

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE SRI JUSTICE N.TUKARAMJI

Writ Appeal No.414 of 2023

JUDGMENT: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Mr. Avinash Desai, learned Senior Counsel for the appellant and Ms. A Chandana, learned Government Pleader for Stamps and Registration representing respondent Nos.1 to 4.

2. This appeal is directed against the order dated 09.03.2023 passed by the learned Single Judge in I.A.No.1 of 2023 in W.P.No.6033 of 2023, rejecting the interlocutory application filed by the appellant as the writ petitioner for interim relief.

3. Before we advert to the order of the learned Single Judge dated 09.03.2023, we may mention that the borrower *i.e.*, the corporate debtor- M/s. Priyadarshini Spinning Mills Limited had defaulted in repayment of dues to the corporate creditor whereafter the corporate creditor instituted Corporate Insolvency Resolution Process (CIRP) before the National Company Law Tribunal (NCLT) under the Insolvency and Bankruptcy Code,

2016 (briefly 'IBC' hereinafter) for liquidation of fixed assets, which were mortgaged by the corporate debtor with the corporate creditor while availing the financial assistance.

4. By the order dated 03.09.2019, NCLT initiated CIRP proceedings against the corporate debtor whereafter respondent No. 5 was appointed as liquidator *vide* the order dated 26.04.2021. Liquidator issued e-auction sale notice on 11.08.2021 for auctioning the fixed assets of the corporate debtor. In the e-auction which took place pursuant to such notice, appellant had participated and emerged as the highest bidder. This was communicated by the liquidator to the appellant *vide* the letter dated 27.08.2021. Following the same, appellant deposited the entire bid amount of Rs.49,92,08,000.00. Thereafter, liquidator issued a certificate of sale dated 25.10.2021 in favour of the appellant under Section 35(1)(f) of IBC r/w Regulations 32 and 33 of Insolvency Bankruptcy (Liquidation Process) Regulations, 2016 and handed over the auctioned property to the appellant. In other words, appellant was put in possession of the auctioned property.

5. Thereafter, liquidator issued a letter to the Sub-Registrar/respondent No. 4 on 16.02.2023 to record and file the certificate of sale dated 25.10.2021 in book No.1 available in the office of respondent No. 4 as the appellant was the successful e-auction purchaser of the auctioned property. However, by the letter dated 25.02.2023, respondent No. 4 declined to do the needful on the ground that there is no practice of filing certificate of sale of this nature in his office and also on the ground that such filing would attract stamp duty at par with sale under Article 47-A of the Indian Stamp Act, 1899. This intimation came to be challenged before the learned Single Judge in W.P.No.6033 of 2021 wherein I.A.No.1 of 2023 was filed seeking an interim direction to respondent No. 4 to record and file the copy of certificate of sale dated 25.10.2021 in book No.1 maintained in his office.

6. Learned Single Judge declined to grant the interim relief sought for and dismissed the interlocutory application. However, liberty was granted to the appellant to pay the requisite stamp duty

and approach respondent No.4 thereafter. Relevant portion of the order of the learned Single Judge dated 09.03.2023 passed in I.A.No.1 of 2023 in W.P.No.6033 of 2023 reads as under:

There is no dispute that a sale certificate is required to be taken on record by the registering authorities in terms of Section 89 of the Act, 1908 and the law laid down by the Hon'ble Apex Court to that extent is also a settled legal position. If that is only reason assigned by the fourth respondent while issuing the impugned letter, this Court would have passed appropriate interim orders in the matter. But, in the instant case, the fourth respondent also expressed his view that the sale certificate, which is sought to be placed on record is to be treated as conveyance under Section 47 of the Act, 1899 and stamp duty need to be paid. Admittedly, no stamp duty is paid in respect of sale certificate in question. No doubt, under Section 89 of the Act, 1908, the fourth respondent is duty bound to take up the sale certificate on record. Whether the sale certificate forwarded by the Official Liquidator will fall within the purview of Section 89 of the Act, 1908, or not is a matter to be considered by this Court at the time of final hearing. None of the judgments relied upon by the learned Senior Counsel dealt with the aspect of deficit stamp duty or non-payment of stamp duty on the sale certificates under Section 89 of the Act, 1908. The request of the fifth respondent to record the sale certificate dated 25.10.2021 under Section 89 of the Registration Act, 1908 ("the Act, 1908" for brevity) was negatived by the fourth respondent through the impugned letter

dated 25.02.2023. Besides the reason that there is no practice of filing certificate of sales of this nature in his office, the fourth respondent also informed the fifth respondent that the same would attract stamp duty on par with sale under Article 47A of the Indian Stamp Act, 1899 ("the Act, 1899" for brevity).

On being queried by this Court, learned Senior Counsel for the petitioner fairly submitted that none of the judgments relied upon by him deal with the aspect of stamp duty and also the effect of Section 33 of the Act, 1899.

Section 33 of the Act, 1899 requires the registering authorities to collect the stamp duty as and when such documents are brought to their notice. Here is a case where a sale certificate, which has the effect of conveying title in favour of the certificate holder over an immovable property is brought to the notice of the fourth respondent by way of sending the same to him to place the same on record under Section 89 of the Act, 1908. The fourth respondent, having received the same found that the same need to be stamped as a conveyance deed under Section 47 of the Act, 1899, thus discharged his obligation under Section 33 of the Act, 1899.

Therefore, this Court is not inclined to grant the interim relief as sought for in this interlocutory application, as the same would amount to granting the main relief in the Writ Petition and also for the reason that the issue as to whether the stamp duty is liable to be paid on the sale certificate in question or not is a serious matter dealing with revenue of the Government, is required to be

considered by this Court after the counter affidavit is filed by the respondents.

The submission of the learned Senior Counsel for the petitioner that the impugned sale certificate in question can be taken on record without insisting for payment of stamp duty subject to the result of the Writ Petition also does not require consideration, as this Court *prima facie* felt that the fourth respondent rightly discharged his obligation under Section 33 of the Act, 1899.

In the light of the above, this application is dismissed.

However, in case if the petitioner so desires, he is at liberty to pay the requisite stamp duty treating the same as conveyance and approach the fourth respondent for taking the same on record under Section 89 of the Act, 1899. In case, if the petitioner deposits the stamp duty that is payable as above and approaches the fourth respondent, the fourth respondent shall take the same on record under Section 89 of the Act, 1899 and comply with the other formalities.

7. Section 89 of the Registration Act, 1908 (briefly 'the Registration Act' hereinafter) deals with copies of certain orders, certificates and instruments to be sent to registering officers and filed. As per sub-section (4) thereof, every revenue officer granting a certificate of sale to the purchaser of immovable property sold by public auction shall send a copy of the certificate to the registering officer within the local limits of whose

jurisdiction, the whole or any part of the immovable property comprised in the certificate is situated and such officer shall file the copy in his book No.1 or get it scanned.

8. The above provision was analyzed by a learned Single Judge of the Madras High Court in **Shree Vijayalakshmi Charitable Trust v. Sub-Registrar**¹. In that case also, sale certificate was sent by the official liquidator of the court to the office of the Sub-Registrar to file the same in book No.1 as per Section 89 of the Registration Act. However, the Sub-Registrar took the view that stamp duty was not paid and accordingly demanded deficit stamp duty to be paid. After examining the provisions of Section 51 of the Registration Act which deals with the books to be kept in registration offices and various other provisions, it has been held that when an instrument is not submitted for registration and is being sent to the Registrar only for the purpose of filing in book No.1, it does not attract any stamp duty; for

¹ 2009 (5) CTC 15

registration, stamp duty is must whereas for filing, no stamp duty is necessary.

9. Learned Government Pleader has placed before us a copy of the order dated 11.11.2022 passed by the Supreme Court in **Inspector General of Registration. v. Madhurambal**² wherein assailing a similar order, special leave petition was filed before the Supreme Court. While dismissing the special leave petition, Supreme Court has held that law on this point is well settled that a sale certificate is not an instrument of the kind mentioned in clause (b) of Section 17 of the Registration Act; the authorized officer of the bank under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (briefly ‘SARFAESI Act’ hereinafter) should hand over the duly validated sale certificate to the auction purchaser with a copy forwarded to the registering authority to be filed in book No.1 as per Section 89 of the Registration Act. Supreme Court has further opined 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 authority to be filed in book

² 2022 Live Law (SC) 969

No.1 as per Section 89 of the Registration Act, it has the same effect as registration and obviates the requirement of any further action. Supreme Court has observed that the authorities should stop filing unnecessary special leave petitions on this issue.

10. In view of above, we are of the opinion that the interim relief sought for by the appellant is required to be considered. We accordingly direct, as an interim measure, that respondent No.4 shall file the sale certificate dated 25.10.2021 in book No.1 maintained in his office, which shall be subject to outcome of the writ petition.

11. This disposes of the writ appeal. No costs.

As a sequel, miscellaneous petitions, pending if any, stand closed.

UJJAL BHUYAN, CJ

N.TUKARAMJI, J

Date: 04.04.2023
BW/LUR