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Proceedings of the Chief Controlling Revenue Authority & Inspector General of Registration, Chennai–600 028
Present: Thiru.M.P.Sivanarul, I.A.S.,

D.Dis.No. 8526/P1/2023 Date: 12.5.2023

Sub : Revision Petition – Pending document No.P18/2023 – Joint II Sub Registrar Office, Chennai (Central) – Revision Petition received under section 56(1) of the Indian Stamp Act, 1899 against the order passed by Sub Registrar (District Registrar cadre) – order issued – regarding.

Ref : 1.Sub Registrar (District Registrar cadre) order.I.No.1/2023 dated 6.3.2023.

2.Revision petition from Mr.Dodla Subba Reddy dated 8.3.2023

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ORDER:

The 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 Joint II Sub Registrar, Chennai (Central) wherein it has been ordered to pay deficit stamp duty of Rs.1,19,60,000/– and penalty of Rs.5,000/– in respect of document No.P.18/2023 on the file of Sub Registrar office, Joint–II Chennai Central.

2) Facts and circumstances leading to the Review Petition are as follows:–

Document No.	No.P.18/2023
Office	Sub Registrar office, Joint II Chennai Central
Date of Execution	1.2.2023
Title	Indenture of Mortgage Without Possession of Property.
Executants	Mr.Dodla Subbha Reddy
Claimant	ICICI Bank Limited.
Loan Amount	Rs.15,00,00,000/–

(PTO)

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Stamp Borne by the deed	Rs.40,000/–
Nature of document as determined by the District Registrar	Mortgage with Possession and Power for Consideration
Deficit stamp duty & penalty determined by the District Registrar	Rs.1,19,60,000/– & Rs.5,000/–

Considering certain clauses, viz., clauses 3, 4, 7, 9 to 11, 13 (i), 13 (ii) & 26 of the document the registering officer classified the document is chargeable to stamp duty as having dual nature under Article 40(a) of the Indian Stamp Act i.e., "*Mortgage with Possession*" and Article 48(e) of the said Act i.e., as *"Power of Attorney to sell immovable property granted for consideration"*. As a result, the Sub Registrar (in the cadre of District Registrar) Vide his proceedings dated 06.3.2023 determined the deficit stamp duty as Rs.1,19,60,000/– and penalty as Rs.5,000/– Aggrieved over above decision present revision petition has been filed.

3) The Revision Petitioner was heard on 12.4.2023.The main grounds of revision petitioner are as follows:

(i) In the Instant document, the Mortgagor does not appoint Mortgagee as a power of attorney. Only, In case of any default from Mortgagor the Mortgagee derives the power to sell the property. There is no consideration received for the said clause.

(ii) The instant document is a mortgage deed empowering the mortgagee with certain powers as provided for under section 69 of Transfer of property Act 1882.

(iii) The clause 7 of the document which recites that "Upon the happening of any event of default under the facility Agreement" clearly shows that

89

possession has not been handed over to the mortgagee, and the mortgagee is entitled to take possession only in the event of the default.

4) Contents of revision petition, connected records of the Sub Registrar, argument advanced by the petitioner have been carefully examined be me.

i) A careful reading of the clauses relied upon by the registering officer shows that these recitals provide for taking of possession of mortgaged property only in the event of default and also that the power to sell the mortgaged property is neither absolute nor unconditional but a legal recourse made available only in the case of default. Furthermore reading of the document in entirety shows that creation of interest over the property is only for the purpose of securing the mortgage money and that grant of power is only to fulfil the obligations imposed under the mortgage deed.

ii) Apart from the above a close reading of clause 4 of the document (which is viewed by the registering officer to be granting power to sell the property even before any default occurs) shows that the said clause provides that the mortgagor shall do or concur with the Mortgagor, at the cost and request of the Mortgagor in execution of any document including a sale and the receivables of sale would become charged in favour of the mortgagee. Therefore the said clause 4 provides that if the mortgagor is necessitated to sell the property, such sale shall be made with cooperation of the Mortgagee and proceeds of such sale shall be charged in favour of mortgagee. Therefore aforesaid event is a contingent event, which may happen or may not happen.

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iii) At this juncture it is pertinent to note the following orders:

a) In IGR circular No.49698/P1/2013 dated 27.11.2013 relying on Referred Case 19 of 1925; B.P.176–R, Mis 26th May 1926 it has been clarified that Article 40(b) alone would apply if the recitals stipulate that possession will be taken over by the mortgagee in the event of breach of any covenants of the Mortgage deed.

b) In a similar instance in CCRA proceedings No.24049/P1/2016 dated 2.6.2016 and 9265/P1/21 dated 20.4.2021 where in provision for grant of power to sell in the event of default was found to exist, it was concluded by the CCRA that the document cannot be treated as power for consideration.

In view of the legal position discussed above, the document in question is classifiable 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 Sub Registrar is set aside.

(sd)/– M.P.Sivanaurl/12.5.2023
Chief Controlling Revenue Authority &
Inspector General of Registration.

/By Order/

For Inspector General of Registration.

To

1. Mr.Dodla Subba Reddy,
   No.20–2, 1st Street Wallace Garden,
   Nungambakkam,
   Chennai – 600 006.

2. The Joint II Sub Registrar,
   Chennai (Central) (with original file)

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