

CASE NO.:  
Appeal (civil) 5273 of 2007

PETITIONER:  
STATE OF RAJASTHAN & ORS

RESPONDENT:  
M/S KHANDAKA JAIN JEWELLERS

DATE OF JUDGMENT: 16/11/2007

BENCH:  
A.K. MATHUR & MARKANDEY KATJU

JUDGMENT:  
J U D G M E N T

CIVIL APPEAL NO. 5273 OF 2007  
[Arising out of S.L.P.(C) No.19439 of 2006]

A.K. MATHUR, J.

1. Leave granted.

2. This appeal is directed against the judgment dated 23.11.2005 passed by the Division Bench of the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur in SBCWP No. 133/1997 and DBCSA No. 427/2002 whereby the division bench has affirmed the order of the learned Single Judge.

3. Brief facts which are necessary for the disposal of this appeal are as under:

The S.B. Civil writ petition No. 133/97 was filed by M/s Khandaka Jain Jewellers, petitioner (respondent herein) in the High Court of Judicature for Rajasthan, Jaipur Bench, Jaipur who prayed that a direction may be issued to the respondent Nos. 2&3 to register the sale deeds sent by the Court of additional district Judge No. 1, Jaipur city in execution application No. 15/94 and 16/94 and to send back the same to the Court immediately after registration. It was also prayed that the respondents may be directed to register the sale deeds on the stamps on which it is executed by the executing court and not to charge more stamp duty from respondent (herein). It was further prayed to quash and set aside the proceedings taken under Section 47A(2) of the Stamps Act, 1952 in case No. 442/95 and 443/95 on 4th March, 1997 for determination of the valuation of the sale deed for registration.

The respondent is a registered firm and it entered into two agreements for purchase of properties with Shri Prem Chand Ajmera, resident of 2148, Haldiyan Ka Rasta Jaipur by one agreement dated 20th October, 1983. The property was agreed to be purchased for a sum of Rs. 1,41,000/- out of which Rs. 20,000/- were paid at the time of the agreement. As the vendor failed to comply with the terms of the agreement, the respondent vendee filed a suit for specific performance of the contract in the Court of district Judge, Jaipur city which was later on transferred to the Court of additional district Judge No.1, Jaipur city under registration No. 216/86. The suit was decreed by the Judgment and decree dated 2nd February, 1994. In pursuance of the said decree, the respondent firm deposited an amount of Rs. 1,21,000/- in the Court on 9th May, 1994. Since the vendor did not execute the sale deed, therefore, the respondent firm filed the execution application No. 16/90 before the Court of additional district Judge No. 1, Jaipur city.

In another agreement dated 20TH October, 1983 the vendor Premchand agreed to sell a portion of property for a sum of Rs.

50,000/- out of which Rs. 10,000/- was paid at the time of agreement. The respondent firm purchased the stamp papers and got the sale deed typed. In this case also the vendor failed to fulfill the condition of agreement and to execute the sale deed. Consequently, the respondent firm filed another suit for specific performance of the contract in the Court of district Judge, Jaipur city. It was also transferred to the court of additional district Judge No. 1, Jaipur city under registration No. 151/91. The suit was decreed vide judgment and decree dated 2nd February, 1994 and the respondent firm was directed to deposit the remaining amount of Rs. 40,000/- and the judgment debtor would execute the sale deed. If the judgment debtor fails to comply with the decree, the decree holder would be entitled to get the sale deed registered and to get the possession. In compliance of the judgment and decree passed by the Court, the respondent firm deposited an amount of Rs. 40,000/- in the court but the judgment debtor did not execute the sale deed. The execution application No. 15/94 was filed before the Court of additional district Judge No. 1, Jaipur city. Both these applications No. 15/94 and 16/94 were taken up by the executing court and the respondent firm was directed to submit the stamp papers for the execution of the two sale deeds. The stamp papers for a sum of Rs. 14,100/- and Rs. 5,000/- for execution of the sale deeds in respect of properties purchased for a sum of Rs. 1,41,000/- and Rs. 50,000/- respectively, were submitted by the respondent firm. The learned executing court executed the sale deeds and sent the same on 17th March, 1995 for registration before the Sub-registrar, Registration Department, Collectorate Bani Park, Jaipur. The Sub-Registrar exercising its powers under Section 47A(1) of the Stamp Act sent these two sale deeds to Collector (Stamps) Jaipur for determining the market value and to assess the charge of the stamp duty. The Collector (stamps) registered these two cases No. 442/95 and 443/95 of the respondent firm and passed the order dated 5th March, 1997. In case No. 442/95 he assessed value of the property as Rs. 5,60,000/- and deficient stamp duty was raised to the extent of Rs. 41,900/- and deficient registration fees as Rs. 1500/- and he also levied the penalty of Rs. 1000/-. Thus, the total amount against the respondent firm raised was Rs. 44,400/-. In the second case No. 443/95 he assessed value of the property as Rs. 3,87,580/- and deficient stamp duty to the extent of Rs. 33,758/- and deficient registration fees as Rs. 1500/- and the penalty of Rs. 1000/-. Thus the total amount directed to be recovered from the respondent firm was Rs. 36,258/-. The respondent firm filed writ petition challenging both these orders and the contention of the respondent firm was that the valuation of the property should be taken when the agreement of sale deed was executed, and not at the time of the registration of the sale deed. The learned Single Judge relying on the judgment in the case of Sub Registrar, Kodad Town and Mandal v. Amaranaini China Venkat Rao and Others reported in AIR 1998 Andhra Pradesh 252 allowed the writ petition and observed that since the vendor backed out and did not execute the sale deed of the property in pursuance of the agreement on 20th October, 1983 therefore, the respondent firm filed a suit for specific performance of contract in 1986 and the suit was decreed. The respondent firm was ready and willing to pay the amount, and therefore, it was not his fault. The same was the position regarding the second suit which was filed in 1991. The learned Judge after considering the matter directed to set aside both the orders and held that for the purpose of charging stamp duty, etc, the relevant date for assessment of the market value shall be the date on which the suit for specific performance of the agreement to sale was filed. Consequently the order dated 4th March, 1997 (Annexure 5 & 6) was quashed and the authorities were directed to pass a fresh order regarding the market value of the property in question for the purpose of levy of the stamp duty as on the date of filing of the suit and also directed to undertake this exercise keeping in view the

observation of the judgment within a period of one month from the date of receipt of the certified copy of the order after notice to respondent firm.

4. Aggrieved against this order, an appeal was preferred before the Division Bench of the Rajasthan High Court at Jaipur Bench and the Division Bench affirmed the order of the learned single Judge.

Aggrieved against the order of the Division Bench, the present appeal was preferred by the State of Rajasthan & Ors., appellants herein.

5. We have heard learned counsel for the parties and perused the records.

6. The question is whether the valuation should be assessed on the market rate prevailing at the time of registration of the sale deed or when the parties entered into agreement to sell.

7. Learned counsel for the State has submitted that the Stamp Act is a taxing statute and a taxing statute has to be construed strictly. Whatsoever may have been the consideration for the vendor not to get the sale deed executed is a matter between both the parties, but when the matter is before the registering Authority the registering Authority has to see the valuation of the property at the market rate at the time of the registration as per Section 17 of the Act.

Therefore, a notice under Section 47A of the (Rajasthan Amendment) Stamp Duty Act was given and proper valuation was determined for registration. As against this, the learned counsel for the respondent submitted that Section 3 of the Act is a charging section. The registering authority has to see the instrument and the consideration mentioned therein for payment of duty as per Section 27 of the Act. If he finds it undervalued then he can hold an inquiry with regard to market value which was prevailing at the time of agreement to sell.

8. In order to appreciate the controversy involved in the matter, it is necessary to reproduce the relevant provisions of the Stamp Act which are as under:

Section 2(12) of the Act reads as under:

"(12) "Executed", and "execution", used with reference to instruments, mean "signed" and "signature"."

Section 3 of the Act reads as under:

"3. Instruments chargeable with duty - Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefore, respectively, that is to say \026

(a) every instrument mentioned in that Schedule which, not having been previously executed by any person, is executed in (India) on or after the first day of July, 1899;

(b) every bill of exchange payable otherwise than on demand or promissory note drawn or made out of India on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in India; and

(c) every instrument (other than a bill exchange or promissory note) mentioned in that Schedule, which, not having been previously executed by any person, is executed out of India on or after that day relates to any property situate, or to any matter or thing done or to be done, in India and is received in India:

Provided that no duty shall be chargeable in respect of-

(1) any instrument executed by, or on behalf of, or in favour of, the Government in cases where, but for

this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument;

(2) any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel, registered under the Merchant Shipping Act, 1894, or under Act 19 of 1938, or the Indian Registration of Ships Act, 1841 (10 of 1841) as amended by subsequent Acts.

(3) Any instrument executed, by or on behalf of, or in favour of the Developer, or Unit or in connection with the carrying out of purposes of the Special Economic Zone.

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Section 17 of the Act reads as under:

"17. Instruments executed in India \026 All instrument chargeable with duty and executed by any person in India shall be stamped before or at the time of execution."

Section 27 of the Act reads as under:

"27. Facts affecting duty to be set forth in instrument.- The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein."

Section 47-A inserted by Rajasthan(Amendment) State Stamp Act reads as under:

"S.47-A Instruments under-valued, how to be valued \026 (1) Notwithstanding anything contained in the Registration Act, 1908 (Central Act XVI of 1908) and the rules made thereunder as in force in Rajasthan where in the case of any instrument relating to an immovable property chargeable with an ad valorem duty on the market value of the property as set forth in the instrument, the registering officer has, while registering the instruments, reason to believe that the market value of the property has not been truly set forth in the instrument, he may either before or after registering the instrument, send it in original to the Collector for determination of the market-value and to assess and charge the duty in conformity with such determination together with a penalty not exceeding ten-times the deficient stamp duty chargeable and surcharge, if any, payable on such instrument.

(2) On receipt of the instrument under sub-section(1), the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an enquiry in the prescribed manner determine the market-value and the duty including penalty and surcharge, if any, payable thereon; and if the amount of duty including penalty and surcharge, if any, already paid, is deficient, the

deficient amount shall be payable by the person liable to pay the duty including penalty and surcharge, if any.

(2-A) Where it appears to a person having by law or consent of parties authority to receive evidence or a person in charge of a public office, during the course of inspection or otherwise, except an officer of a police, that an instrument is undervalued, such person shall forthwith make a reference to the Collector in that matter.

(3) The Collector may, suo motu, or on a reference made under sub-section (2-A) call for and examine any instrument not referred to him under sub-section (1), from any person referred to in sub-section (2-A) or the executant or any other person for the purpose of satisfying himself as to the correctness of the market-value of such property has not been truly set forth in the instrument, he may determine in accordance with the procedure provided in sub-section (2), the market-value and the amount of stamp duty together with a penalty not exceeding ten times the deficient stamp duty chargeable on it, which shall be payable by the person liable to pay the stamp duty and penalty.

(4) Where for any reason the original document called for by the Collector under sub-section (3) is not produced or cannot be produced, the Collector may after recording the reasons for its non-production call for a certified copy of the entries of the document from the registering officer concerned and exercise the powers conferred on him under sub-section (3).

(5) For the purpose of enquiries under this section, the Collector shall have power to summon and enforce the attendance of witnesses including the parties to the instrument or any of them, and to complete the production of documents by the same means, and so far as may be in the same manner, as is provided in the case of Civil Court under Code of Civil Procedure, 1908 (Central Act V of 1908)"

9. The contention of the learned counsel for the State that as per Section 17 of the Act, the market value has to be taken into consideration because Section 17 stipulates that all the instruments chargeable with duty and executed by person of India shall be stamped before or "at the time of execution". The word "execution" has been defined in Section 2(12) of the Act which says that "Execution" used with reference to the instruments, mean "signed" and "signature". Therefore, it shows that the document which is sought to be registered has to be signed by both the parties. Till that time the document does not become an instrument for registration. A reading of Section 2(12) with Section 17 clearly contemplates that the document should be complete in all respects when both the parties should have signed it with regard to the transfer of the immovable property. It is irrelevant whether the matter had gone in for litigation.

10. It may be mentioned that there is a difference between an agreement to sell and a sale. Stamp duty on a sale has to be assessed on the market value of the property at the time of the sale, and not at the time of the prior agreement to sell, nor at the time of filing of the suit. This is evident from section 17 of the Act. It is true

that as per Section 3, the instrument is to be registered on the basis of the valuation disclosed therein. But Section 47-A of the Rajasthan (Amendment) Stamp Duty Act contemplates that in case it is found that properties are under valued then it is open for the Collector (Stamps) to assess the correct market value. Therefore, in the present case when the registering authority found that valuation of the property was not correct as mentioned in the instrument, it sent the document to the Collector for ascertaining the correct market value of the property. The expression "execution" read with Section 17 leaves no manner of doubt that the current valuation is to be seen when the instrument is sought to be registered. The Stamp Act is in the nature of a taxing statute, and a taxing statute is not dependant on any contingency. Since the word "execution" read with Section 17 clearly says that the instrument has to be seen at the time when it is sought to be registered and in that if it is found that the instrument has been undervalued then it is open for the registering authority to enquire into its correct market value. The learned single Judge as well as the Division Bench in the present case had taken into consideration that the agreement to sell was entered into but it was not executed. Therefore, the incumbent had to file a suit for seeking a decree for execution of the agreement and that took a long time. Therefore, the Courts below concluded that the valuation which was in the instrument should be taken into account. In our opinion this is not a correct approach. Even the valuation at the time of the decree is also not relevant. What is relevant in fact is the actual valuation of the property at the time of the sale. The crucial expression used in Section 17 is "at the time of execution". Therefore, the market value of the instrument has to be seen at the time of the execution of the sale deed, and not at the time when agreement to sale was entered into. An agreement to sell is not a sale. An agreement to sell becomes a sale after both the parties signed the sale deed. A taxing statute is not contingent on the inconvenience of the parties. It is needless to emphasize that a taxing statute has to be construed strictly and considerations of hardship or equity have no role to play in its construction. VISCOUNT SIMON quoted with approval a passage from ROWLATT, J. expressing the principle in the following words

" In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

11. The same view was expressed by Hon'ble Bhagwati J. in the case of A.V. Fernandez v. State of Kerala reported in AIR 1957 SC 657. The principle is as follows:

"In construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law. If the revenue satisfies the court that the case falls strictly within the provisions of the law, the subject can be taxed. If on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intention of the Legislature and by considering what was the substance of the matter."

Hon'ble Shah J has formulated the principle thus:

"In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the

words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any assumed deficiency."

Therefore, a taxing statute has to be read as it is. In other words, the literal rule of interpretation applies to it.

12. In this back-ground, if we construe Section 17 read with Section 2(12) then there is no manner of doubt that at the time of registration, the Registering Authority is under an obligation to ascertain the correct market value at that time, and should not go by the value mentioned in the instrument.

13. Learned counsel for the respondent submitted that if we construe Section 3 read with Section 27 of the Act then the Registering Authority is under an obligation to only see the value mentioned in the instrument. In our opinion Section 3 which is the charging section cannot be read in isolation but has to be read along with Section 17 of the Act. From a composite reading of Sections 3, 17 and 27, it becomes abundantly clear that the valuation given in an instrument is not conclusive. If any doubt arises in the mind of the Registering Authority that the instrument is under-valued then as per Section 47-A of the Rajasthan (Amendment) the instrument can be sent to the Collector for determination of the correct market value. Under Section 47-A read with Sections 3, 17 and 27, it becomes clear that the Registering Authority has to ascertain the correct valuation given in the instrument regarding market value of the property at the time of the sale.

14. Learned Counsel for the respondent strenuously urged before us that in fact when the agreement to sell was not executed by the vendor, the respondent had no option but to file a suit and a long time was taken for obtaining a decree for execution of the agreement. He was not at fault and as such the valuation given in the instrument should be taken into consideration because during the litigation the valuation of the property has shot up. In this connection, learned counsel has invited our attention to the principle "*Actus curie neminem gravabit*" meaning thereby that no person shall suffer on account of litigation. Hence learned counsel submitted that since the matter had been in the litigation for a long time, the respondent cannot be made to suffer. He invited our attention to the decision of the Andhra Pradesh High Court Sub-Registrar, Kodad Town and Mandal (supra). It is true that no one should suffer on account of the pendency of the matter but this consideration does not affect the Principles of interpretation of a taxing statute. A taxing statute has to be construed as it is all these contingencies that the matter was under litigation and the value of the property by that time shot up cannot be taken into account for interpreting the provisions of a taxing statute. As already mentioned above a taxing statute has to be construed strictly and if it is construed strictly then the plea that the incumbent took a long time to get a decree for execution against the vendor that consideration cannot weigh with the Court for interpreting the provisions of the taxing statutes. Therefore, simply because the matter have been in the litigation for a long time that cannot be a consideration to accept the market value of the instrument when the agreement to sale was entered. As per Section 17, it clearly says at the time when registration is made, the valuation is to be seen on that basis.

15. In the case of Sub-Registrar, Kodad Town and Mandal (Supra), the learned single Judge of the Andhra Pradesh High Court felt persuaded on account of 30 years' long litigation and therefore, declined to send the papers back to the Collector for valuation at

the market value. With great respect, the view taken by the learned single Judge is against the principles of interpretation of a taxing statute. Therefore, we are of the opinion that the view taken by the learned single Judge of the Andhra Pradesh High Court is not correct.

16. Accordingly, we are of the opinion that the view taken by the learned single Judge as well as by the Division Bench cannot be sustained and the same is set aside. The Collector shall determine the valuation of the instrument on the basis of the market value of the property at the date when the document was tendered by the respondent for registration, and the respondent shall pay the stamp duty charges and surcharge, if any, as assessed by the Collector as per the provisions of the Act. The appeal of the State is allowed. No order as to costs.

JUDIS