

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE EJAZ AFZAL KHAN.
MR. JUSTICE SARDAR TARIQ MASOOD

CIVIL APPEALS NO. 613 AND 614 OF 2014.

(Against the judgment dated 31.10.2013 in W. P. No. 2545 of 2000 and C. R. No. 566-D of 2000 passed by the Lahore High Court, Rawalpindi Bench, Rawalpindi).

M/s Lagarge Pakistan Cement Company. ...Appellant(s)

Versus

District Collector, Chakwal, District Chakwal, etc. ...Respondent(s)

For the appellant(s): Mr. Waseem Sajjad, Sr. ASC.

For the respondent(s): Mr. Mudassar Khalid Abbasi, AAG, Pb.
With Syed Naveed Alam, AC. Kalar Kahar.

Date of hearing: 26.04.2016. (Judgment Reserved)

J U D G M E N T

EJAZ AFZAL KHAN, J.- These appeals with the leave of the Court have arisen out of the judgment dated 13.11.2013 whereby Writ Petition No. 2645 of 2000 and C. R. No. 566-D of 2000 were dismissed.

2. Facts of the case in brief are that appellant obtained a loan of two billion Japanese Yen which at the relevant time was equal to Rs.64,52,72000/-. To secure the loan obtained the appellant hypothecated the machinery etc. and mortgaged the land mentioned in the mortgage-deed. On 09.05.1998 respondent No. 1 issued a notice to the appellant stating therein that stamp-duty in the sum of Rs.4,49,31,530/- has been evaded in the registration of mortgage- deed, therefore, it is liable to pay ten times penalty along with the actual stamp-duty which shot up to Rs.49,42,46,830/-. The appellant challenged the notice by filing a writ petition which was disposed of with the direction to respondent No. 1 to decide the

matter afresh after hearing the appellant. The respondent after hearing the appellant maintained the order passed earlier. The appellant to assail the order of District Collector filed Writ Petition No. 2645 of 2000. In the meantime, when a decree passed by the Civil Court was set aside by the Court of appeal the appellant also filed a C. R. No. 566-D of 2000. The writ petition as well as civil revision was dismissed by the High Court. The appellant filed petitions for leave to appeal before this Court which were granted by holding as under:-

“Making reference to the registered mortgage deed dated 29.5.1996 and the leviable duty thereon in terms of Article 40 of the Stamp Act 1899, learned Sr. ASC for the petitioners contends that the payment of stamp-duty and registration fee on the mortgage deed was made strictly in accordance with law, but due to erroneous interpretation of relevant provision of the Stamp Act, 1899, (as applicable in the year 1996), the Collector had illegally calculated further liability of Rs.4,49,31,530/- against the petitioner with additional sum equal to five times of the purported payable duty as penalty, without taking into consideration the fact that the question of payment of penalty was not at all involved in the present case as there was no concealment or misstatement of facts from the side of the petitioner at the time of execution and registration of mortgage deed dated 29.5.1996. He further adds that since possession of mortgage property was not given to the mortgagee, as evident from its contents, the leviable stamp-duty in terms of Article 40 of the Stamp Act was as on a Bond (Article No: 15) for the amount secured by such bond and not as payable (article No:23) on a conveyance deed.

2. Contention raised need consideration. Leave to appeal is accordingly granted in these two connected petitions. The appeal paper books may be prepared on the basis of available record within two months. Additional documents, if any, within one month. Since government revenue is involved in these cases office is directed to fix the appeals arising out of these petitions for hearing within six

months. In the meantime, the interim order dated 9.1.2014 shall continue to remain in force."

3. Learned ASC appearing on behalf of the appellant contended that when possession of the property or any part thereof comprised in such deed is not given or agreed to be given by the mortgagor, the case of the appellant would be covered by Article 40(b) and not 40(a) of the First Schedule of the Stamp Act, 1899, therefore, the amount of stamp-duty shall be charged as on a bond covered by Article 15. Learned Sr. ASC next contended that Collector under Section 48 of the Stamp Act could have recovered the duties, penalties and other sums required to be paid, under Chapter IV of the Stamp Act if the instrument had been produced in evidence and impounded on account of being deficiently stamped in view of the provisions contained in Sections 33 and 38 of the Stamp Act. But where, he added, it was neither produced nor impounded, the Collector could not recover duties, penalties or other sums as is evident from the language used in Section 48 of the Act. To support his contention, learned Sr. ASC placed reliance on the cases of **Hanuman Prasad. Vs. The State of Rajasthan** (AIR 1958 Rajasthan 291), **Thakar Das and others. Vs. The Crown** (AIR 1932 Lahore 495), **Dairy Farm. Vs. Emperor** (AIR 1942 Lahore 257), **Chandahasji Maharaj. Vs. Chief Controlling Revenue Authority** (AIR 1986 Madhya Pradesh 132), **Lala Uttam Chand. Vs. Perman Nand and others** (AIR 1942 Lahore 265), **Abdur Rehman. Vs. Raabia Bibi** (PLD 1984 Lahore 407), **Imtiaz Rafi Butt. Vs. The Lahore Development Authority** (PLD 1996 Lahore 663). The learned Sr. ASC lastly argued that where there is nothing on the record to show that the appellant willfully under-stamped the deed to evade the payment of the

proper stamp-duty, it cannot be subjected to any penalty. Learned ASC to support his contention placed reliance on the cases of **Smt. Kamla Devi. Vs. The Chief Controlling Revenue Authority, Delhii (AIR 1966 Punjab 293)** and **Messrs Humayun Ltd. Vs. Pakistan and others (PLD 1991 SC 963)**.

4. The learned Assistant Advocate General, Punjab appearing on behalf of the respondent contended that where the mortgagor covenanted in the mortgage-deed that in the event of default on its part in payment of the mortgage money or part thereof, in accordance with the provisions of the agreement, the lender shall have the right to sell without intervention of the Court, title as well as possession of the property has been transferred to the mortgagee, therefore, the case would fall within the purview of the Article 40(a) of the First Schedule of the Stamp Act. The learned AAG next contended that the words *“or comes in the performance of his functions”* used in Section 33 of the Stamp Act are wide enough to cover the situation emerging in this case, and that the view taken by the learned Single Judge of the High Court being in conformity with the provisions of the Act is not open to any exception.

5. We have gone through the record carefully and considered the submissions of the learned Sr. ASC for the appellant as well as the learned AAG for the respondent.

6. Before we appreciate the arguments addressed at the bar it is worthwhile to refer to the relevant Articles 15 and 40 of the First Schedule of the Stamp Act which run as under :-

“

Sr. No.	Description of Instrument	Proper Stamp-duty
15.	Bond as defined by section 2(5) not being a DEBENTURE (No. 27) and not being otherwise	Fifteen rupees.

	<i>provided for by this Act, or by the Court Fees Act, 1870—</i>	
(i)	<i>where the amount or value secured does not exceed five hundred rupees</i>	<i>Fifteen rupees.</i>
(ii)	<i>where it exceeds five hundred rupees, for every additional amount of five hundred rupees or part thereof.</i> <i>See ADMINISTRATION BOND (No. 2).</i> <i>BOTTOMERY BOND (No. 16)</i> <i>CUSTOMS BOND (No. 26)</i> <i>INDEMNITY BOND (No. 34)</i> <i>RESPONDENTIA BOND (No.56),</i> <i>SECURITY BOND (No. 57),</i> <i>Exemption</i> <i>Bond when executed by any person for the purpose of guaranteeing that the local income derived from private subscription to a Charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem.</i>	<i>Fifteen rupees.</i>

AND

Sr. No.	Description of Instrument	Proper Stamp-duty
40.	MORTGAGE DEED not being an AGREEMENT RELATING TO DEPOSIT OF TITLE-DEEDS, PAWN OR PLEDGE (No. 6), BOTTOMERY BOND (No. 16) MORTGAGE OF A CROP (No. 41) RESPONDENTIA BOND (No. 56), OR SECURITY BOND (No. 57).	
(a)	When possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given;	The same duty as on a Conveyance(N o. 23) for a consideration equal to the amount secured by such deed.
(b)	When a possession is not given or agreed to be given as aforesaid;	The same duty as on a Bond (No. 15) for the amount secured by such deed.

“

7. A glance at the table would reveal that where possession is not given or agreed to be given, the stamp-duty shall be charged on the amount secured by such deed as is provided by Article 15 of the First Schedule of Stamp Act. The question thus arises whether possession in this case has been given to the mortgagee.

The answer to the question is an emphatic no as the words used in Clause 4(vii) of the agreement that “the mortgagor shall not without the prior written consent of the lender part with possession of the mortgage property” unmistakably show that possession has not been given to the lender. The argument of the learned AAG addressed on the strength of Clause 3 of the agreement is misconceived as the lender’s right to sell the mortgage property without intervention of the Court would accrue only, if the mortgagor defaults in payment of mortgage money and not otherwise. It, therefore, follows that the case of the appellant is covered by Article 15 and not Article 40(a) of the First Schedule of the Stamp Act. It thus has to be charged accordingly.

8. The other question emerging for the consideration of this Court is as to when the Collector can recover duties, penalties and other sums required to be paid, under Chapter IV of the Stamp Act. Sections 33, 38 and 48 of the Act provide the answer which read as under :-

“33. Examination and impounding of instruments: (1) Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

(2) For this purpose every such person shall examine every instrument so chargeable and so produced or coming before him in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in Pakistan when such instrument was executed or first executed:

Provided that –

(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII of Chapter XXXVI of the Code of Criminal Procedure, 1898;

(b) in the case of a Judge of a High Court the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

(3) For the purposes of this section, in cases of doubt, --

(a) the Provincial Government may determine what offices shall be deemed to be public offices; and

(b) the Provincial Government may determine who shall be deemed to be persons incharge of public offices.

38. Instruments impounded how dealt with: (1) When the person impounding an instrument under Section 33 has by law or consent of parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by Section 35 or of duty as provided by Section 37, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the collector, or to such person as may appoint in this behalf.

(2) In every other case, the person so impounding an instrument shall send it in original to the collector.

48. Recovery of duties and penalties: All duties, penalties and other sums required to be paid under this chapter may be recovered by the Collector by distress and sale of the movable property of the person from whom the same are

instrument in question came before the Collector not once but thrice in the performance of his functions after its registration. The last argument of the learned Sr. ASC for the appellant that where there is nothing on the record to show that the appellant willfully under-stamped the deed to evade the payment of the proper stamp-duty it cannot be subjected to any penalty, does not deserve unqualified acceptance when provisions contained in Articles 40 and 15 of the First Schedule of the Act being clear and unambiguous do not admit of more than one interpretation. The judgments rendered in the cases of Smt. Kamla Devi. Vs. The Chief Controlling Revenue Authority, Delhi and Messrs Humayun Ltd. Vs. Pakistan and others (supra) are not applicable when the appellant through the civil suit and the writ petitions tried to justify what was unjustifiable. However, in the circumstances of the case, we hold that five times penalty is too harsh and that two times penalty of the deficient portion of the duty would be sufficient to meet the ends of justice.

10. The short and long of what has been discussed above, Civil Appeal No. 613 of 2014 is partially allowed and the impugned judgment is modified to the extent hinted to above while Civil Appeal No. 614 of 2014 is dismissed.

JUDGE

JUDGE

Announced in open Court at Islamabad on 05.05.2016.

JUDGE

‘Not Approved For Reporting’
M. Azhar Malik