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**(1967) 04 MAD CK 0039**

**In the Madras High Court**

**Case No :** Referred Case No's. 7 and 8 of 1965

The Chief Controlling Revenue Authority, Madras

APPELLANT

Vs

V. Ramakrishna Sons (P.) Ltd., Madras and Another

RESPONDENT

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**Date of Decision :** 03-04-1967

**Acts Referred:**

Stamp Act, 1899 — Article 5, 6(2), 23, 57

**Citation :** AIR 1968 Mad 279 : (1968) ILR (Mad) 680 : (1968) 81 LW 11

**Hon'ble Judges :** M. Anantanarayanan, C.J.; Ramakrishnan, J.; Natesan, J

**Bench :** Full Bench

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## Judgement

Natesan, J.—These references under Sec. 57 of the Indian Stamp Act, 1899, raise a common question whether the related instrument is

chargeable as an agreement relating to pledge or pawn of moveable property falling under Art. 6(2) of Schedule (formerly Art. 5 of Schedule 1-A)

or as an agreement relating to pledge or pawn of moveable property falling under Art. 6(2) of Schedule (formerly Art. 5 of Schedule 1-A) or as an

agreement falling under Art. 5(c) (formerly Art. 5 of Sch. 1-A). The language of the two instruments is identical and the same as in R. C. No. 1 of

1964, which this Court had to consider and the answer to which is reported in the The Chief Controlling Revenue Authority, Madras Vs.

Sundaram Finance (P) Ltd., Madras, . Under the instruments in question, the executants arranged with the Bank for the cash credit or overdraft

facilities providing security for the advances. The relevant term of the instrument, which is relied upon for the Revenue is Clause 11 which runs thus:

That the borrowers do further agree and hereby give to the said Bank during the currency and for the payment of its dues, a general lien and right

of set off and charge on all moveable property of every description coming into

the possession of the said Bank on account of the borrowers or any one of them, whether alone or jointly with others..... without prejudice deposit receipts for moneys, promissory notes..... stocks, goods and merchandise..... any other negotiable or transferable instruments or securities, instruments and documents of title and mercantile documents of every description including hire purchase agreements or contracts other than those affecting Immovable property.....

2. In the case in R.C. No. 7 of 1965 the overdraft facility is to the limit of Rs. 4,50,000, and in the other case R.C. No. 8 of 1965 the provision is for overdraft facility to the extent of Rupees three lakhs. Now for an instrument to amount to a pledge or pawn falling under Article 6(2), there must be a present transfer of possession of moveable property. This problem arose for consideration in The Chief Controlling Revenue Authority, Madras Vs. Sundaram Finance (P) Ltd., Madras, , above referred to. The Special Bench had no difficulty in holding on the terms of the instrument that it would create a pawn or pledge of moveable property, provided the bank had possession of moveable property, falling under the terms of the instrument when the instrument was executed. In that case an affidavit was called for and the affidavit filed indicated that the Bank had possession of certain hire purchase agreements which formed security for the amounts advanced and to be advanced.

3. The Special Bench therefore held that the case fell squarely within the language of Art. 6 of Schedule I, the agreement clearly evidencing pledge or pawn of moveable property. In the present case, an affidavit has been filed by the accountant of the Punjab National Bank Ltd., stating that as security for repayment of the amount due and payable pursuant to the instruments under consideration on overdraft accounts, the executants had deposited with the Bank certain shares in public limited companies. The shares are specified in the affidavit. It is on this deposit counsel for the Revenue would contend that in accordance with the decision in R.C. No. 1 of The Chief Controlling Revenue Authority, Madras Vs. Sundaram Finance (P) Ltd., Madras, , we must hold that the instruments fall under Art. 6(2) of the Stamp Act. The learned counsel appearing for the executants draws our attention to Sec. 23-A of the Stamp Act, the relevant portion of which runs thus:

Where an instrument (not being a promissory note or bill of exchange)--(a) is given upon the occasion of the deposit of any marketable security

by way of security for money advanced or to be advanced by way of loan, or for an existing or future debt, or (b) makes redeemable or qualifies a

duly stamped transfer, intended as a security, or any marketable security. It shall be chargeable with duty as if it were an agreement or

memorandum of an agreement chargeable with duty under Art. 5(c) of Schedule I.....

4. Learned counsel submits that Sect. 23-A has an overriding effect and, as in the present case, marketable securities only had been deposited on

the occasion of the execution of the instrument by way of security for money advanced or to be advanced, the instrument is one falling under Art

5(c) of Schedule I. The language of Sec. 23-A is emphatic and it cannot be denied that the documents deposited on the occasion are marketable

securities. In the circumstances, our answer has to be that the instruments will not fall under Art. 6(2) of the Stamp Act as relating to pawn or

pledge, but are instruments falling under Art. 5(c) of the Stamp Act. The references are answered accordingly. No order as to costs.