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. 9583/P1/2018 Dated 09.12.2023

Sub : Revision Petition – Document No. P.19/2016, Sub Registrar office, Virugambakkam – received under section 56(1) of the Indian Stamp Act, 1899 against the order passed by Sub Registrar (In the cadre of District Registrar), Virugambakkam– order issued – regarding.

Ref : 1. Sub Registrar (In the cadre of District Registrar), Virugambakkam order No.I P19/2016 dated 20.10.2017.
2. Revision Petition dated 14.2.2018 received from M/S.Muthoot Finance Ltd.

oOo

ORDER:

The revision petition 2nd cited has been preferred under section 56 (1) of the Indian Stamp Act, 1899 before the Chief Controlling Revenue Authority against the order 1st cited passed by the Sub Registrar (District Registrar cadre) Virugambakkam wherein it has been ordered to pay deficit stamp duty of Rs.20,00,00,000/– and penalty of Rs.1000/– in respect of document No.P.19/2016 on the file of Sub Registrar office, Virugambakkam.

2) The facts relating to the Review Petition are as follows:–

Document No.	No.P.19/2016
Office	Sub Registrar office, Virugambakkam
Date of Execution	20.1.2016
Title	DEBENTURE TRUST DEED
Executant	Muthoot Finance Ltd, Kochi
Claimant	IDBI Trusteeship services Ltd.,
Value of Debenture	Rs.500,00,00,000/–

(P.T.O)

Verified RealEstate TM

Stamp Borne by the deed	Rs.40,000/–
Nature of document as determined by the District Registrar	Mortgage without possession {Article 40(b)} & Power of Attorney to sell immovable property granted for consideration {Article 48(e)}
Deficit stamp duty & penalty determined by the District Registrar	Rs.20,00,00,000/– & Rs.1000/–

The above document has been executed for securing repayment to the Debenture holders of the principal amount of Rs.500 crores by mortgaging the property in favour of IDBI Trusteeship Services ltd who has been appointed as the Debenture Trustee.

The order 1st cited has been passed by the Sub Registrar under section 40(1) (b) of the Indian Stamp Act, 1899 considering by holding that certain recitals available under Clause 52 of the subject document not only provide for appointment of the Trustee to hold the properties mortgaged but such appointment of the Trustee is also intended to confer the powers to act as the Attorney of the Company and to execute any deed, including a sale deed. Based on the above understanding the Sub Registrar classified the the deed as comprising two distinct matters viz., Article 40(b) {Mortgage without possession of the Property) and Article 48(e) (Power of Attorney to sell the immovable property given for consideration).

Accordingly deficit stamp duty and penalty have been determined by the Sub Registrar. Aggrieved over the same present Revision petition has been filed before the Chief Controlling Revenue Authority cum Inspector General of Registration.

3) The petitioner, through their Advocate was personally heard on 20.9.2023.

(P.T.O)

Verified RealEstate TM

Main contentions advanced by the petitioner are as follows:

a) The Sub Registrar has completely overlooked the definition for the term 'Debenture Trustee' found in section 2(bb) of the SEBI (Debenture Trustees) Regulations, 1993
b) As stipulated in the document itself, only upon the happening of event of default mentioned therein, the Trustee will have power to bring the mortgaged property to sale.
c) Clause 52 is an ancillary clause to the main object and the same is not chargeable under section 5 of the Indian Stamp Act.
d) As held in Suryanarayanamurthy Vs Satyanarayanaraju AIR 1956 AP 252 and Secy to the commr of Salt Akbari and Separate Revenue, Madras 43 Mad 365, main test to find out whether a document comprises 2 distinct matters is to ascertain the leading object and to see whether the 2nd matter is only ancillary to the main object or is independent of it.
e) In the case dealt in Board of Revenue Vs Annamalai & CO (1967 (2) MLJ 515 (FB) relied upon by the Sub Registrar, the relationship between the Bank and the Annamalai & Co was that of Creditor and Debtor, while the debenture trustee holds the position of a Trustee.
f) The glaring difference between Annamalai & Co case and the case on hand is that the right of the bank therein to collect rents and profit accrued soon after the loan was advanced and not in the event of default.
g) No consideration flows from debenture trustee to the petitioner company but on the other hand, remuneration is being paid by the

(P.T.O)

Verified @ RealEstate

petitioner to the debenture trustee to act as trustee for protecting the interest of NCD holders.

h) As held in Full bench decision fo Madras High Court in CCRA Vs Madras Refineries Ltd (1975) 88 LW 440 and as confirmed by the Hon'ble Supreme Court in (1977) 2 SCC 308, debenture trust deed has to be treated as a document of Trust and Mortgage and the stamp duty has to be charged as a mortgage deed.

i) Clause 52 has to be read along with clause 11.2 which provides that subject to provisions of section 69 of the Transfer of Property Act, sale can be effectuated by following due process of law, only in the event of default in payment.

4) Contents of revision petition, connected records received from Sub District Registrar, arguments advanced by the petitioner's advocate 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 DEBENTURE TRUSTEE AS ATTORNEYS OF THE COMPANY

The Company hereby irrevocably appoints the Debenture Trustee to be the attorney of the Company in the name and on behalf of the company to execute, sign and do any deeds, documents, assurances, acts and things, which shall in the opinion of the Debenture Trustee be necessary or expedient that the Company should execute, sign and do ***for the purpose of carrying out any of the trusts or***

Verified RealEstate™

obligations declared or imposed upon the Debenture Trustee *or for giving NCD holders or to the Debenture 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 Debenture Trustee***" employed in aforesaid recitals undoubtedly indicate that exercise of power of attorney could be only for the purpose of carrying out any of the trust or obligations declared or imposed upon the Trustee and such power is not an outright one. Hence it is clear that contrary to the findings of the Sub Registrar the said recitals confer power to sell the immovable property only for purpose of carrying out the object of the Trust, in other words only in the event of default. 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 deed of 'power of attorney to sell immovable property granted 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 Sub Registrar is set aside.

Sd/– Dinesh Ponraj oliver /–09.12.2023
Chief Controlling Revenue Authority &
Inspector General of Registration.

/By Order/
District Registrar (Inspection)

11/12/2023

(P.T.O)

Verified © RealEstate

To

1. M/s.Muthoot Finance Limited,
   2nd Floor, Muthoot Chambers,
   Opposite to saritha Theatre Complex,
   Banerji Road, Kerala,
   Ernakulam – 682 018.

2. Mr.Karthikeyan Anbazhagan (Advocate)
   No.115, Luz Church Road,
   Mylapore,
   Chennai – 600 004.

3. Sub Registrar (In the cadre of District Registrar),
   Virugambakkam
   (with original file).

Copy to: – Stock File.

Verified RealEstate™