IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8315 OF 2016

Mohindersingh Amarjeetsingh Wahi .. Petitioner

versus

Deputy Inspector General of registration
& deputy Collector of Stamps, & another .. Respondents

WITH
WRIT PETITION NO. 8282 OF 2016

Smt. Ravinder w/o Pritpalsingh Uppal .. Petitioner

versus

Deputy Inspector General of registration
& deputy Collector of Stamps, & another .. Respondents

Mr. P. S. Agrawal, Advocate for the Petitioner.
Mrs. M. L. Sangeet, AGP for the State.

CORAM : R. M. JOSHI, J.
RESERVED ON : 23rd SEPTEMBER, 2025.
PRONOUNCED ON : 4th OCTOBER, 2015.

ORDER :

1. By consent of both sides, heard finally at the stage of admission.

2. These Petitions involve similar questions of law and fact. Hence, by consent of both sides, heard and decided together by a common judgment.

3. These Petitions take exception to the order passed by the Deputy Inspector General of registration & Deputy Controller of Stamps, Nashik Region, Nashik, confirming the orders dated 17.04.2025 and 15.04.2025 respectively passed by the Sub Registrar Class 1 and Collector of Stamps, calling upon the Petitioners to pay deficit stamp duty in respect of the sale-deed registered in their favour.

4. In Writ Petition No. 8315/2016, Mohindersingh Amarjeetsingh Wahi, proprietor of Sana Trade Links, purchased plot bearing No. 26 admeasuring 358 sq. mtrs. situated at Survey no. 351/1, Bhingar, Ahmednagar from its owner Smt. Darshankaur Amarjeetsingh Wahi, who is the mother of the Petitioner. The property shall be referred to as 'subject property' for the sake of convenience. Mohindersingh had obtained loan from Indian Banks and the subject property was given as a collateral security towards repayment of the said loan of Rs. 33,00,000/-. The sale-deed came

to be executed vide Serial No. 4505/2013 on 04.12.2013. The stamp duty and registration charges were paid in accordance with the market value of the property. Later on, Indian Bank was taken over by the Bank of Baroda and as such the loan obtained by M/s Sana Trade Link was to be repaid to the Bank of Baroda on the same conditions. The subject property remained to be collateral security for repayment of loan of Rs. 1,00,00,000/-.

5. Petitioner in Writ Petition No. 8282/2016, Smt. Ravinder w/o Pritpalsingh Uppal, purchased the subject property from Mohindersingh on 21.04.2014 vide registered sale-deed at Serial No. 1671-2014 and stamp duty and registration charges were paid on the basis of market value of the subject property.

6. Ravindersingh Wahi, real brother of Mohindersingh filed complaint with the authorities under the Stamps Act claiming that in respect of registration of sale-deed between Mohindersingh and Darshan Kaur, proper stamp duty has not been paid. Pursuant to the said complaint, notice was issued to the Petitioners calling upon them to explain as to why deficit stamp duty along with penalty should not be recovered from them. Said show cause notice was duly

responded by the Petitioners claiming that no deficit stamp duty is payable and the adequate/proper stamp duty has been paid by the Petitioners on sale-deed. The authority granted hearing to the Petitioners and proceeded to pass order holding that valuation of the sale-deed in favour of Mohindersingh should be Rs. 39,00,000/- in view of the fact that there was a loan to the extent of Rs. 33,00,000/- and the same was secured by collateral security of subject matter. Similarly, Smt. Ravinder Uppal was asked to pay deficit stamp duty with observation that when the subject property was purchased, it was mortgaged with the Bank of Baroda against loan to the extent of value of Rs. 1,00,00,000/-. These orders came to be challenged by Petitioners before the Deputy Inspector General of Registration & Deputy Controller of Stamps unsuccessfully. Hence, these Petitions.

7. Learned counsel for Petitioners submits that Mohindersingh, proprietor of Sana Trade Link, though had obtained loan however, the said loan was secured by hypothication of equipments, stocks, furniture and fixtures and other movable assets of the firm whereas the subject property was only a collateral security. It is his submission that the subject land was provided as collateral security and hence cannot become part of consideration.

According to him, the authority has wrongly invoked provisions of Section 25 of the Maharashtra Stamp Act in order to consider valuation of the property at the rate of market value plus the loan against which the subject property was given as a security.

8. In respect of Writ Petition No. 8282/2016, it is his contention that in any case, the purchaser had not agreed to repay the loan and therefore, there was no question of the amount of loan being included in the valuation of the property. It is his further submission that later on, the loan has been repaid and therefore, there is no question of sustainment of the orders impugned.

9. Learned AGP supported the orders impugned by referring to the document on record more particularly, document indicating overdraft facility allowed to Mohindersingh and his firm Sana Trade Link. It is submitted that at the first instance, the subject property was additionally given as security for repayment of loan of Rs. 33,00,000/- whereas during the second transaction, the said loan was Rs. 1,00,00,000/-. It is her submission having regard to the provisions of Section 25 of the Act that no fault can be found with the orders passed by the authorities.

10. At the outset, this Court needs to take into consideration certain admitted facts such as Mohindersingh, proprietor of Sana Trade Link, had obtained loan from Indian Bank to the extent of Rs.33,00,000/- and along with other securities subject property was given as a collateral security by way of equitable mortgage. The said security was towards repayment of loan of Rs. 33,00,000/-. Later on, Bank of Baroda took over the said loan and when the second transaction i.e. transaction with Smt. Ravinder Uppal was entered into, the loan amount was Rs. 1,00,00,000/- and the subject property was collateral security for repayment of said loan.

11. It would be relevant to take note of provisions of Section 25 of the Act which read thus :-

> 25. How transfers in consideration of debt or subject to future payments, etc. to be charged :
> Where any property is transferred to any person;
> (a) in consideration, wholly or in part, of any debt due to him; or
> (b) subject either certainly or contingently to the payment or transfer (to him or any other person) of any money or stock, whether being or constituting a charge or encumbrance upon the property or not,
> such debt, money or stock, shall be deemed to be the whole or part, as the case may be, of the consideration

> in respect whereof the transfer is chargeable with ad volorem duty :
>
> Provided that, nothing in this section shall apply to any such certificate of sale as is mentioned in Article 16 of Schedule I.
>
> Explanation : Where property is sold and sale is subject to a mortgage or other encumbrance, any unpaid mortgage-money or money charged, together with the interest (if any) due on the same, shall be deemed to be part of the consideration for the sale, whether or not the purchaser expressly undertakes with the seller to pay the same or indemnify the seller if the seller has to pay the same:
>
> Provided that, where any property subject to a mortgage is transferred to the mortgagee, he shall be entitled to deduct from the duty payable on the transfer the amount of any duty already paid in respect of the mortgage.

12. The said provisions clearly indicate that for the purpose of valuation of the property for the purpose of registration of document of sale where the property has been mortgaged against repayment of loan, the amount of loan would be in addition to the market value of the subject property. Thus, in case the property is mortgaged, over and above the market value, the loan amount against which the property is mortgaged would be added for the

purpose of calculation of value of the property for the purpose of imposing stamp duty.

13. Needless to state that strict rule of interpretation would be applicable in this case if being taxation statute. When the terminology of the provision which enables the Government to impose stamp duty is clear, the Court is bound to follow the same. Here in this case, provision of Section 25 is unambiguous and therefore must be given its plain meaning. The only exception as provided thereto is not application thereof to certificate of sale as mentioned in Article 16 of Schedule I.

14. Coming to the facts of the case, there is no dispute that at the time of the first transaction with Mohindersingh, there was loan of Rs. 33,00,000/- obtained by him and subject land owned by his mother was collateral security for its repayment. Moreover, there is specific recital in the sale-deed that the purchaser i.e. Mohindersingh would repay the loan in respect of which the subject property is held as a collateral security by Indian Bank. Here in this case, thus the purchaser has not only accepted the property as security but further admitted the liability of repayment of loan and

irrespective of the fact that the loan was obtained by the purchaser himself for the purpose calculation of valuation of the property, Section 25 of the Act would certainly apply.

15. Though it is sought to be argued on behalf of the Petitioner in Writ Petition No. 8282/2016 that in the recitals of the sale-deed there is no liability of repayment of loan accepted by the purchaser and therefore question of applying Section 25 of the Act does not arise. This argument of the Petitioner does not stand to the scrutiny of Section 25. Proviso to Section 25 as quoted above clearly shows that such valuation would be irrespective of the fact that the purchaser agrees to repay the loan or not. Thus, in view of such deeming provision, even if the purchaser herein has not accepted liability of repayment of loan, for the purpose of computation/calculation of the valuation of the suit property, the loan amount ought to have been included therein.

16. It is pertinent to note that no dispute has been made by the Petitioners with regard to the fact that at the time of first transaction loan amount was Rs. 33,00,000/- whereas during the second transaction the loan amount was Rs. 1,00,00,000/- and the

subject property was provided as a collateral security by equitable mortgage. The Petitioners have neither sought to make out the case nor made out the case that the said security was not towards entire loan repayment of the loan but any part thereof. In absence of any such case being made out, this Court is not required to go into the issue as to what extent of the loan the collateral security was given in the form of subject property and it needs to be accepted that collateral security was towards repayment of entire loan.

17. Here in this case, perusal of Section 25 of the Act leaves no room of doubt that in case of security of property towards repayment of loan, the amount of loan would be included in the valuation of such property.

18. It is also sought to be argued that the complaint made by the brother of Mohindersingh was not bonafide but out of grudge against him. It is immaterial as to at whose instance it is brought to the notice of the authorities regarding payment of deficit stamp duty. Moreover, it is not the case of the Petitioners that the assessment done is barred by limitation or beyond the jurisdiction of the authority.

19. Having regard to the above discussion, this Court finds no substance in the Petitions. Consequently, both the Petitions stand dismissed.

(R. M. JOSHI)
Judge

dyb

LATER ON :

1. Learned counsel for the Petitioner seeks stay of the order passed by this Court for a period of four weeks.

2. Learned AGP opposes the same.

3. There is interim relief granted by this Court which is running since 03.03.2025. In view of this, interim relief stands extended for a period of four weeks from today.

(R. M. JOSHI)
Judge

dyb