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The Madras High Court clarifies the law on presentation, stamping and registration requirements of a sale certificate issued by the authorised officer under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

The Madras High Court (“**Madras HC**”) in its recent judgement in *M/s. Sri Balaji Fibre vs. The Inspector General of Registration and Ors.*¹, has held that, no stamp duty in terms of the Indian Stamp Act, 1899 (“**Stamp Act**”) or registration fee, as per the Registration Act, 1908 (“**Registration Act**”), is payable when a sale certificate issued under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“**SARFAESI Act**”) is forwarded by the authorized officer to the registering authorities, for filing as required under the Registration Act ; and the requirement of payment of stamp duty and registration fee would arise only when the person in whose favour the sale certificate is issued, voluntarily presents the sale certificate for registration or when the sale certificate is used to establish right/title over the property, in any proceedings. This judgement of the Madras HC is significant since it consolidates and clarifies the law on the presentation, stamping and registration requirements of a sale certificate issued by an authorized officer under the SARFAESI Act.

Brief facts

The petitioners were the purchasers of properties sold in public auction conducted by various authorised officers of the secured creditors under the SARFAESI Act and sale certificates were issued in their favour. When copies of the sale certificates were forwarded to the jurisdictional registering authorities by the authorised officers, the registering authorities demanded payment of stamp duty and registration fee, as applicable for conveyance, as a precondition for filing the sale certificate as required under Section 89(4) of the Registration Act. In another set of cases, when the sale certificates were presented for registration by the persons in whose favour they were issued, the registering authorities treated the transaction as undervalued and demanded stamp duty and registration fee on the market value of the underlying properties and/or referred the sale certificate under Section 47-A of the Stamp Act for ascertaining market value of the property and consequential orders were passed for payment of deficit stamp duty. The Registration Department’s stand was that the sale certificate issued under SARFAESI Act is a sale *inter vivos*, hence it is an instrument required to be stamped as conveyance and is compulsorily registrable as the authorised officer is neither a civil nor revenue officer as per Section 17(2)(xii) of the Registration Act. Writ petitions were filed before the Madras HC challenging the actions of the registration department.

¹ Judgement dated July 23, 2024, in W.P. Nos. 415, 3696, 23276 & 22555 of 2023 and W.M.P.Nos.3791, 22815, 22816 and 22817 of 2023; and W.P. Nos. 859, 6807, 6808, 6810, 9728, 9886, 10285, 10454, 11503, 12097, 12742, 12788, 15704, 16520, 16911, 17613, 18044 and 17205 of 2024.

Decision of the High Court

The Madras HC dealt with various judicial precedents on the subject matters and held as under:

1. **Authorised officer as civil or revenue officer:** The Madras HC relied on the judgment of the Supreme Court in *Shanti Devi L. Singh v. Tax Recovery officer*², and held that the term 'revenue officer' used under Section 89 of the Registration Act must be liberally construed to include persons effecting compulsory sale for recovery of dues in terms of a statute. The Court, considering the nature of powers exercised by an authorized officer under the SARFAESI Act, held that the authorized officer will be a revenue officer under Section 89 of the Registration Act.
2. **Sale certificate is not compulsorily registrable:** The Madras HC clarified that since the authorised officer is a revenue officer under the Registration Act, in terms of Section 17(2) of the Registration Act, the sale certificate does not require registration, when it is forwarded by the authorized officer, in terms of section 89(4) of the Registration Act. Considering that the Transfer of Property Act, 1882 applies only to transfer by act of parties³ and that a sale under the SARFAESI Act is an involuntary transfer by operation of law, Madras HC clarified that the provisions of the Transfer of Property Act, 1882 requiring mandatory registration for transfers involving value above INR 100 (Indian Rupees one hundred), does not apply to the sale certificate issued under the SARFAESI Act.
3. **Sale certificate is not an instrument of conveyance:** The Madras HC clarified that the transfer and vesting of title to the immovable property in favour of the auction purchaser takes place, when the sale is confirmed by the authorised officer. A sale certificate issued by the authorised officer merely records and evidences the sale.⁴ Therefore, the sale certificate is not an instrument of conveyance.
4. **Stamping of sale certificates:** The Madras HC held that the sale certificates will have to be compulsorily stamped in terms of Article 18 of Schedule 1 to the Stamp Act and not as per Article 23 dealing with conveyances. In case the sale certificates are not stamped, the same will not be admissible in evidence as per Section 35 of the Stamp Act; any authority or court before whom a sale certificate is submitted for any purpose, can impound it and refer it for assessment of duty; and the person relying on the certificate will have to pay the stamp duty and penalty, as applicable.
5. **Sale price mentioned in the sale certificate alone to be considered:** The Madras HC clarified that the sale price mentioned in the sale certificate alone will have to be considered for the purpose of calculating the stamp duty; and the registration department cannot treat the transaction as undervalued and exercise powers under Section 47A of the Stamp Act.
6. **Recording of sale certificate forwarded by the authorised officer:** The Madras HC relied on judgments of the Supreme Court⁵ and held that, upon receipt of the copy of the sale certificate forwarded by the authorised officer in terms of Section 89(4) of the Registration Act, the jurisdictional sub-registrars are required to record the details in Book I as per the Registration Act, subject to receipt of filing fees; and for this purpose, they cannot insist on payment of stamp duty or registration fee as payable on conveyances or sale certificates.

Based on the above, the Madras HC passed suitable orders in each of the writ petitions directing the registration department to refund excess duties paid by the purchaser; register the sale certificates presented by the parties on payment of requisite stamp duty and registration fee; reduced the penalty levied; and quashed the proceedings initiated to ascertain the market value of the properties; and directed the registration department to release the impounded documents.

² (1990) 3 SCC 605.

³ Relied on *Bharat Petroleum Corporation vs. P. Kesavan and Anr* [(2004) 9 SCC 77].

⁴ Relied on *B. Arvind Kumar vs. Govt of India* [(2007) 5 SCC 745]; and *K. Chidambara Manickam vs. Shakeena* [(2007) 6 MLJ 488].

⁵ *Esjaypee Impex Private Limited vs. Assistant General Manager and Authorised Officer, Canara Bank* [2021 (11) SCC 537]; *Inspector General of Registration and Anr vs. Madhurambal* [2022 SCC OnLine SC 2079].

Conclusion

The judgement consolidates and clarifies the position of law on stamping and registration requirements for a sale certificate issued by the authorized officer under the SARFAESI Act. There were conflicting judgements of the Madras HC on these issues including, scope of the term 'revenue officer' under the Registration Act, powers of the registration department to ascertain the market value of the property covered under the sale certificate, levy of transfer duty on a sale certificate, etc. This judgement resolves such conflicting views and consolidates the position of law on the subject. There have been instances where the registration department has taken a stand that the exemption available under the Registration Act applies only to the sale certificates issued by nationalised banks. This judgement has clarified that the exemption is applicable to sale certificates issued by an authorized officer under the SARFAESI Act, irrespective of whether the secured creditor is a nationalised bank or not. This judgement will assist auction purchasers who purchase properties under the SARFAESI Act.

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