by the Commissioner. The petitioner has raised an objection (recorded in Order dt. 18.10.2016) that the Commissioner had no locus standi to act on the complaint /appeal of Converntry and that as per Section 47A(4) of Indian Stamp Act, Converntry can not be said to be a person aggrieved against the

order passed by Collector as it was not party to the transaction in question. This argument is fallacious. The Collector had acted on the complaint filed by the Sub-Registrar under Section 33 of the Act. No doubt the appeal before Commissioner was filed by Convertnry, but there is no embargo in law on filing of complaint or appeal by a private person. Moreover, Convertnry was not a stranger and was an aggrieved person in as much as it was Convertnry's assets and loan account (which was valued by the parties to the Deed at Rs.84,49,38,818/-) which was transacted between the parties vide the said deed and which they transferred inter-se for just Rs.3.04 cr and on the basis of said deed, the DRT in OA 57/2008 saddled Convertnry with decree of same amount i.e. Rs.84,49,38,818/- against Convertnry.

'M' If any person brings to the notice of the authorities about any Stamp Duty evasion and the Authority acts on the same in public interest, no fault can be ascribed to such an action of the Authority.

'N' What is important is that State should not be deprived of its revenue (stamp duty in this case) on technical considerations if it is otherwise shown that the deed was undervalued and was deficiently stamped. Who raises the issue regarding deficient stamp duty is hardly material and cannot detain the State Authorities to take appropriate action to recover Govt. revenue once pointed out to them by anyone. If such an argument as raised by petitioner is accepted, it will lead to dishonesty and disorder and will encourage people to get deeds registered by paying low stamp duty by showing consideration amount much lower in value than the real value. If the Sub-Registrar failed to file appeal against the Collector's order before the Commissioner, it does not mean that a citizen is estopped,

in public interest, from bringing to Commissioner's notice the defect in Collector's order and the attempt by parties to the deed to evade substantial stamp duty. The laudable objective behind introducing Section 47-A in Indian Stamp Act in case of documents registered in Haryana to curb the menace of undervalued instruments cannot be nullified by people like the present petitioner by raising such technical objections. Due weightage must to be given to the Haryana Stamp (Prevention of Undervaluation of Instruments) Rules 1978 which were framed with reference to Section 47-A.

'O' The Stamp Act provides a multi-tiered regime to ensure that there is no loss to the public exchequer due to inadequate payment of stamp duty.

Submission No. 3.1 - Three such tiers may be identified in the Stamp Act as follows:

Tier I is provided in S. 47A.

Tier 2 is the quasi-judicial power of Chief Controlling

Revenue Authority ("CCRA") U/s 56 and 57 and

Tier 3 are the powers U/s 33, 35 and 38.

S.56(1) makes powers exercisable by the Collector under Chapter IV and V and Section 26 subject to CCRA's "Control".

The powers exercisable by the Collector over which CCRA exercises control are quasi-judicial powers. It is submitted that the only way quasi-judicial powers can be controlled is through the quasi-judicial function of review or revision.

Below is a summary of the powers under just one chapter- Chapter-IV-over which CCRA Exercises

control.

SN	POWER	SECTION
1.	Collector's power to refund penalty above Rs. 5 if he thinks fit.	S.39 (Ch.IV)
2.	Collector's power to determine if instrument is duly stamped, after he receives an impounded document, either to endorse that it is duly stamped or to require payment of deficiency plus Rs. 5 or 10 times deficiency, whichever is more	S.40 (Ch.IV)
3.	Collector's power to receive stamp duty to cover deficiency and exempt penalty if the executor himself comes forward and Collector is satisfied that deficient stamping is not intentional.	S.41 (Ch.IV))
4.	Collector power to determine whether there was intention to evade stamp duty, as a precondition for initiating prosecution	S.43 (Ch.IV)
5.	Collector's powers under S.47A in respect of registered instruments, which are deficiently stamped, either on reference by Registering Officer to suo-motu	S.47-A(Ch.IV)
6.	Collector's power to recover deficient stamp duty and penalty as arrears of land revenue	S.48 (Ch.IV)

'P' All the above powers are quasi-judicial in nature and the only way they can be subject to "control" is through quasi- judicial intervention by way of review/ revision. It would be perverse and contrary to the rule of law, if a quasi-judicial function supposed to be discharged by the Collector in an independent manner, by due application of the law, is controlled through administrative directions issued by CCRA.

'Q' A conjoint reading of Section 56 and 57 makes it clear that not only is the CCRA's power quasi-judicial, but also that it can be exercised suo-moto. Section 57 (1) envisages the exercise of power by the CCRA.

'R' Section 57(1) states that CCRA can act not only on reference by the Collector, but also on the information "otherwise coming to its notice". This shows that the CCRA can exercise powers even suo-moto.

'S' The Hon'ble Supreme Court in the case of Banarsi Dass Ahluwalia Vs. Chief Controlling Revenue Authority (AIR 1968 SC 497) held that it is not only the power, but also the duty of CCRA to refer the matter to the Hon'ble High Court for decision on any substantial points that come to its notice. CCRA can exercise such power even if there is no case pending before the Collector. Thus, CCRA has the power to act suo-moto and independent of the power of Collector.

'T' Hence, the exercise of powers by CCRA in the present case would also be covered by Section 57 (1) because he could have referred the matter to the Hon'ble High Court for a decision by three judge bench of the Hon'ble Court.

'U' Section 33 empowers authorities to impound deficiently stamped document, Section 35 bars the admission of deficiently stamped documents into evidence and Section 38 specifies the power of Collector in relation to impounded documents referred to him. These powers are not constrained by any limitation.

'V' The learned State counsel has drawn the attention of the Court to Section 3 and 8 of the Transfer of Property Act and submits that the Commissioner has correctly directed payment of stamp duty on Rs.84.49 Crore.

7. Before this Court proceeds to adjudicate the dispute, it would be appropriate to extract the following relevant provisions of the Indian Stamp

Act, 1899 as applicable to the State of Haryana:-

Section 2(10): *“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 1 or by Schedule I-A [or by [Schedule 1-B or] Schedule 1-C], as the case may be;*

Section 33. Examination and impounding of instruments.—

(1) *Every person having by law or consent of parties, authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.*

(2) *For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in [India] when such instrument was executed or first executed:*

Provided that—

(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (5 of 1898);{now see the Code of Criminal Procedure, 1973 (2 of 1974)}

(b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

(3) For the purposes of this section, in cases of doubt,—

(a)[the[State Government]] may determine what offices shall be deemed to be public offices; and

(b)[the[State Government]] may determine who shall be deemed to be persons in charge of public offices.

Section 47-A. Instruments under-valued how to be dealt with.-

(1) 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 the minimum value determined in accordance with the rules made under this Act, the Registering Officer appointed under the Registration Act, 1908 (Central Act 16 of 1908), shall after registering the instrument, refer the same to the

Collector for determination of market value of such property and the proper duty payable thereon.

(2) On receipt of reference under sub-section (1), the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an enquiry in such manner, as may be prescribed by rules, determine the market value of the property and the duty as aforesaid, and the deficient amount of duty, if any, shall be payable by the person liable to pay the duty.

(3) The Collector may, suo motu or on receipt of reference from the Inspector-General of Registration or the Registrar of a district appointed under the Registration Act, 1908 (Central Act 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, shall within three years from the date of registration of any instrument, not already referred to him under sub-section (1), call for and examine the instrument for the purpose of satisfying himself as to the correctness of its market value, and the duty payable thereon and if, after such examination, he has reason to believe that the market value has not been truly set forth in the instrument, he may determine the market value and the duty, as aforesaid, in accordance with the procedure provided for in sub-section (2) and the deficient amount of duty, if any, shall be payable by the person liable to pay the duty.

(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 the 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:

Provided that in computing the period aforesaid, the time requisite for obtaining a copy of the order appealed against, shall be excluded:

Provided further that no order shall be passed without affording opportunity of being heard to the appellant.

(5)The order passed in appeal under sub-section (4) and the order passed by the Collector under sub-section (2) or sub-section (3) shall not be called into question in any Civil Court.”

8. On careful reading of the definition of conveyance deed it is evident that a conveyance includes sale deed and every other instrument by which property whether movable or immovable is transferred inter-vivos. As per Section 6 of the Transfer of Property Act, 1882 (hereinafter referred to as 'the 1882 Act'), the property of any kind can be transferred. The transfer of right of interest in a debt/financial asset is also transfer of the property. On reading of Section 8 of the 1882 Act, it is evident that the debt is a property. The deed of assignment does not necessarily mean the sale of immovable property but it is transfer of right to recover debts. On careful reading of the deed of assignment which has been place on record as Annexure P-1, it is evident that IFCI Limited had absolutely assigned all its rights, title, interest and benefit in and to the financial asset or an incidental rights thereto in favour of the petitioner. It was agreed that from the date of execution of the assignment deed, the petitioner shall be substituted as the owner in the place of the IFCI Limited in respect of all legal proceedings

initiated by the erstwhile owner relating to the financial assets. Clause 1.2 and 1.3 of the assignment deed reads as under:-

“1.2 The Assignor hereby covenants that it owns the Financial Asset and all the rights, title and interests thereunder, created under the Financing Documents, free and clear of all liens, charges, and other encumbrances.

1.3 On and from the date of execution of this Deed, the Assignee shall be substituted in place of the Assignor in respect of all legal proceedings instituted by the Assignor relating to the Financial Asset and pending on the date hereof, which shall hereafter continue as per the directions fo the Assignee at the cost and risks of Assignee and from the date hereof shall be enforceable by the Assignee in accordance with Applicable Laws.”

9. The attention of the court has not been drawn to the specific article which may specify the amount of stamp duty chargeable on an assignment deed of such nature. Whereas a study thereof, it is evident that there is no specific article which deals with such assignment deed. Though, Article 63 provides for the transfer of lease by way of assignment, however, it also provides for the same duty as conveyance. On careful perusal of the definition of 'Conveyance' under Section 2(10), it becomes evident that the definition of 'Conveyance' is expansive and broad. It includes not only sale but every instrument by which property, whether movable or immovable, is

transferred inter vivos. The definition further provides that it would include every instrument which is not otherwise provided for by Schedule 1-A. Thus, the definition of conveyance is broadly in three parts; (1) sale deed; (2) every instrument by which property, whether movable or immovable is transferred inter vivos; (3) instrument which is not otherwise specifically provided for by Schedule 1-A. Hence, the assignment deed falls within the meaning of conveyance as defined in Indian Stamp Act, 1899. Article 23 of Schedule 1-A prescribes the rate at which the stamp duty is payable.

10. On its careful study, it becomes evident that there are two different columns providing for different rates at which the stamp duty is payable on a conveyance deed. The second column provides for the stamp duty payable for execution of conveyance which amounts to sale of immovable property, whereas the third column provides for other conveyances.

11. It is provided that the stamp duty will be payable on the value or the amount of consideration for such conveyance as set forth therein. It is also evident that apart from powers under Section 33 which provides for examination and impounding of instruments, the Registering Officer or the Collector has the enabling power to pass suitable orders if evasion in payment of stamp duty is noticed. Sub-section(1) of Section 47A provides that the Collector may if convinced that the instrument has been undervalued to evade payment of stamp duty then after granting opportunity of hearing and evidence to the parties proceed to assess the market value and the duty payable. The entire emphasis of Section 47 is on the market value of the

property. Similarly, Section 56 enables the Collector to draw up the statement of the case and refer it to the CCRA for decision. Similarly, the CCRA may refer the matter to the High Court for that State for its opinion. Thus, the scheme of the Act enables the competent authority to not only impound the instrument which is not sufficiently stamped but to recover the deficient stamp duty which is sought to be evaded. The financial creditor has assigned/transferred all his rights, title or interest created under the financial documents in favour of the petitioner which includes immovable property measuring 143 Kanals 12 Marlas which was mortgaged with the financial creditor. Apart from the immovable property, Schedule 'C' of the assignment deed also provides for the assignment of loan agreement, hypothecation deed, deed of personal guarantee etc. etc. In these circumstances, the crucial question is “whether the stamp duty is payable on the total amount to which the assignee is entitled to recover or the amount of consideration for which the petitioner had purchased the rights of the financial creditor?” It is the value of the deed of assignment or the amount of consideration paid or promised to be paid by the petitioner to purchase the rights of the financial creditor would determine the amount of duty payable under the Stamp Act. The total amount recoverable by the financial creditor has no relation or connection or relevance with the deed of assignment particularly when the debt became non-performing asset resulting in filing of the proceedings and a decree passed by the Debt Recovery Tribunal. In these circumstances, on reading of Clause-1 of the deed of assignment it is evident that the total purchase consideration was mutually agreed at Rs.3,04,00,000/- out of which the amount was paid as under:-

“1.1 The above Purchase Consideration of Rs 3,04,00,000/- (Rupees Three Crore and Four Lakhs only) has been paid by the Assignee as below:

- (1) Rs. 31,00,000/- has been paid to the Confirming Party vide Demand Draft No.026374 drawn on HSBC dated 25.09.2007;*
- (2) Rs.2,73,00,000/- (Rupees Two Crores Seventy Three Lakhs) has been paid to the Confirming Party vide Demand Draft/Pay Order No. 026889 drawn on HSBC dated 6th November, 2007.*

Of the amount received by the Confirming Party from the Assignee, the Confirming Party has in turn paid an amount of Rs. 10,93,600/- (Rupees Ten Lakhs Ninety-three Thousand Six Hundred) to the Assignor on 26 September 2007 vide Cheque No.337574 dated 26 September 2007 drawn on IDBI Bank and a further amount of Rs.2,75,60,800/- (Rupees Two Crores Seventy Five Lakhs Sixty Thousand and Eight Hundred only) vide Demand Draft/Pay Order, No. 337578 dated 8 November, 2007, drawn on IDBI Bank so that total amount to the account of the Assignor is Rs. 2,86,54,400/- (Rupees Two Crore Eighty Six Lakhs Fifty Four Thousand Four Hundred only) and to the account of Confirming Party is Rs.17,45,600 (Rupees Seventeen Lakhs Forty Five Thousand Six Hundred only).

1.2 The Assignor hereby covenants that it owns the Financial Asset and all the rights, title and interests thereunder, created under the Financing Documents, free and clear of all liens, charges, and other encumbrances.

1.3 On and from the date of execution of this Deed, the Assignee shall be substituted in place of the Assignor in respect of all legal proceedings instituted by the Assignor relating to the Financial Asset and pending on the date hereof, which shall hereafter continue as per the directions of the Assignee at the cost and risks of Assignee and from the date hereof shall be enforceable by the Assignee in accordance with Applicable Law.”

12. It is this value of Rs.3,04,00,000/- which is the consideration amount transferred or transferable by the petitioner in favour of IFCI Bank Ltd. or ACE.

13. The Collector or the competent authority is entitled to come to the conclusion that such amount as specified in the deed is not a true reflection of the market value of the property. However, the Act does not enable the Collector or the Appellate Authority to charge stamp duty on the total recoverable amount due to the financial creditor. The transaction between the financial creditor and ARC is a commercial transaction in accordance with the provisions of the law. In such circumstances, the Commissioner has erred in proceeding to accept the appeal and direct the petitioner to pay stamp duty @ 6% on the total recoverable amount of Rs.84,49,38,818/-. In fact, both the authorities have overlooked that Article/entry 23 of Schedule 1-A prescribes stamp duty at different rates. Since the transaction in question does not amount to sale of immovable property but falls in other conveyances, hence, the stamp duty as payable under Column No.3 would govern the field and not the stamp duty prescribed under Column No.2. Although, while filing the complaint the borrower (respondent no.1) has alleged that the market value of immovable property which has been mortgaged is more than 25 Crore, however, no evidence in support thereof has been proved. Even the Collector or the Registering Authority has failed to collect evidence to prove the same.

14. In argument 'A' the learned counsel representing the respondent has contended that the amount of decree shall be the basis of value of the assets, however, the same cannot be accepted for the reasons already stated. The argument 'B' is with regard to the requirement of the Collector to levy penalty equivalent to 10 times of the deficient stamp duty as provided under proviso 'A' of Section 35. It is contended that such penalty cannot be less

than 10 times the amount of proper stamp duty or deficient portion thereof. While interpreting Section 35, the Hon'ble Supreme Court has held that it is not mandatory to levy penalty 10 times of the deficient stamp duty. Reliance in this regard can be placed on *Pateti Subarao vs. Anumla S. Narender 2002 (10) SCC 427, Gandhapa vs. Fakirappa 2019(3) SCC 788,* and *Trustees of HC Danda Trust vs. State of Madhya Pradesh, AIR 2020 (SC) 4349.* The amount of such penalty is dependent on the conclusion arrived at by the Collector with reference to the efforts made to evade payment of the stamp duty. Hence, the Collector could have ordered penalty upto 10 times but it is not mandatory.

15. As far as the argument 'C' is concerned, the deed of assignment is a transfer of debt/financial asset, however, it does not amount to the transfer of immovable property.

16. As regard the argument 'D', it is evident from the study of the deed of assignment that the total consideration amount is Rs.3,04,00,000/- and not the amount to which the financial creditor was entitled to recover or the assignee is entitled to recover. This court has studied the judgment passed in *Asset. Reconstruction Company (India) Limited (Arcil) vs. Jyoti Overseas Limited,* wherein the Madhya Pradesh High Court has held that the stamp duty is payable.

17. As regards the argument 'E', this court has already observed that the stamp duty shall be payable as per Column No.3 and not as per Column No.2. The same is the answer to the next argument 'F' of the learned counsel representing respondent no.1.

18. The argument 'G' & 'H' already stand answered because the assignment deed in question is resulting in transferring right or interest in a debt/financial asset but it does not amount to sale in the conventional terms. This court has also studied the judgment passed by the Supreme Court in *State of Haryana vs. Manoj Kumar (2010) 4 SCC 350*. This judgment relate to a sale deed executed pursuant to a decree for specific performance of the agreement to sell granted by the Court. Hence, the aforesaid judgment is not applicable to the facts of the case.

19. As regard the argument 'I' with regard to alternative remedy, it may be noticed that the writ petition is pending for the last 7 years. The power under Section 56 is available on a reference made by the Collector. Hence, the petitioner did not have remedy of filing the revision before the Chief Controlling Revenue Authority. Moreover, as per Sub-section (4) of Section 47A does not provide for any further revision after the order was passed by the Commissioner in exercise of powers under sub-section (4) of Section 47A. Section 47B prescribes only the functions of Chief Controlling Revenue Authority. It does not enable the aggrieved party to file revision.

20. As regard the argument 'K' of the learned counsel representing the petitioner is correct. The petitioner is not entitled to benefit of Section 8(f) of the Indian Stamp Act which was inserted by 2016 amendment as the amendment is prospective and not retrospective.

21. The arguments 'L', 'M', 'N', 'O', 'P', 'Q', 'R' and 'S' are academic because this court does not wish to go into the aforesaid field particularly when the matter has been examined on merits. The objection with regard to

the maintainability of the appeal by respondent before the Commissioner is kept open.

22. The learned counsel representing the respondent no.1 relies upon the judgment passed in **Joshi Technologies vs. Union of India, (2015) 7 SCC 728** to contend that the court should not exercise powers under Article 226 once there is an effective alternative remedy. The aforesaid judgment is not in the context of examining the contents of the Indian Stamp Act. It does not laid down that there is a power of revision with the Chief Controlling Revenue Officer.

23. The learned counsel for respondent no.1 also relies upon the judgment passed in **Residents Welfare Association, Noida vs. State of Uttar Pradesh and others, (2009) 14 SCC 716**, to support the impugned order passed by the Commissioner. On careful study of the judgment, it is evident that on being allotted, the Cooperative Societies executed lease deed in favour of its members. The members further executed deeds in favour of other persons. In that context, the Court held that such deeds fall within the definition of transfer of lease by way of assignment. Hence, Article 23 shall be applicable. Consequently, the aforesaid judgment is not applicable to the facts of the present case.

24. The learned counsel representing respondent no.1 also relies upon **ICICI Bank Limited vs. Official Liquidator of APS Star Industries Limited and others, (2010) 10 SCC 1**. In this judgment also explains that debt is an asset in the hands of the secured creditor or mortgagee or hypothecatee bank which can be transferred/assigned. This judgment is also

not in the context of relevant entry in the Stamp Act. The judgment in **Manoj Kumar's case** has already been discussed. The learned counsel also relies upon a judgment passed in **Phoenix ARC Private Limited (Trustee of Phoenix Trust FY17-8) vs. M/s Cherupushpam Films Private Limited**, by National Company Law Tribunal, Kochi Bench, (2023) ibclaw.in 48 NCLT. In this judgment, the points for consideration were culled in para 9 and it was held that insufficiently stamp documents should be impounded. In the end, the learned counsel relies upon a five Judge Bench judgment in **M/s N.N.Global Mercantile Private Limited vs. M/s Indo Unique Flame Limited and others, (Civil Appeal No.3802-3803 of 2020, decided on 25.04.2023)**. This judgment is relating to the scope of jurisdiction of the Court while exercising powers under Section 11 of the Arbitration and Conciliation Act, 1996 in the Context of requirement of stamping the arbitration agreement. It has been held that before appointing Arbitrator the Court is required to examine the question whether the instrument is properly stamped or not. Hence, the aforesaid judgment has also no application.

25. In view of the aforesaid discussion, the writ petition is allowed. The order passed by the Commissioner, Gurgaon Division, Gurgaon, on 10.03.2016 is set aside. Though, the proper stamp duty is to be calculated under second column of Article 20, however, since the petitioner has already deposited the amount as determined by the Collector, the matter is directed to be closed while treating the excess paid amount to be penalty in terms of Section 33 of the Indian Stamp Act without directing the Collector to re-calculate the amount and refund the excess deposited by the petitioner.

26. All the pending miscellaneous applications, if any, are also disposed of.

04th May, 2023
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :YES/NO
Whether reportable :YES/NO