

The State Of Punjab vs M/S Ferrous Alloy Forgings P Ltd on 19 November, 2024

2024 INSC 890

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.12527 of 2024
(Arising out of SLP(C) No.23347 of 2014)

THE STATE OF PUNJAB & ANR.

Appe

VERSUS

M/S FERROUS ALLOY FORGINGS P LTD. & ORS.

Respo

O R D E R

1. Leave granted.

2. This appeal arises from the judgment and order dated 28-11-2013 passed by the High Court of Punjab and Haryana in C.W.P. No.11055/2001 wherein the Writ Petition filed by the Respondent No.1 herein was allowed and the Respondent No.2 herein was directed to handover the original sale certificate to the Respondent No.1 and send a copy of the same to the Sub-Registrar under Section 89(4) of the Indian Registration Act, 1908 (in short, “the Act, 1908”). The High Court also held that the Respondent No.1 was entitled to a refund of the stamp duty deposited by it in pursuance of the order passed by the Company Judge of the High Court.

3. The facts giving rise to the appeal may be summarized as under.

4. The Company by the name M/s Punjab United Forge Limited was ordered to be wound up by the Company Judge of the High Court under the provisions of the Companies Act, 1956 (for short, “the Act, 1956”) and permission was granted to the Industrial Finance Corporation of India (IFCI) to sell the properties mortgaged with it and also the properties hypothecated with Andhra Bank. Consequently, the IFCI invited tenders for the immovable and movable assets to be put to auction wherein M/s Ferrous Alloy Forging Pvt. Limited, a sister concern of the Respondent No.1 herein, offered the highest bid and as a result the auction sale was confirmed, first by the official liquidator and later by the High Court in favour of M/s Ferrous Alloy Forging Pvt. Limited. It appears from the materials on record that thereafter the Respondent No.1 moved an application requesting for execution of the conveyance deed in its favour on the ground that the entire sale consideration was paid by it and also the Board of Directors and Chairman were the same for both the Respondent

No.1 and its sister concern. The request was declined by the Company Judge of the High Court. However, the Respondent No.1 filed an appeal against the same before a Division Bench of the High Court which came to be allowed vide order dated 22.10.1997.

5. The materials on record further reveal that the Respondent No.1 herein filed an application under Order XXI Rule 94 of the Code of Civil Procedure, 1908 (for short, the “CPC”) for the issuance of sale certificate in its capacity as the successful auction purchaser for both the movable and immovable properties. The application came to be disposed of by the Company Judge of the High Court vide order dated 13-4-1999 taking the view that the Respondent No.1 was liable to pay the stamp duty on the immovable properties which had been put to auction which would include land, building and permanently affixed machinery thereto. It further directed that although the immovable properties which were put to auction were to be included in the certificate of transfer, their value would be excluded for the purpose of computation of stamp duty. The High Court directed the Respondent No.1 to file an affidavit to this effect and pay the requisite stamp duty.

6. In pursuance of the order referred to above passed by the High Court, the Respondent No.1 submitted an additional affidavit of the movable assets purchased by the auction purchaser at Rs.54.67 lakhs. However, when the matter was taken up by the Registrar, he took the view that stamp duty had to be paid on Rs. 2.25 crore which was the valuation of the immovable properties as offered in the tender. The Respondent No.1 was, accordingly, directed to pay stamp duty on Rs.2.25 crore for the sale certificate to be issued in its favour.

7. The directions issued by the Registrar were challenged by the Respondent No.1 by way of a Writ Petition for being in derogation of Section 17 (2)(xii) of the Registration Act read with Rule XXI Order 94 of CPC. The Division Bench of the High Court formulated the following question of law for its consideration. “Whether a sale certificate issued in pursuance to a Court’s auction is required to be stamped”

8. In other words, according to the High Court, the controversy revolved around the interplay of the Registration and Stamp Acts, i.e., although a sale certificate is undoubtedly not compulsorily registrable yet is it mandatory for the auction purchaser to deposit the stamp duty for the sale certificate to be issued to it in view of the provisions of the Stamp Act.

9. The Writ Petition came to be allowed by way of the impugned order wherein the High Court took the view that there was no occasion for fixation of stamp duty at the time of issuance of the sale certificate and the Registry of the High Court was only required to issue the sale certificate and send a copy of the same to the Sub-Registrar in accordance with the mandate contained in Section 89(4) of the Registration Act. The High Court further observed that whether the certificate is to be stamped or not would be the responsibility of the successful auction purchaser.

10. The appellant herein also raised an objection before the High Court that as the Respondent No.1 had not challenged the order of the Company Judge dated 13-4-1999, the same had attained finality and the directions of the Registrar being in consonance with the said order, the same could not have been challenged by way of a writ petition. The High Court rejected the said objection and held that

in view of the limited ambit of the controversy, it thought fit to consider them in the writ proceedings.

11. In view of the above, the High Court directed that the original sale certificate be handed over to the Respondent No.1 and a copy of the same be sent to the Sub-Registrar under Section 89(4) of the Registration Act. It further directed that the stamp duty deposited by the Respondent No.1 be refunded within a period of one month.

12. Aggrieved by the aforesaid, the State of Punjab is in appeal before us.

13. The short question that falls for our consideration in this appeal is whether it is mandatory for the successful auction purchaser to deposit the stamp duty for the sale certificate to be issued to it in view of the provisions of the Stamp Act and the Registration Act.

14. This Court in *Municipal Corporation of Delhi v. Pramod Kumar Gupta* reported in AIR 1991 SC 401, after examining the relevant provisions of Order XXI of the Code of Civil Procedure, observed that the title to the property put on auction sale passes under the law when the sale is held. The owners and certain other interested persons are afforded opportunity under the CPC to assail the sale and make a prayer for setting aside the sale on certain enumerated grounds. However, once such objections are disposed of without disturbing the sale, the sale stands confirmed under Order XXI Rule 92 of the CPC. Thereafter, the sale certificate is issued under Order XXI Rule 94. The Court observed that this chronology of events made it clear that the transfer becomes final when an order under Rule 92 of Order XXI is made and the issuance of a sale certificate under Rule 94 is only a formal declaration of the effect of such confirmation. Such issuance of certificate does not create or extinguish any title and thus would not attract any stamp duty which is applicable qua an instrument of sale of immovable property.

15. In *Smt. Shanti Devi L. Singh v. Tax Recovery Officer and Others* reported in AIR 1991 SC 1880, this Court observed that since the certificate of sale is not a compulsorily registrable document in lieu of Section 17(2)(xii) of the Registration Act, the transfer of title in favour of the auction purchaser would not be vitiated on account of non-registration of the sale certificate.

16. In *B. Arvind Kumar v. Govt. Of India and Others* reported in (2007) 5 SCC 745, this Court observed that when a property is sold by public auction in pursuance of an order of the court and the bid is accepted and the sale is confirmed by the court in favour of the purchaser, the sale becomes absolute and the title vests in the purchaser. A sale certificate is issued to the purchaser only when the sale becomes absolute. The sale certificate is merely the evidence of such title. It is well settled that when an auction- purchaser derives title on confirmation of sale in his favour, and a sale certificate is issued evidencing such sale and title, no further deed of transfer from the court is contemplated or required. Although in the said case, the sale certificate was registered yet this Court proceeded to observe that a sale certificate issued by a court or an officer authorized by the court, does not require registration. Section 17(2)(xii) of the Registration Act, 1908 specifically provides that a certificate of sale granted to any purchaser of any property sold by a public auction by a civil or revenue officer does not fall under the category of non-testamentary documents which require

registration under sub-section (b) and (c) of Section 17(1) of the said Act.

17. The position of law is thus settled that a sale certificate issued to the purchaser in pursuance of the confirmation of an auction sale is merely evidence of such title and does not require registration under Section 17(1) of the Registration Act. It is not the issuance of the sale certificate which transfers the title in favour of the auction purchaser. The title is transferred upon successful completion of the sale and its confirmation by the competent authority after all the objections against the sale have been disposed of.

18. Recently, a three-Judge Bench of this Court in *M/s Esjaypee Impex Private Limited v. The Asst. General Manager and Authorized Officer Canara Bank* reported in (2021) 11 SCC 537 observed that the mandate of law that flows from a combined reading of Sections 17(2)

(xii) and 89(4) of the Registration Act respectively is that the auction purchaser is entitled to receive the original sale certificate and a copy of the same is required to be forwarded to the Sub- Registrar for the purpose of filing in Book 1 as per the Registration Act.

19. In *Inspector General of Registration and Another v. G. Madhurambal and Another* reported in 2022 SCC Online SC 2079, a two- Judge Bench of this Court observed that the consistent position of law is that a certificate of sale cannot be regarded as a conveyance subject to stamp duty. The Court further observed that once a direction is issued for the duly validated certificate to be issued to the auction purchaser with a copy forwarded to the registering authorities to be filed in Book I as per Section 89 of the Registration Act, it has the same effect as registration and requirement of any further action is obviated.

20. The position of law discussed above makes it clear that sale certificate issued by the authorised officer is not compulsorily registrable. Mere filing under Section 89(4) of the Registration Act itself is sufficient when a copy of the sale certificate is forwarded by the authorised officer to the registering authority. However, a perusal of Articles 18 and 23 respectively of the first schedule to the Stamp Act respectively makes it clear that when the auction purchaser presents the original sale certificate for registration, it would attract stamp duty in accordance with the said Articles. As long as the sale certificate remains as it is, it is not compulsorily registrable. It is only when the auction purchaser uses the certificate for some other purpose that the requirement of payment of stamp duty, etc. would arise.

21. We also do not find any force in the contention of the appellant that the High Court should not have exercised its writ jurisdiction under Article 226 as Respondent no. 1 had an alternate efficacious remedy of filing an appeal against the order of the Company Judge in pursuance of which directions came to be passed by the Registrar. This Court in *Radha Krishan Industries v. State of H.P.* reported in (2021) 6 SCC 771 observed that an alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law. It was held that when a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular

statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. However, this Court clarified that this rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion and if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

22. In view of the aforesaid, the appeal fails and is hereby dismissed.

23. Pending application(s), if any, shall also stand disposed of.

.....J. (J.B. PARDIWALA)J. (R. MAHADEVAN) NEW DELHI;

19TH NOVEMBER, 2024.

ITEM NO.7

COURT NO.15

SECTION IV-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition for Special Leave to Appeal (C)

No.23347/2014

[Arising out of impugned final judgment and order dated 28-11-2013 in CWP No. 11055/2001 passed by the High Court of Punjab & Haryana at Chandigarh] THE STATE OF PUNJAB & ANR. Petitioner(s) VERSUS M/S FERROUS ALLOY FORGINGS P LTD. Respondent(s) Date : 19-11-2024
This petition was called on for hearing today. CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA HON'BLE MR. JUSTICE R. MAHADEVAN For Petitioner(s) Mr. Karan Sharma, AOR Mr. Abhishek Budhiraja, Adv. For Respondent(s) Mr. Siddharth Batra, AOR Mr. Rhythm Katyal, Adv. Mr. Samar Ahluwalia, Adv. Ms. Archana Yadav, Adv.

Mr. Chinmay Dubey, Adv. Ms. Shivani Chawla, Adv. Mr. Ayushmaan Bhutani, Adv.

UPON hearing the counsel the Court made the following O R D E R

1. Leave granted.
2. The appeal is dismissed, in terms of the signed Reportable order.
3. Pending applications, if any, also stand disposed of.

(VISHAL ANAND)
ASTT. REGISTRAR-cum-PS

(POOJA SHARMA)
COURT MASTER (NSH)

(Signed Reportable Order is placed on the file)