S.F 375

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.47309/P1/2021 Dated 15.09.2022

Sub: Revision Petition–Pending Document No.P.113/2021– Sub Registrar Office,Adayar– Revision Petition under section 56(1)of the Indian Stamp Act, 1899 against the order passed by Sub Registrar (District Registrar Cadre), Adayar– order issued – regarding.

Ref: 1. Sub Registrar (District Registrar Cadre), Adayar order No.Nil dated 28.9.2021.

2. Revision Petition from M/s.Gita Power & Infrastructure, Gummidipoondi dated 01.12.2021

3. Letter from M/s.Gita Power & Infrastructure, Gummidipoondi dated 21.6.2022

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ORDER:

The Revision Petition 1st cited under section 56(1) of the Indian Stamp Act, 1899 has been filed before the Chief Controlling Revenue Authority against the order 2nd cited passed by the Sub Registrar (District Registrar cadre) in respect of document No.P113/2021 on the file of Sub Registrar office, Adayar wherein it has been order to pay deficit stamp duty of Rs.8,56,99,294/–.

2) Facts relating to the document are as follows:–

Document No.	P113/2021, Sub Registrar office, Adayar
Date of Execution	30.3.2021
Title	Assignment Cum Novation Agreement
Executants	OPG Power Generator Pvt Ltd (OPGP) (Assignor) Gita Power And Infrastructure Pvt Ltd (GPI) (Assignee) Bhadreshwar Vidyut Pvt Ltd (BVPL)

(PTO)

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	(Borrower)
Value mentioned in document	Amount borrowed Rs.122.47 crores Assigned loan Rs.2,00,00,000/– Assignment consideration Rs.2,00,00,000/–
Stamp Borne by the deed	Rs. 30,000/–
Classification of document and Deficit stamp duty & penalty as determined by the Sub Registrar	Article 23 (Conveyance) Rs.8,56,99,294/–.

The document in question has been executed in favour of assignee for assigning the part of a loan to the tune of Rs.2,00,00,000/– out of loan already availed by the borrower to the extent of Rs.122.47 crores. The Sub Registrar classified the document as falling under Article 23 of the Indian Stamp Act, 1899 and that stamp duty is payable on entire amount of Rs. 122.47 crores and accordingly decided that deficit stamp duty of Rs.8,56,99,294/–is payable. Aggrieved over this decision of the Sub Registrar, revision petition 2nd cited has been preferred under section 56(1) of the Indian Stamp Act, 1899.

3) The revision petitioner was personally heard on 19.4.2022.

Main contentions and submissions of the Revision petitioner are as follows:

i) The loan of Rs.122.47 crores was availed by pledging the share certificates and no document for that purpose was required.

ii) OPGP (Assignor) assigned their right to collect an amount of Rs.2 crores from BVPL (Borrower) to GPI.

iii) The findings of the Sub Registrar, Adayar that entire amount of Rs.122.47 crores has been assigned under the document in question is false and misleading. Assigned amount is only Rs.2 crores.

iv) The present document is similar to one covered by judgment of Hon'ble High Court in CMA 920/2008.

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v) The present document falls under Article 62(C) of Indian Stamp Act, 1899.

4) Contents of the revision petition, connected records, the arguments advanced by the petitioner during the personal hearing have been carefully examined by me and following conclusions are arrived at:

i) Though in the document in question, OPGP has been referred as 'Lender' cum 'Assignor', actually OPGP seems to have stood as a 'Guarantor' (by pledging the securities of Assignor) for the loan availed by BVPL byway of over draft facility to the tune of Rs.122.47 crores from Punjab National Bank (PNB). However since PNB has encashed the securities of the Assignor herein which were pledged as a Security, the OPGP has assigned a part of amount viz., Rs.2 Crores to GPI upon Assignee agreeing to pay a consideration of Rs.2 Crores within 12 months from the date of execution of present document.

Therefore the instant document besides evidencing assignment of debt, serves also as a memorandum of pledge of securities of OPGP in favour of PNB towards securing the overdraft facility of Rs.122.47 crores. At this juncture it would be pertinent to note that as per section 23-A (1)(a)of the Indian Stamp Act, 1899 *'an instrument given upon the occasion of the deposit of any marketable security by way of security for money advanced or to be advanced by way of loan, or for an existing or future debt'* is chargeable stamp duty under Article 5(j) of the said Act.

ii) The claim of the petitioner that present document is similar to one covered by judgment dated 9.7.2020 of Hon'ble High Court in CMA 920/2008 is not sustainable for the following reason:

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The relevant portions of Para 12 and 13 of the judgment in C.M.A.No.920/2008 are extracted as follows;

12. In the instant case the recitals of the mortgage deed clearly indicate creation of security on a specified immovable property. In that case the document shall be construed as a mortgage deed. When such recitals are specifically made it is not open to the court to add or amend or rewrite or reframe or assume a different meaning to the recitals. To buttress his argument the learned counsel for the appellant rely of Indore Development Authority & ors 2018 (2) SCALE 1; 1954 (56) BOBLR 1054 Maharana; AIR 1950 Bom 213 Ramesh Thapar; Therefore, there is no doubt that the deed dated 18.9.1998 is a mortgage deed.

13. ..... Since this court has come to a conclusion that deed dated 18.9.1998 is a Mortgage deed and since the right to recover the mortgage debt alone is transferred, it will not amount to Conveyance as contended by the respondents, but shall be construed as Transfer chargeable as per Art 62 (c) of Sch–I of the Indian Stamp Act,1899..... (para 13)

Therefore on a careful reading, it becomes crystal clear that the above decision of the Hon'ble High Court was based on the findings that in that particular case, the previous deed of DOT deed very well answered the legal requirement of being a Mortgage Deed.

Thus it is pertinent to note that view of the Hon'ble High Court in CMA No.920/2008 was that for a "Deed of Transfer of Mortgage rights' for being classified under Article 62(c), the previous deed must be of the description of a 'Mortgage'. Whereas in the case on hand, no such previous document reduced into writing was in existence prior to the execution of the instant document.

Therefore in light of legal position stated in para 12 and 13 of the judgment in C.M.A.No.920/2008, the instant document cannot be classified under Article

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62(c) but classifiable only as a 'Conveyance' as per section 2(10) of the Indian Stamp Act, 1899.

iii) The next point which arises for consideration is whether the instant document is liable to stamp duty as a conveyance on the entire amount of Rs.122.47 crores as decided by the Sub Registrar or on the assigned amount of Rs.2 crores as claimed by the petitioner.

In this regard it is found that, in contrast to the conclusion arrived by the Sub Registrar, the document in question does not evidence assignment of debt to the tune of Rs. 122.47 crores, but evidences assignment of debt only to the tune of Rs.2 crores. Thus the subject matter of conveyance is only Rs.2 Crores.

In light of the aforesaid facts and legal position, it is concluded that as per section 5 of the Indian Stamp Act, 1899, the document in question consists of dual nature viz., 'Conveyance' under Article 23 of the said Act (Attracting 5% stamp duty and 4% registration fee on Rs.2 crores) and also an instrument falling under section 23-A of the said Act read with Article 5(j) of the said Act. (Attracting Rs.20/-stamp duty and 1% registration fee on Rs.122.47 crores).

Based on the above decision, the order of the Sub Registrar (District Registrar cadre), Adayar is modified in the above manner and the Sub Registrar is hereby directed to pass revised orders accordingly.

(Sd)/- M.P.Sivanarul/15.9.2022
Chief Controlling Revenue Authority &
Inspector General of Registration.

/By Order/

For Inspector General of Registration.

15.9.22

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To

1. M/s.GITA Power & Infrastructure Pvt Ltd.,
   OPG Nagar,
   Periya Obulapuram Village,
   Nagaraja Kandigai,
   Madharpakkam Road,
   Gummidipoondi–601 201.

2. Sub Registrar,
   Adayar.
   (With original file)

   Copy to: Stock file.

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