Proceedings of the Chief Controlling Revenue Authority and Inspector General Of Registration

Chennai – 600 028.

Present: Thiru.M.P.Sivanarul, I.A.S.,

D.Dis No.16161/P1/2021 Dated 4.06.2022

Sub: Review Petition– pending document No.P–153/2016 –Ashok Nagar Sub Registrar Office– Review Petition under section 56(1) of the Indian Stamp Act, 1899 against the order passed by District Registrar Chennai (Central) – order issued – regarding.

Ref: 1. District Registrar, Chennai (Central) Proceedings No.14614/B1/2019 dated 26.3.2021
2. Revision petition from Repco Home Finane Ltd dated 16.4.2021.
3. Order of Hon'ble High Court dated 23.9.2021 in W.P.Nos.20313 & 20314/2021

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ORDER:

Revision Petition 2nd cited has been filed under section 56(1) of the Indian Stamp Act, 1899 before the Chief Controlling Revenue Authority against the order 1st cited passed by the District Registrar, Chennai (Central). In the said order it has been ordered to pay deficit stamp duty of Rs.8,00,00,000/– and penalty of Rs.2000/– in respect of document No.P153/2016 on the file of Sub Registrar office, Ashok Nagar.

As per the Hon'ble High Court order 3rd cited the revision petition was taken up for hearing on 18.3.2022 but no one on behalf the petitioner appeared on that day. Consequently the petitioner was called upon for hearing on 29.3.2022 and on that day counsel for the petitioner appeared and sought for an adjournment. On the adjourned day viz., 5.4.2022 also the counsel again sought for an adjournment. Accordingly adjourned hearing was held on 21.4.2022.

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2) Facts of the Case are as follows:–

Document No.	P153/2016 Sub Registrar office, Ashok Nagar
Date of Execution	7.102016
Title	Mortgage Deed Cum Debenture Trust Deed
Executants	Repco Home Finance Ltd, Chennai
Claimant	Catalyst Trusteeship Ltd, Pune
Amount secured	Rs.200,00,00,000/–
Stamp Borne by the deed	Rs.40,000/–
Classification of document and Deficit stamp duty & penalty as determined by the District Registrar	Mortgage deed {Art 40(b)} & Power of Attorney to sell immovable property granted for consideration {Art 48(e)} Rs.8,00,00,000/– and penalty of Rs.2000/–

The document in question has been executed for the purpose of securing Debentures issued by Repco Home Finance Ltd to the tune of Rs.200 crores. Considering certain recitals found in page 33 (clause 52) {*to the effect that Repco Home Finance Ltd irrevocably appoints Catalyst Trusteeship Ltd as attorney to execute, sign and do any deeds which shall in the opinion of the trustee to be necessary for the purpose of carrying out obligations of trustee for realization of the receivables*}, the registering officer impounded the document under the opinion that these recitals do not limit the scope of attorney only in the event of default. Accordingly he forwarded the impounded document to the District Registrar for further action.

The District Registrar after obtaining the explanation from the registrant in her proceedings dated 26.3.2021 concluded that the impugned recitals do not restrict the scope of power conferred on the trustee only in the event of default and hence the document contains dual nature of a "Mortgage deed" {Art 40(b)} and also a "Power of Attorney to sell immovable property granted for consideration" {Art 48(e)}. Based on this decision the District Registrar determined the Deficit stamp duty & penalty as Rs.8,00,00,000/– and Rs.2000/– respectively.

3) Main contentions of the Revision Petitioner:

i) The document was presented for registration on 29.12.2016. Whereas District Registrar initiated proceedings only on 26.3.2021, i.e., after 5 years which is beyond 3 years

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337

stipulated under section 33A of the Indian Stamp Act, 1899. Hence the entire proceeding of the District Registrar is barred by limitation.

ii) Entire construction of the document will reveal that on happening of the specified event, any transfer of interest or creation of right over or in respect of specified property will come into operation.

iii) Merely because the words are missing in one place and it was explained in a separate heading by a separate clause will not alter the scheme of the instrument from deed of trust and mortgage into a power of attorney for consideration.

iv) A document has to be read as a whole and the spirit of it should be taken note of and not to be carried away by the mere letters found therein. Anyone who tries to rely on mere wordings but without keeping in mind the object and spirit of the document would be considered as a person who has thrown the baby along with the bath water. (J.Chandrasekaran Vs kesavan (Madras High Court) AIR 2013 (NOC) 316 Mad)

v) Misrecital in some part of the deed cannot vitiate it. Anything expressly mentioned in the deed excludes another view impliedly possible.

vi) The intention of the parties to the deed is very clear and cogent and therefore the attempt of District Registrar to interpret as though it is a document of power of attorney for consideration is legally unsustainable.

vii) Moreover entire amount has been repaid to the Trustee Company on 14.10.2019. Accordingly a letter of satisfaction of charge was also issued by the trusteeship company and therefore the entire matter became infructuous.

4) Contents of revision petition, connected records received from the District Registrar and the arguments advanced by the counsel of the petitioner have been carefully examined by me.

The recitals relied upon by the District Registrar for having classified the document as Power of Attorney to sell immovable property granted for consideration under Article 48(e) of the Indian Stamp Act, 1899 is as follows:

52. APPOINTMENT OF TRUSTEE AS ATTORNEYS OF THE COMPANY

The Company hereby irrevocably appoints the Trustee to be the attorney of the Company in the name and on behalf of the company to execute, sign and do any deeds,

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documents, assurances, acts and things, which shall in the opinion of the Trustee be necessary or expedient that the Company should execute, sign and do ***for the purpose of carrying out any of the trusts or obligations declared or imposed upon the Company for realisation of the receivables*** *and to take all steps and legal proceedings for that or for or for giving NCD Holders or to the Trustee on their behalf the full benefit of any of the provisions of these presents and generally to use the name of the Company in the exercise of all or any of the powers hereby conferred upon the Trustee or any Receiver appointed by it.*

The words ***for the purpose of carrying out any of the trusts or obligations declared or imposed upon the Company for realisation of the receivables*** employed in aforesaid recitals indicate exercise of power of attorney only for the purpose of carrying out any of the trust or obligations declared or imposed upon the Company for realisation of the receivables.

Hence contrary to the findings of the District Registrar, the said recitals confer power to sell the immovable property to the Trustee only for purpose of carrying out the object of the Trust. Moreover certain other recitals found in pages 24, 25, 27, 28 also indicate that possession of the property continue to remain with the Mortgagor and only in the event of default, the Trustee can take possession of the property for selling in order to carry out the purposes of the trust. Therefore it becomes clear that the power of attorney conferred on the Trustee is neither absolute nor final and also that it is nothing but a legal recourse available in case of default. Accordingly, it is concluded that the document in question cannot be treated as a power of attorney for consideration under Article 48(e) of the Indian Stamp Act, 1899. Based on the above decision, the revision petition is hereby allowed and the order of the District Registrar is set aside..

(Sd)/– M.P.Sivanarul/4.6.2022
Chief Controlling Revenue Authority &
Inspector General of Registration.

/By Order/

For Inspector General of Registration.

6.6.22

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339

To

1. The Authorised officer,
   Repco Home Finance Ltd,
   3rd Floor, Alexander Square,
   New No.2 (Old No.34&35),
   Sardar patel Road, Guindy,
   Chennai – 600 032.

2. M/s.A.Ilangovan, C.Samivel, G.Mahalakshmi,
   Advocates,
   No.223, N.S.C.Bose Road,
   Parrys, Opp Bar Council,
   Chennai – 600 001.

3. District Registrar,
   Chennai (Central)
   (With original file)

   Copy to: Stock file.

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