IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE MANINDER S. BHATTI

ON THE 8th OF JULY, 2026

WRIT PETITION No. 12775 of 2016

RELIANCE ASSET RECONSTRUCTION COMPANY LTD.

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Rahul Diwaker - Advocate for the petitioner.

Shri Prabhanshu Shukla - Govt. Advocate for the State.

ORDER

This is a petition by which the petitioner has called in question the impugned order passed by the Collector of Stamps, Raisen, dated 12-08-2014 (Annexure-P/7).

2. The counsel for the petitioner contends that the matter stands in a narrow compass inasmuch as the petitioner is a company duly constituted under the provisions of the Companies Act and is registered under the provisions of Section 3 the SARFAESI Act, 2002. In furtherance of its object, the present petitioner/Bank executed an Assignment Deed which is contained in Annexure-P/3 and accordingly, the liability pertaining to a loan transaction amounting to Rs.5376.90 Lakhs was taken over by the present petitioner. The said loan was extended to one D.A. Rubber Industries Limited (which was formerly known as Ralson Industries Limited). On the date of assignment of the deed the overall liability towards the loan was

Rs.53,76,90,000/- and apart from the said outstanding liability, a sum of Rs.4,75,00,000/- was also paid by the present petitioner as consideration regarding the said transaction. Accordingly, a Deed of Assignment was executed, however, an audit objection was raised to the effect that at the time of execution of Deed of Assignment, the stamp duties under the different heads were not transferred to the State Government and, therefore, resultantly there was loss to the public exchequer. The said audit objection was made in view of the provisions of section 75 of the M.P. Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993 [hereinafter referred to as "the Act of 1993"] as well as section 161 of the M.P. Municipalities Act, 1961 (for brevity "the Municipalities Act"]. According to audit objection, the present petitioner was required to pay Rs.1,42,63,010/- as deficit stamp duty. The said audit report was taken note of by the Collector of Stamps, who then passed the impugned order dated 12-08-2014.

3. It is the contention of the counsel for the petitioner that the order of the Collector of Stamps *prima facie* reflects that a total high-handed and mechanical approach has been resorted to by the Collector while passing the impugned order. The counsel contends that the petitioner-company which is an entity created under Section 3 of the SARFAESI Act takes over liability of a financial institution/bank and such taking over of liability *ipso facto* does not create any direct relationship between the reconstruction company and the original borrower. On the contrary, relationship is created between the Bank which had disbursed the loan in favour of the borrower as well as the reconstruction company. In other words, the reconstruction company

steps into the shoes of the Bank and, therefore, for all purposes, shapes into the institution which has extended the loan to the borrower.

4. It is also contended by the counsel for the petitioner that at the time of availing of loan by the original borrower, the entire documents pertaining to immovable property were mortgaged by the borrower and on such mortgage, stamp duty was also paid by the Bank and, therefore, there was no occasion for the present petitioner to pay same duty again. It is contended by the counsel that taking into consideration the provisions of the SARFAESI Act, a Notification dated 07-03-2005 has been issued by the Department of Commercial Tax which is contained in Annexure-P/8. As per the said Notification, the State Government can only charge stamp duty to the extent of 0.1% of the loan securitized or debt assigned securities, if the securities are immovable property. In the case in hand also, the said duty was payable by the present petitioner and accordingly, at the time of execution of Assignment Deed a duty to the tune of Rs.13,30,145/- was paid by the petitioner, and apart from the said duty no other amount was required to be paid by the present petitioner. The counsel thus, submits that the impugned order deserves to be set aside. In support of his contentions he has relied on the decisions rendered in the cases of ***Kotak Mahendra Bank Ltd. vs. State of U.P. and others, 2018 SCC OnLine All 5942; Easun Products of India Pvt.Ltd. vs. Inspector General of Registration and Chief Controller of Revenue Authority and others, 2020 SCC OnLine Mad 7199; A.G. Neuro Hospitals (P) Ltd., through its Managing Director Dr. P. Sundarajan vs. Inspector General of Registration and Chief Controller of Revenue Authority***

and others, 2020 SCC OnLine Mad 20619; and ***ICICI Bank Limited vs. Official Liquidator of Aps Star Industries Limited and others, (2010) 10 SCC 1.***

5. Per contra, the counsel for the respondents/State submits that the present writ petition is liable to be dismissed. It is the contention of the counsel that the audit objection is in consonance with Section 75 of the Act of 1993 as well as Section 161 of the Municipalities Act. The Authority having found that the transaction had taken place without making payment of statutory duties and the order has been rightly passed by the Collector of Stamps and the Collector of Stamps is empowered to pass such an order in terms of Section 47-A of the Stamps Act. It is also contended by the counsel that the audit objection which is contained in Annexure-P/6 clearly reflects that the audit objection was in regard to the percentage of duty under the provisions of the Act of 1993 as well as Municipalities Act. The audit objection has also been taken into consideration the duty amount already paid by the petitioner and after deduction, it was found that there was loss to the public exchequer to the tune of Rs.1,43,63,010/- and the said amount has rightly been directed to be deposited by the Collector of Stamps and hence, no interference is required.

6. Heard the submissions and perused the records.

7. A perusal of the records reflects that it is a case where an order imposing stamp duty is being questioned by the petitioner on the ground that the heads under which the duty is being sought to be fastened, are not covered by the Notification dated 07-03-2005 which is contained in

Annexure-P/8. According to the petitioner there cannot be imposition of any stamp duty as per Section 75 of the Act of 1993 or section 161 of the Municipalities Act. It is not a case where any transaction pertaining to mortgage of immovable property had taken place at the time of execution of Deed of Assignment.

8. To deal with the aforesaid stand of the counsel for the petitioner, if the Deed of Assignment contained in Annexure-P/3 is perused, the same would reveal that the assignee being Securitization & Reconstruction Company registered as per Section 3 of the SARFAESI Act, accepts assignment of the loan disbursed to the borrower along with rights, title and interest created by the documents in favour of the Bank. Relevant Clause (D) which is at page No.2 of the Deed of Assignment is reproduced herein :

> *"(D) The Assignor is desirous of assigning to and in favour of the Assignee, the Loans, disbursed under the aforesaid Financing Documents together with all its rights, title and interest in the Financing Documents and any underlying Security Interests, pledges and/or guarantees in respect of such Loans, and the Assignee is desirous of purchasing the Loans together with all the tights, title and Interest of the Assignor. In the Financing Documents and any underlying Security Interests, pledges and/or guarantees in respect of such Loans, upon the terms and subject to the conditions hereinafter mentioned and as envisaged under Section 5(1)(b) of the SARFAESI Act."*

A perusal of the said clearly reflects that in a nutshell by the said Deed of Assignment, the present petitioner had taken over the entire rights, liabilities and interest which were with the Union Bank of India which has extended the loan facility to the borrower. By virtue of Deed of Assignment, the present petitioner became the lending entity and also the present petitioner acquired all the rights and duties which were available with the Union Bank of India. Meaning thereby, by virtue of execution of Deed of Assignment, all the transactions pertaining to release of the loan, disbursement of the loan and execution of mortgage deed qua immovable property remained the same and the present petitioner replaced the Union Bank of India as lending institution.

9. The audit report which has been made basis to pass the impugned order reveals that while submitting the said audit report, the Authority has taken into consideration the fact that as per the provisions of Section 75 of the Act of 1993 and also as per the provisions of the Municipalities Act, on transaction pertaining to immovable property situated within the territories of the Panchayat of a Municipality, certain amount of duty was to be recovered. Accordingly, calculating the duties at the rate of 0.1% of the amount of loan towards Panchayat Duty and 1% towards Municipal Duty, assessed the liabilities. Section 75 of the Act of 1993 as well as Section 161 of the Municipalities Act are reproduced herein :

> *"[75. Duty on transfer of property within block. (1) The duty imposed under the Indian Stamp Act, 1899 (No. 2 of 1899) on instrument relating to sale or gift of immovable property situated within the block be increased by the notification issued in this behalf by the State Government generally, or specially for various cases or class of cases, subject to maximum limit of one percent on the value of such property:*
> *Provided that no extra stamp duty is leviable in respect of any instrument of sale or gift exempted from stamp duty under the Indian Stamp Act, 1899 or the rules made thereunder.*
> *(2) The duty imposed under the Indian Stamp Act, 1899 (No. 2 of 1899) on instrument relating to mortgage of immovable property situated within the block be increased by one percent on the amount secured by the instrument of mortgage: Provided that*

such extra stamp duty levied in respect of mortgage shall not exceed the amount of stamp duty thereon: Provided further that no extra stamp duty is leviable in respect of any instrument of mortgage exempted from stamp duty under the Indian Stamp Act, 1899 or the rules made thereunder.]

M.P. Municipalities Act

161. Method of assessment of duty on transfer of immovable property. (1) The duty imposed by the Indian Stamp Act, 1899 (II of 1899), on instruments of sale, gift and usufructuary mortagage, respectively of immovable property, shall in the case of instruments affecting immovable property, shall in the case of instruments affecting immovable property situated within the limits of any Municipality and executed on or after the date on which the provisions of this Act come into force within Municipality be increased by one percentum on the value of the property so situated, or in the case of an usufructuary mortgage on the amount secured by the instrument as setforth in the instrument:

Provided that nothing herein shall apply in case of the transfer of property where the value of the property so transferred or in the case of usufructuary mortgage the amount so secured does not exceed two thousand rupees.

(2) For the purpose of this section, Section 27 of he Indian Stamp Act 1899 (II of 1899), shall be read as if it specifically required the particulars referred to therein to be set forth separately in respect of-

(a) property situated in any Municipal area;

(b) property not situated in any Municipal area.

(3) The State Government shall, every year, pay to each Council from the Consolidated Fund of the State a grant-in-aid approximately equal to the extra duty realized under sub-section (1) in respect of the property situate within the are of each such Municipality.

(4) The State Government may make rules for carrying out the purposes of this section."

A perusal of the aforesaid statutory provisions reveal that there can be eventuality of imposition of stamp duty when a deed is being executed as regards the immoveable property. Meaning thereby, when any deed or conveyance is being executed in regard to immovable property situated within the Panchayat area or the Municipal area, stamp duty at a certain rate is required to be charged. Thus, the very transaction becomes leviable with duty as provided under the Act as well as Guidelines made thereunder.

10. In the case in hand, the Union Bank of India while sanctioning the loan in favour of borrower, had executed the Mortgage Deed in order to secure the loan availed by the borrower and on such mortgage, the stamp duties were paid by the Union Bank of India. Therefore, the stage of creation of mortgage came in existence when the present petitioner was not at all in picture. Upon execution of a mortgage as regards immovable property, the stamp duties were paid to the State Government and the mortgage was so registered as well. However, at the time of execution of Deed of Assignment no fresh mortgage deed was executed and only Deed of Assignment was executed which is contained in Annexure-P/3. Therefore, it is safe to infer that Annexure-P/3 contains a Deed of Assignment which itself does not speak about creation of any charge or encumbrances on any immovable property so as to bring the transaction leviable with the Stamp Duty. It is further evident from a perusal of the Notification dated 07-03-2005 (Annexure-P/8) that when an instrument of securitization of a loan or assignment of a debt is executed in favour of the securitization company or a reconstruction company, the stamp duty to the tune of 0.1% of the <u>loan securitized or debt assigned</u>, is recoverable. The Notification date 07-03-2005 is reproduced herein :

"Bhopal, the 7th March 2005

No. (5) B-7 (B) 37-44-2-Five. In exercise of the powers conferred by clause (a) of sub-section (1) of Section 9 of the Indian Stamp

Act. 1899. (No. II of 1899), the State Government hereby reduces the stamp duty with which instruments of securitisation of loan or of assignment of debt with underlying securities executed in favour of a Securitisation Company or a Reconstruction Company registerd under the Securitisation and Reconstruction of Financial Assees and Enforcement of Security Interest Act, 2002 is chargeable under schedule 1-A of the said Act to 0.1 percent of the loan securitized or debt assigned with underlying securities, if the securities are immovable properties.

By order and in the name of the Governor of Madhya Pradesh.

JAGDISH SHARMA. Dy.Secy:."

A perusal of the Notification clearly reflects that the said Notification nowhere speaks about the immovable property or value thereof. The Stamp duty as per the provisions of the Notification dated 07-03-2005 is not charged considering the value of the land which is mortgaged in order to secure the land. On the contrary, the percentage of duty is quantified qua loan securitized or debt assigned. Hence, the market value of the property is not a consideration for the purposes of assessment of 0.1% of Stamp Duty for the purposes of the transaction where a loan is securitized or debt assigned to a reconstruction or a securitization company.

11. The audit report contained in Annexure-P/6 reveals that the Audit Authorities were persuaded by the fact that the immovable properties were situated within the Municipal limit and accordingly, making a reference to the statutory provisions of the Act of 1993 as well as the Municipalities Act, concluded that the duty to the tune of Rs.1,42,63,010/- was required to be paid. The said audit report was accepted by the Collector of Stamps without even appreciating the aspect that in the case in hand, at the time of initial mortgage deed between the borrower and the Union Bank of India, the stamp

duties were already paid to the State Government and subsequent execution of Assignment Deed was not a transaction creating mortgage over the immovable property belonging to the borrower.

12. Hence, the audit report *prima facie* has effect of double jeopardy so far as the petitioner is concerned, inasmuch as there can be no incidences of imposition of duty. Once the duty is already paid to the State Government at the time of original mortgage, charging of the same duty again at a subsequent stage, when the Assignment Deed was executed, would amount to unjust enrichment.

13. The Apex Court in the case of Indian Council for **Enviro Legal Action vs. Union of India and others, (2011) 8 SCC 161** held as under:

> *"158. While Section 3 (unjust enrichment) reads as under:*
> *"The phrase 'unjust enrichment' is used in law to characterise the result or effect of a failure to make restitution of, or for, property or benefits received under such circumstances as to give rise to a legal or equitable obligation to account therefor. It is a general principle, underlying various legal doctrines and remedies, that one person should not be permitted unjustly to enrich himself at the expense of another, but should be required to make restitution of or for property or benefits received, retained or appropriated, where it is just and equitable that such restitution be made, and where such action involves no violation or frustration of law or opposition to public policy, either directly or indirectly."*
> *159. Unjust enrichment is basic to the subject of restitution, and is indeed approached as a fundamental principle thereof. They are usually linked together, and restitution is frequently based upon the theory of unjust enrichment. However, although unjust enrichment is often referred to or regarded as a ground for restitution, it is perhaps more accurate to regard it as a prerequisite, for usually there can be no restitution without unjust enrichment. It is defined as the unjust retention of a benefit to the loss of another or the retention of money or property of another against the fundamental principles of justice or equity and good conscience. A person is enriched if he has received a benefit, and*

he is unjustly enriched if retention of the benefit would be unjust. Unjust enrichment of a person occurs when he has and retains money or benefits which in justice and equity belong to another.

160. *While the term "restitution" was considered by the Supreme Court in South Eastern Coalfields [South Eastern Coalfields Ltd. v. State of M.P., (2003) 8 SCC 648] and other cases excerpted later, the term "unjust enrichment" came to be considered in Sahakari Khand Udyog Mandal Ltd. v. CCE & Customs [(2005) 3 SCC 738] . This Court said: (Sahakari Khand case [(2005) 3 SCC 738] , SCC p. 748, para 31)*

> *"31. … 'unjust enrichment' means retention of a benefit by a person that is unjust or inequitable. 'Unjust enrichment' occurs when a person retains money or benefits which in justice, equity and good conscience, belong to someone else."*

14. The Apex Court in the case of **Shyam Sunder Radheshyam Agarwal and another vs. Pushpabai Nilkanth Patil and others, (2024) INSC 730** held has under :

> *"16. In addition, we wish to further record that the second proviso to Article 25 only states that if the stamp duty is already paid or recovered on the agreement to sale, then the same shall be deducted while computing the stamp duty payable when the sale deed is executed; the proviso does not contemplate a situation similar to this case, where the document ought to have been registered with payment of stamp duty on the agreement for sale initially and only the balance, on the deed of sale after deduction of the duty already paid ought to have been collected. <u>Since, the state cannot recover by way of stamp duty in excess of what it is entitled to, the recovery shall be restricted only to the extent of difference in stamp duty and the entire penalty from the date of execution of the agreement for sale till the date of payment of stamp duty.</u> Needless to say, that until the defect is cured by satisfying the requirements under Section 34, the documents impounded cannot also be used in evidence.*

15. The aforesaid decisions of the Apex Court clearly reveal that the approach of the State is required to be just, fair and transparent in the matter of recovery of public exchequer and there cannot be dual liability regarding the same duty when there is change of lending institution on papers.

16. Resultantly, the order impugned passed by the Collector of Stamps, Raisen dated 12-08-2024 (Annexure-P/7) stands set aside. However, it is made clear that nothing would be charged from the present petitioner, except amount of Rs.13,30,145/- which has already been charged towards the head of Stamp Duty.

17. Accordingly, the writ petition stands allowed.

(MANINDER S. BHATTI)
JUDGE

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