(2025) 04 OHC CK 1355

In the Orissa High Court

Case No : Writ Petition (C) No. 8711 Of 2024

KTI Logistics and Services Pvt. Ltd., Cuttack APPELLANT

Vs

State Of Odisha And Others Vs RESPONDENT

Date of Decision : 22-04-2025

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Transfer of Property Act, 1882 — Section 105

Citation : (2025) 04 OHC CK 1355

Hon'ble Judges : G. Satapathy, J

Bench : Single Bench

Advocate : D. Mohapatra, S.K. Rout

Final Decision : Allowed

Judgement

G. Satapathy, J

1. The petitioner by way of this writ petition has invoked the extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India praying to set aside the orders dated 29.11.2022, 21. 12.2022,12.01.2023 and 05.04.2023 under Annexure-1 series by which the claim of the Petitioner for refund of the stamp duty and registration charges on security amount paid to execute the lease under Annexure-3 has been turned down.

2. The short facts as involved in this writ petition are, the writ Petitioner is a Company registered under the Companies Act, 1956 and the scheduled property comprising of Plot Nos. 30 & 31 of Khata No. 5 of Mouza-Chhatisha No.2 and Plot No. 114/1316 of Khata No. 186(AJA) of Mouza-Indranipatna, total area measuring Ac. 56.430 decimal was originally leased out by IDCO to M/s. Purvi Bharat Paper and Power Ltd. who surrendered the leased property in the year 2019 and thereafter, the scheduled property was again leased out to the Petitioner Company for 90 years on 26.07.2019 for establishing an industry, however, the Petitioner company sub leased the scheduled property to M/s.

InstaKart Services Pvt. Ltd(OP No.7) for 9 years w.e.f 01.12.2020 for a consideration of monthly rent of Rs.26,85,366/- which shall be payable on 10th of every month, in addition to a sum of Rs. 1,61,12,196/-(Rupees One Crore Sixty One Lakhs Twelve Thousand One Hundred Ninety Six) towards security deposit for the performance of obligation of sub-lease for the purpose of doing warehousing business. Accordingly, a deed of sub-lease drawn up on a non-judicial e-stamp paper with user charges of Rs.550/- containing the covenants, conditions and agreement was presented for registration before the Sub-Registrar, Jagatpur, Cuttack(OPNo.5) who according to the Petitioner erroneously included the security deposit in the consideration amount while calculating for payment of stamp duty and registration charges which eventually led the parties to pay the excess stamp duties inadvertently. According to the Petitioner, since the security deposit which is advanced by OP No.7 for the purpose of performance of sub-lease and the same being refundable at the time of determination of sub-lease, subject to adjustment of liability arising out of sub-lease, no stamp duty is leviable on it and, therefore, the Petitioner is entitled to refund of the excess stamp duty levied on the security deposit, but the authority concerned has refused to refund the excess stamp duty levied on the security deposit by rejecting the representations of the Petitioner. On the aforesaid averments, the Petitioners has filed this writ petition.

2.1. In response to the the notice of the writ petition, OP Nos. 3 to 6 filed their joint counter affidavits stating interalia the following:-

"the security deposit is one kind of money advance which may fully or in part be utilized in case of contingencies or be returned to the lessee on successful and litigation free completion of term of the lease"

On the above averments, it is contended by OP Nos.3 to 6 in their counter affidavits that the Sub-Registrar, Jagatpur, Cuttack has not committed any mistake in calculating the stamp duty and registration fees on the security deposit like all other lease deeds registered in Odisha following the provision of Article 35(c) Schedule-1A (Stamp Duty on instrument) (according to the Orissa Amendment by O.A. No.01/2003).

3. In the course of hearing of the writ petition, Mr. Dayanand Mohapatra, learned counsel for the petitioner has submitted that the security deposit being mainly for the purpose of performance of the sub-lease and the same being refundable in two situations; firstly, after expiry of the lease period and secondly, when the lease deed is terminated prematurely, and, therefore, the security deposit being not a consideration amount, no stamp duty is leviable on such security deposit amount. It is further submitted by Mr. Mohapatra that according to Section 105 of the Transfer of Property Act, 1882(In short "the Act"), the consideration of lease is two folds; one is 'premium' and second is 'rent' and there is no third type of consideration in lease and, therefore, the security deposit is not chargeable and it is refundable which is an admitted fact in terms of counter affidavit and thereby, the excess stamp duty charged from the Petitioner should have been

refunded back on his representation, but the authority concerned erroneously interpreting the provision governing levy of stamp duty has refused to refund the same giving rise to cause of action for writ petitioner to file this writ petition and, therefore, OP No. 3 to 6 may kindly be directed to refund excess amount of stamp duty charged from the parties to the sub-lease.

3.1. In reply, Mr. S.K. Rout, learned ASC, however, has seriously refuted the submission advanced for the Petitioner by contending interalia that since the security amount is an advance of money in addition to rent reserved, the same is chargeable and stamp duty is payable thereon at the time of registration in view of the provision under Article 35(c) Schedule-1A (Stamp Duty on instrument) (according to the Orissa Amendment by O.A. No.01/2003). Mr. Rout has accordingly, prayed to dismiss the writ petition.

4. Having heard the rival submission upon perusal of record, since OP Nos. 3 to 6 resist the claim of the writ Petitioner to refund the excess stamp duty by taking the umbrage of Article 35(c)Schedule-1A (Stamp Duty on instrument) with Orissa Amendment vide O.A. No.01/2003, this Court considers it proper to extract the aforesaid provision. For clarity and better appreciation, the aforesaid provision as referred to above reads as under:-

Article

Description of instrument

Proper Stamp Duty

35(c)

Where the lease is granted for a fine or premium or for money advanced in addition to rent reserved

xx xx xx xx

xx xx xx xx

The same duty as Conveyance under Division (A) ,(B) or (C), as the case may be, of Article-23 for a consideration equal to the amount or value of such find or premium,or advances as set forth in the lease, in addition to the duty which would have been payable on such lease, if no fine or premium or advance had been paid or delivered.

xx xx xx

A plain reading of above provision makes it ample clear that in case of execution of lease deed, stamp duty is leviable on fine, premium and money advanced, but the specific plea of OP Nos.3 to 6 is that the security deposit as paid in this case for sub-lease between the Petitioner and OP No.7 is a kind money advanced, which is chargeable to stamp duty, but the fact remains that OP Nos. 3 to 6 even after contending the security deposit to be one kind of money advance chargeable to stamp duty have admitted in their counter affidavit that the security deposit may be utilized in full or part on certain contingencies or returned to the lessee on successful and litigation free completion of the term of lease. Further, the sub-lease entered into by the Petitioner and OP No.7 contain a covenant of security deposit specifically at Serial No. 6 of the agreement in which both the parties have agreed for refund of security deposit, which is Rs. 1,61,12,196/- (Rupees One Crore Sixty One Lakhs Twelve Thousand One Hundred Ninety Six) to OP No. 7 in this case, on expiry or earlier termination of sub-lease and this covenant further stipulates that the security deposit will be held by sub-lesser (Petitioner herein) to secure due and faithful performance of the sub-lease. It is, therefore, very clear that security deposit is not the consideration money of the sub-lease, however, it is to be seen whether is it a kind of money advanced in addition to rent for the sub- lease? This conundrum can be cleared by contextually referring to the definition of lease and reading it in juxtaposition with the covenants of the sub-lease in this case. For clarity, the definition of lease as provided in Sec. 105 of the Act, 1882 is extracted as under:-

“ Sec. 105 of the Act: A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, expressed or implied, or in perpetuity, in consideration of a price paid or promised, or of money, or a share of crops, service or any other thing of value, to be rendered periodically or on a specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or thing to be so rendered is called the rent.”

The language as used in the definition of lease U/S. 105 of the Act makes it as simple as, the consideration in lease is two types “premium” and “rent” and there is no third type of consideration. Thus, the premium in the lease is the price paid or promised and the price paid may be cash or may be an adjustment of outstanding debt or its payment may be deferred to be paid in future or made payable in installments or price promised to be paid in future. The other type of consideration for lease is “rent” which is recurring in nature and paid periodically. It is, however, clear that the rent paid in advance is still be “rent” and not an advance in addition to rent. On examining the sub-lease in this above context, clause no. 5 of covenants of sub-lease refers for payment of rent of Rs. 26,85,366/- per month, which according to the agreement shall be payable on 10th of every month with increase of 4% on completion of every twelve months. In the aforesaid situation, since the instrument of lease is chargeable only for “premium” and “rent”, which is the consideration of lease, the security deposit being refundable and kept as security for the performance of obligation of the sub-lease, by no stretch of imagination can it be said as “money advance” in addition to the rent reserved. Besides, on a cursory glance of words used in Article 35(c)makes it apparently clear that where lease is granted for a fine or premium or for money advanced in addition to rent received, such advance is chargeable to stamp duty, but in this case, the sub-lease is not granted on security deposit as money advance in addition to rent.

5. This Court, however, considers it useful to refer to the decision in Chief Controlling Revenue Authority, Delhi vrs. Marshal Produce Brokers Co. Pvt Ltd.; 1978 SCC Online Del 157, wherein in a similar situation, a Full Bench of Delhi High Court in answering a reference as to whether security deposit on lease is chargeable to stamp duty had held that:-

"The duty is not chargeable under Article 35(c) of Schedule-I-A of the Indian Stamp Act, 1899 on the amount of security/deposit/advance, which is refundable on determination of lease, in addition to the duty paid on the rent reserved under Article 35(a) of the Schedule. If such deposit/advance is adjustable in rent/other charges/dues payable under the lease, the amount of security deposit paid for the due performance of the contract of lease is chargeable under Article 57 of the Schedule read with Sec. 5 of the Act."

On the above backdrop of facts and law, when covenants of the sub-lease entered into by the petitioner and OP No.7 are considered, it appears that a covenant under the heading "security deposit" is found at Clause No.6 which suggests that the parties to the sub-lease have agreed for deposit with sub-lessor a sum of Rs.1,61,12,196/- (Rupees One Crore Sixty One Lakhs Twelve Thousand One Hundred Ninety Six) which shall be equivalent to six(06) month's rent as a interest free refundable security deposit, out of which Rs.1,48,47,690/- (Rupees One Crore Forty Eight Lakhs Forty Seven Thousand Six Hundred Ninety) only has already been paid to the sub-lessor by the sub-lessee at the time of complete hand over of the demise premises. It is further stipulated therein that the security deposit will be held by the sub-lessor to secure the due and faithful performance by the sub-lessee of the terms and covenants of the agreement and it is mutually agreed by the parties that once the sub-lessee issues the termination notice pertaining to the sub-lease deed, the sub-lessor shall be authorized to adjust the said security deposit amount proportionately against the prevailing monthly rental amounts payable during that time and the sub-lessee shall be liable to remit the differential amounts to the sub-lessor. It is also stated in the agreement of lease that on expiry or earlier termination of the lease, the sub-lessor shall be liable to refund the security deposit to the sub-lessee on the simultaneous handing over the possession of the premises to the sub-lessor. In the context, it is very clear, although the security deposit is not chargeable Article 35(c)Schedule-1A (Stamp Duty on instrument) with Orissa Amendment vide O.A. No.01/2003, but the security amount being adjustable in rent and other charges dues payable under the lease, it is chargeable under Article 57 of the Schedule-I-A of Stamp Duty on instrument with Orissa Amendments which is same as the Central Act, however, Article 57 of Schedule-I Stamp Duty on Instrument, provides that Security Bond or Mortgage, Deed executed by way of security for the due execution of an office, or to account for money or other property received by virtue thereof or executed by a surety to secure the due performance of a contract, is chargeable with same duty as a Bond (No. 15) for the amount secured. In addition, Sec. 5 of Indian Stamp Act provides that any instrument compromising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters would be chargeable under this Act. The obvious result of this discussion is that the security deposit as made in this case is chargeable under Article 57 read with Sec. 5 of the Indian Stamp Act.

6. A careful conspectus of facts involved in this case together with the provisions of law and the rulings of Delhi High Court makes it very clear that the authority concerned had erred in calculating the stamp duties and registration charges on security deposit by resorting to Article 35(c) Schedule-1A (Stamp Duty on instrument) with Orissa Amendment vide O.A. No.01/2003, since the same is chargeable under Article 57 of the Schedule-I-A of Stamp Duty on instrument with Orissa Amendments read with Sec. 5 of Indian Stamp Act and, therefore, the authority concerned are accordingly liable to adjust the stamp duty and refund back the differential amount, if any, after applying the same in terms of observations made above to the parties in terms of the terms and conditions of the agreement of the lease.

7. In the result, the writ petition stands allowed on contest, but in the circumstance there is no order as to costs. Accordingly, Annexure-1 series are hereby quashed and the authority concerned is directed to refund the differential amount on stamp duty and registration charges, if any, to the parties to the sub-lease.

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