387

Proceedings of the Chief Controlling Revenue Authority and Inspector General of Registration, Chennai-600 028

Present: Thiru.Dinesh Ponraj Oliver, I.A.S.,

D.Dis.No.19287/P1/2018 Dated 23.05.2024

Sub : Revision Petition--Document No.P.21/2015 Sub Registrar office, Perundurai–received under section 56(1) of the Indian Stamp Act, 1899 against the order passed by District Registrar, Erode - order issued – regarding.

Ref : 1. District Registrar (AIG cadre) Erode order No.2053/B1/2017 dated 20.02.2018

2. Revision Petition dated 26.4.2018 received from M/s.Sahyadri Industries Limited

oOo

ORDER:

The revision petition 2nd cited has been filed under section 56 (1) of the Indian Stamp Act, 1899 by M/s.Sahyadri Industries Limited before the Chief Controlling Revenue Authority against the order 1st cited. In the said order of the District Registrar it has been ordered to pay deficit stamp duty of Rs.9,13,00,000/– and penalty of Rs.20,000/– in respect of document No.P.21/2015 on the file of Sub Registrar office, Perundurai.

2) Facts of the Review Petition are as follows:–

Document No.	No.P.21/2015
Office	Sub Registrar office, Perundurai
Date of Execution	16.4.2015
Title of the Document	Reinsted Indenture Of Mortgage Being A

(P.T.O)

Verified RedEstate TM

	Composite Deed Of Mortgage Of Further Charge
Executant	Sahyadri Industries Limited (Mortgagor/Borrower)
Claimant	Cosmos Co-Op Bank Ltd, Pune (Mortgagee/Lead Bank)
Consideration	Rs.114.15 /- crores
Stamp Borne by the deed	Rs.40,000/-
Nature of document as determined by the District Registrar	Mortgage with possession {Article 40(a)} & Power of Attorney to sell immovable property granted for consideration {Article 48(e)}
Deficit stamp duty & penalty determined by the District Registrar	Rs.9,13,00,000/- & penalty of Rs.20,000/-

The above document has been executed as security for availing credit facility to the tune of Rs.114.5 /- crores from various banks including the Lead bank viz., Cosmos Co-op Bank Ltd, Pune.

The above document has been impounded by the registering officer on the ground that it is not duly stamped as per Article 40(a) of the Indian Stamp Act, 1899 as a deed of "Mortgage with possession". Consequently the said document has been forwarded to the District Registrar, Erode for further action.

The District Registrar under the proceedings under section 40 of the said Act, held that clauses 18(iii) at page No.20 and clause 26 at page No.29 of the document empower the mortgagee to take possession of the mortgaged property even before happening of event of default and that the Mortgagee is conferred with power to sell the mortgaged property.

(P.T.O)

Verified Real Estate™

Accordingly the District Registrar classified the document as comprising two distinct matters viz., Mortgage with possession {Article 40(a)} and Power of Attorney to sell immovable property granted for consideration {Article 48(e)}.

Based on the aforesaid decision the District Registrar issued order 1st cited under section 40(1) (b) of the Indian Stamp Act, 1899 requiring payment of deficit stamp duty and penalty of Rs.9,13,00,000/– & penalty of Rs.20,000/–.

Aggrieved over the said order, present revision petition 2nd cited has been preferred.

3) The petitioner through their counsel was heard by Inspector General of Registration on 23.01.2024. Main contentions put–forth by the Revision petitioner are as follows:

a) Mortgaged property is not handed over to the Bank and only in the case of default it has been provided for taking over possession as found in clauses 6,7,8,13,17, 18(iii).

b) As per CCRA Pro.No.10775/P1/2011 dated 26.9.2017 English mortgage is to be stamped as mortgage without possession.

c) Clause 26 of the document based on which the DR classified the document as Irrevocable POA with consideration, is a usual clause employed for incorporating sec 65 of the Transfer of property Act.

d) The document in question has been drafted based on the provisions contained in Transfer of Property Act in order to protect the interest of the parties to the document.

Verified © RealEstate™

e) As per various case laws, the intention of the parties to a mortgage deed should be construed as a whole, giving attention to every provision therein.

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

a) The recitals relied upon by the District Registrar for classifying the document as Mortgage with possession i.e. Article 40(a) of Indian Stamp Act, 1899 is extracted as follows:

Page no.20: Clause 18(iii): *'It shall be lawful for the Mortgagee upon entering into or taking possession* ***under the provisions herein contained*** *of all or any of the Mortgaged Properties thenceforth to hold and enjoy the same and to receive the rents and profits thereof without any interruption or disturbance by the Mortgagor or any other person or persons claiming by, through, under or in trust for the Mortgagor, and that freed and discharged from or otherwise by the Mortgagor sufficiently indemnified against all encumbrances and demands what so ever'*

The words "under the provisions herein contained" employed in the aforesaid recitals indicates that the taking over of possession of property by the lead bank cosmos co-operative bank Ltd could happen only under the provisions of the document. In other words, in the event of default as stated in clause (7) (page 12) clause (8) (page 13). Moreover, Clause 17 of the

Verified RealEstate TM

document specifically puts an embargo on the Mortgagee from taking custody of mortgaged properties until the happening of an event as Default.

b) Whereas, clause 26 relied upon by the District Registrar for concluding that the document is also classifiable under Article 48(e) of the Indian Stamp Act, i.e. "Power of Attorney to sell granted for consideration" recites as follows:

Page No.29 clause: 26; '*The Mortgagor hereby irrevocably appoints the Mortgagee to be the attorney of the Mortgagor in the name and on behalf of the Mortgagor to execute, sign and do any deeds, documents, assurances, acts and things which shall in the opinion of the Mortgagee be necessary or expedient that the Mortgagor should execute, sign and do for the purpose of carrying out any of the trusts or obligations declared or imposed upon the Mortgagor by these presents or of giving to the Mortgagee on their behalf the full benefit of any of the provisions of these presents and generally to use the name of the Mortgagor in the exercise of all or any of the powers hereby conferred upon the Mortgagee or any Receiver appointed by them*'.

The words "*for the purpose of carrying out any of the trusts or obligations declared or imposed upon the Mortgagor by these presents or of giving to the Mortgagee on their behalf the full benefit of any of the provisions of these presents ……..*" Indicate that exercise of Power so granted is only for the purpose of Mortgage. Hence the grant of power is neither an outright one nor unconnected with the rights of mortgagee.

Verified RealEstate™

Hence the decision of the District Registrar in having classifying the document under Article 4o (a) as well as under Article 48(e) is untenable.

c) However from the document in question it could be seen that credit facility of Rs.114.15 /- crores has been availed by Sahayadri Industries Ltd from various banks including the Lead bank viz., Cosmos Co-op Bank Ltd in the following manner:

Sl.No	Name of Bank	Credit Facility (Rs.in Lakhs)
1	Cosmos Coop Bank	4535
2	IOB	500
3	Corporation Bank	1000
4	HDFC	530
5	Standard Chartered	3400
6	ICICI	1450
	Total	11415

In this regard it is noteworthy that in a similar instance where a Company for the purpose of securing loans availed by it from 13 different financial institutions, executed a mortgage deed in favour of one of the 13 lenders (acting as a lead trustee for other lenders), Hon'ble Supreme Court held that the mortgage deed is classifiable as 13 distinct transactions under Section 5 of the Indian Stamp Act, 1899 and the same is liable to be stamped accordingly. {Civil Appeal No. 6054 of 2015 dated 11.8.2015- Chief Controlling Revenue Authority Vs Coastal Gujarat Power Ltd}

(P.T.O)

Verified RealEstate™

The above position of law has also been reiterated in Inspector General of Registration circular No.49932/P1/2015 dated 6.11.2015.

In view of the above legal position discussed in para 4 (a) and 4(b) above, the order 1st cited is hereby set aside and in light of the position of law discussed para 4(c) above, the District Registrar is directed to calculate the stamp duty payable for the document in question in accordance with Hon'ble Supreme Court judgment dated 11.8.2015 rendered in Civil Appeal No. 6054 of 2015.

Sd/– Dinesh Ponraj oliver /– 23.05.2024
Chief Controlling Revenue Authority &
Inspector General of Registration.

/By Order/

District Registrar (Inspection)

24/5/24

To

1. M/s.Sahyadri Industries Ltd,
   Plot No.KK2 (N) & KK3(S) SIPCOT.
   Industrial Growth Centre,
   Perundurai,
   Erode District–638 052.

2. Mahesh.B.Raichandani and others,
   UBR Legal (Advocates)
   806, 8th Floor, "D" Square,
   Opp. Goklibai School,
   Dadabhai Road, Vile Parle (west),
   Mumbai–400 056.

3. District Registrar,
   Erode (with original file)
   Copy to: Stock File

Verified Real Estate

Verified RealEstate™