

# Sumesh Prahladbhai Bakshi vs State Of Gujarat & 2 on 4 July, 2016

**Author: A.J.Desai**

**Bench: A.J.Desai**

C/SCA/15388/2013

JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 15388 of 2013

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE A.J.DESAI

sd/-

- =====
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
  - 2 To be referred to the Reporter or not ?
  - 3 Whether their Lordships wish to see the fair copy of the judgment ?
  - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?

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SUMESH PRAHLADBHAI BAKSHI....Petitioner(s)  
Versus  
STATE OF GUJARAT & 2....Respondent(s)

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Appearance:

MS PAURAMIB SHETH, ADVOCATE for the Petitioner(s) No. 1  
MR KM ANTANI, LD.ASSTT.GOVERNMENT PLEADER for the Respondents.  
RULE SERVED for the Respondent(s) No. 2 - 3

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CORAM: HONOURABLE MR.JUSTICE A.J.DESAI

Date : 04/07/2016

ORAL JUDGMENT

1. By way of the present petition under Articles 14, 21, 226 and 227 of the Constitution of India, the petitioner has prayed as under:

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(B) Pending admission, hearing and final disposal of this petition, stay implementation and execution of the orders dated 06.07.2013 and 04.05.2011 passed by Respondent Nos.2 & 3 respectively as well as consequential Notices issued by office of respondent No.3 office dated 04.06.2011;

(C) Grant such other and further reliefs as this Hon'ble Court deems fit, just and proper in the interest of justice;

(D) Allow this petition with cost."

2. Pursuant to the Notice issued by this Court, respondents have appeared through learned Assistant HC-NIC Page 2 of 7 Created On Sat Jul 09 00:35:45 IST 2016 C/SCA/15388/2013 JUDGMENT Government Pleader Mr.K.M.Antani and has filed Affidavit-in- Reply opposing to grant any relief, as prayed for, by the petitioner.

3. The facts, emerge from the case, are as under:

The petitioner, who was carrying on business, wanted to expand the same and, therefore, approached to Baroda City Co-operative Bank Limited (hereinafter referred to as "the Bank"), to avail the loan. The said Bank sanctioned the loan to the tune of Rs.15,00,000/- in the year 2001, on condition that the petitioner shall deposit the title deeds of the properties belongs to the petitioner, for the purpose of security or repayment of loan sanctioned to it. Accordingly, the petitioner deposited necessary documents with regard to title deeds of the properties belongs to the petitioner, however, possession of the said property was not handed over to the petitioner and, accordingly, created equitable mortgage in favour of the bank vide agreement dated 12/11/2001. The stamp duty to the tune of Rs.7,500/- was paid by the petitioner as per Article 6(1)(a)(ii) of Schedule-I under the Bombay Stamp Act, for the loan amount of Rs.15,00,000/-. The said equitable mortgage was registered with the office of Sub- registrar, Vadodara-2, Danteshwar on 12/11/2001 itself.

The petitioner was served with the Notice from the office of Deputy Collector, Stamp Duty Valuation Organization, Vadodara, on 12/06/2007 that the document executed by the petitioner in favour of the bank has not been properly stamped and the petitioner was asked to pay an amount of Rs.48,750/- since the case would fall under Article 36 of Scheduled-I of the Bombay Stamp Act. The petitioner did appear before the authority, however, the submissions made HC-NIC Page 3 of 7 Created On Sat Jul 09 00:35:45 IST 2016 C/SCA/15388/2013 JUDGMENT by the petitioner were not accepted and vide order dated 04/05/2011, it was held that the petitioner was required to pay an amount of Rs.48,750/- towards deficit stamp duty. The said decision was challenged by the petitioner by way of filing an appeal before respondent No.2 being Appeal No.56 of 2012. After hearing the respective parties, the appeal was dismissed vide order dated 06/07/2013. Hence, this petition.

4. Ms.Paurami Sheth, learned advocate appearing for the petitioner would submit that the petitioner had entered into equitable mortgage and had submitted only title deeds of the property and no possession was handed over to the Bank. The petitioner did produce a Certificate from the Bank, who had advanced loan, stating that possession of the property was not handed over to the Bank and only title deeds were handed over to the Bank and, therefore, the case would fall under Article 6 of Schedule I of the Bombay Stamp Act.

She would submit that Article 6 deals with payment of stamp duty in case of conveyance made for agreement or memorandum for deposit, etc. and would not fall under Article 36 of Schedule I, as held by the authority below.

She would submit that Article 36 of Schedule I would be applicable to those mortgage, where there is no agreement for deposit of title deeds and, therefore, the case would fall under Article 6 of Schedule I only. She would submit that the orders passed by both the authorities below are illegal and are required to be quashed and set aside.

5. Mr.K.M.Antani, learned Assistant Government Pleader has opposed this petition and requested to dismiss the same.

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6. Heard learned advocates appearing

respective parties. As far as present case is concerned, it appears that only title deeds were deposited with the bank against the loan availed by the petitioner under Article 6 of Schedule I of the Bombay

Stamp Act. Article 6 and 36 of Scheduled I of the Bombay Stamp Act, read as under:

Description of Instrument Proper Stamp-duty HC-NIC Page 5 of 7 Created On Sat Jul 09 00:35:45 IST 2016 C/SCA/15388/2013 JUDGMENT

6. AGREEMENT OR MEMORANDUM OF AGREEMENT RELATING TO DEPOSIT OF TITLE DEEDS, PAWN OR PLEDGE, that is to say any instrument evidencing an agreement or memorandum of agreement relating to-

(1) the deposit of title deeds or instruments constituting or being evidence or the title to any property whatever (other than a marketable security), or (2) the pawn or pledge of movable property, where such deposit, pawn or pledge has been made by way of security for the repayment of money advanced or to be advanced by way of loan or an existing of future debt-

(a) if such loan or debt is repayable on demand or more than three months from the date of the instrument evidencing the agreement, -

(i) where the amount of loan or debt does not Rs.100/-

exceed Rs.10,000

(ii) where it exceeds Rs.10,000 but does not Rs.200/-

exceed Rs.50,000

(iii) where it exceeds Rs.50,000 but does not Rs.500/-

exceed Rs.1,00,000

(iv) where it exceeds Rs.1,00,000 but does not Rs.1,000/-

exceed Rs.5,00,000

(v) where it exceeds Rs.5,00,000 but does not Rs.1,500/-

exceed Rs.10,00,000

(vi) where it exceeds Rs.10,00,000 but does not Rs.2,000/-

exceed Rs.15,00,000

(vii) where it exceeds Rs.15,00,000 but does not Rs.5,000/-

exceed Rs.30,00,000

(viii) where it exceeds Rs.30,00,000 Rs.10,000/-

(b) if such loan or debt is repayable not more than Half the duty payable three months from the date of such instrument under sub-clause (a).

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36. MORTGAGE DEED, not being an Agreement relating to Deposit of Title Deeds, Pawn or Pledge (No.6), Bottomry Bond (No.15) Mortgage of a Crop (No.37), Respondentia Bond (No.50) or Security Bond (No.51),-

(a) When possession of the property or any part of the property comprised in such deed is or is not given, or is agreed to be given, by the mortgagor;

The same duty as is leviable on a conveyance under Article 20 for the a secured by such deed

(b) When a collateral or auxilliary or additional or Five rupees for every substituted security, or by way of further sum of Rs.1000 secured assurance for the above mentioned purpose or part thereof. where the principal or primary security is duly stamped.

7. Considering the above provisions and considering the fact that only title deeds were submitted, the case would fall under Article 6 of Schedule-I of Bombay Stamp Act and not under Article 36 as held by the authorities below. Hence, this petition is allowed. The order dated 06.07.2013 and 04.05.2011 passed by respondent Nos.2 & 3 respectively are hereby quashed and set aside. Even otherwise, mortgage by deposit of title deed is legal transaction as per section 58(a) of the Transfer of Property Act,1882. The authority shall refund the amount, which was deposited by the petitioner at the time of filing of the appeal before respondent No.2, within a period of four weeks from the date of receipt of copy of this order. Rule is made absolute to the aforesaid extent.

Direct service is permitted.

sd/-

[A.J.DESAI,J.] \*dipti HC-NIC Page 7 of 7 Created On Sat Jul 09 00:35:45 IST 2016