(1985) 04 KL CK 0023

In the High Court Of Kerala

Case No : C.M. Reference No. 20 of 1983

Board of Revenue, Kerala — APPELLANT

Vs

Hindustan Construction Co., Bombay — RESPONDENT

Date of Decision : 12-04-1985

Acts Referred:
Kerala Stamp Act, 1959 — Article 37, 6(2)

Citation : AIR 1985 Ker 286

Hon'ble Judges : K. Bhaskaran, C.J;V. Sivaraman Nair, J;P.C. Balakrishna Menon, J

Bench : Full Bench

Advocate : Govt. Pleader and K.A. Nayar, for the Appellant; Menon and Pai, for the Respondent

Judgement

Balakrishna Menon, J.—This reference by ''the Board of Revenue u/s 55(1) of the Kerala Stamp Act (the Act for short) is for decision on the question of the proper stamp duty payable on a document produced by the Hindustan Construction Company Limited (hereinafter referred to as the Company) before the District Collector, Idukki for determination of stamp duty u/s 31 of the Act. The Deputy Collector (General) Idukki who is vested with the powers of the Collector under the Act, referred the case to the Board of Revenue u/s 54(2) of the Act expressing his opinion that the document is chargeable to stamp duly under Article 6(2) of the Sch. of the Act. The Board took the view that the document in question is a mortgage deed liable to stamp duty under Article 37(b) of the Schedule of the Act, and declined the Company''s prayer to refer the case for decision by this Court. In O.P. No. 1393 of 1980 filed by the Company, a learned Judge of this Court by judgment dt. 21-1-1983 directed the Board to refer the case to this Court u/s 55(1) of the Act. The Board has accordingly referred the case for decision by this Court.

2. The document in respect of which an adjudication of the stamp duty payable is sought for by the Company is produced as Ext. P3. Ext. P3 refers to an

agreement that the Company had entered into with the K.S.E. Board for the construction of a dam at Edamalayar, as per the terms of which the Company is entitled to advance payment against cost of equipments, tools and plant brought to site for use in connection with the work.

3. The document Ext. P3 purports to hypothecate the tools and equipments mentioned in the schedule valued at Rs. 11 lakhs to the K.S.E. Board, as security for the advance of Rs. 7,97,500.00 to be paid to the Company.

Clauses 1 to 4 of the document are extracted below :

"1. The Contractor hereby hypothecates to the Board the equipment referred to in the schedule hereby annexed costing a total of Rs. 11,00,000/- (Rupees eleven lakhs only) as detailed in the schedule against an advance of Rs. 7,97,500/- (Rs. seven lakhs ninetyseven thousand five hundred only) to be paid.

2. The Contractor hereby agrees that the entire principal be recovered on pro rata basis as provided for in Clause K. I. 64(d) of Annexure to said agreement from intermediate bills and other bills and that he shall pay interest on outstanding advance at 15% (simple interest) as provided for in the said agreement.

3. The Contractor hereby agrees not to create any encumbrances whatsoever on the properties hereby hypothecated.

4. The Contractor hereby agrees to treat the equipment as in the legal possession of the Board and not to remove them from the work site without specific permission granted by the Board."

Article 37 of the Schedule to the Stamp Act relates to :

"Mortgage deed, not being an agreement relating to deposit of title deeds, pawn or pledge (No. 6), Bottomry Bond (No. 14), mortgage of a crop (No. 38). Respondentia Bond (No. 49) or Security Bond (No. 50)."

The relevant portion of Article 6 is extracted below :

"6. Agreement relating to deposit of title deeds, pawn or pledge, that is to say any instrument evidencing any agreement relating to --

(1) xx xx xx (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 or future debt."

4. The only question for decision is as to whether the document Ext. P3 is chargeable to stamp duty under Article 37 as a deed of mortgage or whether it is chargeable at a lesser rate as an agreement relating to a pawn or pledge, within the meaning of Article 6 of the schedule of the Act. The relevant clauses in the document extracted above would show that the legal possession of the plant, equipments; and tools described in the schedule is handed over to the K.S.E. Board by way of security for the advance paid in pursuance of the agreement

between the parties. The advance is by way of a loan for the execution of the work that the Company had undertaken as per the agreement between the parties and the repayment of the loan is ensured on adjustment from out of the intermediate bills to be presented by the Company during the course of the execution of the work. The transaction between the parties can only be treated as a pawn or pledge of movable property by way of security for the repayment of the money advanced. There is no mortgage for the purpose of securing a loan and the document cannot be construed as a deed of mortgage chargeable to stamp duty under Article 37 of the Sch. of the Act.

5. Section 172 of the Contract Act defines pledge, pawnor, and pawnee as follows :

"The bailment of goods as security for payment of a debt or performance of a promise is called "pledge". The bailor is in this case called the "pawnor". The bailee is called the "pawnee".

6. A similar document as per the terms of which cash credit advances were to be made by a bank was construed by a Division Bench of the Allahabad High Court as a document of pledge in Sri Harish Chandra and Others Vs. Punjab National Bank Ltd., . It is stated at page 865 : --

"We find that in this particular case, the goods themselves have been handed over to the Bank in whose favour the document has been executed by way of security. Therefore, under this document the goods in respect of which the document was executed became pledged within the definition of ''pledge'' in Section 172 of the Contract Act, for the possession, as we have pointed out, in respect of it was effectively handed over to the Bank."

In Miran Bakhsh v. Emperor AIR 1945 Lah 69 (SB), it is stated at page 73 :-

"According to Section 172, Contract Act, the bailment of goods as security for payment of a debt or performance of a promise is called ''"pledge" the bailor is called the "pawnor" and the bailee is called the "pawnee". It however appears to me that so far as the Stamp Act is concerned the terms are used in a much wider sense, as in Common law, and cover contracts whereby all kinds of chattels and choses in action are made security for payment of a debt. There can, however, be no doubt that no contract will amount to a contract of pawn unless possession either actual or constructive is delivered to the pawnee."

7. The relevant provisions in Ext. P3 extracted in this judgment would clearly show that the transaction evidenced by the document is one falling under Article 6(2), and the document is not a mortgage deed falling within Article 37 of the Sch. of the Stamp Act.

The reference is answered accordingly.

