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.16162/P1/2021 Dated 10.8.2022

Sub: Review Petition– pending document No.P–215/2016 –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. 14615/B1/2019 dated 26.3.21
2. Revision petition from Repco Home Finane Ltd dated 16.4.2021.

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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 respect of document No.P215/2016 on the file of Sub Registrar office, Ashok Nagar wherein it has been order to pay deficit stamp duty of Rs.4,00,00,000/– and penalty of Rs.2000/– .

2) Facts of the Case are as follows:–

Document No.	P215/2016 Sub Registrar office, Ashok Nagar
Date of Execution	29.12.2016
Title	Mortgage Deed Cum Debenture Trust Deed
Executants	Repco Home Finance Ltd, Chennai
Claimant	Catalyst Trusteeship Ltd, Pune
Amount secured	Rs.100,00,00,000/–
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.4,00,00,000/– and penalty of Rs.2000/–

(PTO)

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The document in question has been executed for the purpose of securing Debentures issued by Repco Home Finance Ltd to the tune of Rs.100 crores. Considering certain recitals found in page 10 (clause 11) {to the effect that the Catalyst Trusteeship Ltd to concur with the company in dealing with the trust properties at any time before the security constituted hereunder becomes enforceable, by way of sell, call in, convert, lease etc., }, the registering officer impounded the document under the opinion that these recitals empowers the trusteeship company to execute any document including a sale deed even when an event of default has not happened and that such empowerment constitutes grant of power of attorney by the Repco Finance in favour of Trustee for sale of immovable property for consideration. 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.4,00,00,000/- and Rs.2000/- respectively. Aggrieved over this decision, present revision petition has been filed. Revision petitioner represented by Advocate was heard on 21.4.2022.

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 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 under a 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.

(PTO)

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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 Rs.150 crores and Rs.25 crores has been repaid to the Trustee Company on 20.9.2018 and 19.9.2019. Accordingly letters of satisfaction of charge were 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.

A combined reading of the recitals found in clause 11 and 12 of the document leads to conclusion that these clauses provide for enforcing the said clauses only with concurrence of the borrower company that too in the event of default.

Therefore it becomes clear that the power conferred on the Trustee is neither absolute nor final but only 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 and the same is classifiable only as a Simple Mortgage falling under Article 40(b) 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/10.8.2022
Chief Controlling Revenue Authority &
Inspector General of Registration.

/By Order/

For Inspector General of Registration.

11.8.22

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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. Mes.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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