ITEM NO.4 COURT NO.5 SECTION XI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 27680/2018
(Arising out of impugned final judgment and order dated 09-02-2018 in RAMA No. 1/2016 passed by the High Court Of Judicature At Allahabad, Lucknow Bench)

THE STATE OF UTTAR PRADESH & ORS. Petitioner(s)

VERSUS

KOTAK MAHINDRA BANK LIMITED Respondent(s)
(IA No. 133981/2018 - CONDONATION OF DELAY IN FILING
IA No. 133982/2018 - EXEMPTION FROM FILING O.T.)

Date : 05-03-2020 These matters were called on for hearing today.

CORAM :
HON'BLE MRS. JUSTICE R. BANUMATHI
HON'BLE MR. JUSTICE A.S. BOPANNA

Mr. Devadatt Kamat,Sr.Adv.(AC)
Mr. Aditya Bhat,Adv.
Mr. Javedur Rahman,Adv.
Mr. Ali Asghar Rahim,Adv.
Mr. M. Yogesh Kanna, AOR

For Petitioner(s) Mr. V. Shekhar,Sr.Adv.
Mr. Bhakti Vardhan Singh,AOR
Mr. Rajiv Kumar Dubey,Dav.
Mr. Rajesh Kumar,Adv.
Mr. Soumya Ranjan Paikray,Adv.
Mr. Sheetal Rajput,Adv.
Mr. Akshay Saxena,Adv.

For Respondent(s) Mr. Arvind Datar,Sr.Adv.
Mr. Mahesh Agarwal,Adv.
Mr. Apoorv Tiwari,Adv.
Ms. Devika Mohan,Adv.
Mr. Yojit Mehra,Adv.
Mr. E. C. Agrawala, AOR

UPON hearing the counsel the Court made the following
O R D E R

We have heard Mr. V. Shekhar, learned senior counsel appearing on behalf of the petitioner-State of Uttar Pradesh.

We have heard the reply submissions of Mr. Arvind Datar,

learned senior counsel appearing on behalf of the respondent-Kotak Mahindra Bank Limited.

Mr. Devadatt kamat, learned amicus is represented by the learned counsel Mr. Aditya Bhat.

During the course of hearing, it emerged that the benefit of ceiling limit of Stamp Duty payable under Article 23 of Schedule I-B of the Indian Stamp Act, 1899 (as amended by the State of U.P.) fixed at Rs. 1,00,000/- (Rupees one lakh) has been provided to Asset Reconstruction Companies. The said notification reads as under:

> ***English translation of Kar Evam Nibandhan Anubhag-5, Noti. No. K.N. 5-1023/XI-2005-500(137)-2003, dated March 15, 2005, published in the U.P. Gazette, Extra., Part 4, Section(Kha), dated 15th March, 2005***
>
> **In exercise of the powers under clause (a) of sub-section (1) of Section 9 of the Indian Stamp Act, 1899 (Act No. 2 of 1899) as amended from time to time in its application to Uttar Pradesh, the Governor is pleased to reduce from the date of its publication in the Gazette, the stamp duty on instruments of assignment of debt [by Financial Institutions] chargeable as Conveyance under clause (a) of Article 23 of Schedule I-B of the aforesaid Act executed in favour of an Asset Reconstuction Company constituted under Section 3 of the Securitization and Reconstuction of Financial Assets and Enforcement of Security Interest Act, 2002 (Act No. 54 of 2002) and registered under the Companies Act, 1956 (Act No. 1 of 1956) by the Department of Non-Banking Supervision, Reserve Bank of India, Mumbai, from Rupees Eighty per thousand to Rupees one per thousand, provided that the duty shall not exceed Rupees one lakh.**

During the course of hearing, our attention has also been drawn to the Judgment of this Court reported in *2010 (10)SCC 1 titled ICICI Bank Limited vs. Official Liquidator of APS Star*

Industries Limited and Others **where the Supreme Court while setting aside the judgment of the Gujarat High Court held that the Banks** ***inter se*** **can transfer their non-performing assets (NPA). The relevant portion of the judgment reads as under:**

> **"51…..…….for example, when an account receivable is treated as NPA and assigned to the assignee Bank, the parties have to follow certain guidelines issued by RBI. If there is a breach of the guidelines or statutory directions issued by RBI by the assignor in regard to transfer of NPA then the assignee Bank can enforce such obligations vis-a-vis the assignor Bank. It is these obligations which are referred to in the impugned deed of assignment. That, an account receivable becomes an NPA only because of the default committed by the borrower(s) who fails to repay. Lastly, it may be mentioned that the said SARFAESI Act, 2002 was enacted enabling specified SPVs to buy NPAs from the banks. However, from that it does not follow that the banks inter se cannot transfer their own assets. Hence the said SARFAESI Act, 2002 has no relevance in this case".**

Considering the judgment of this Court, the business of the Bank in securing assignment of NPA will be similar to the activity of Asset Reconstruction Company. The State of U.P. has given the ceiling limit for the Stamp Duty payable under Article 23 of Schedule I-B of the Indian Stamp Act, 1899 (as amended by the State of U.P.) to Assets Reconstruction Companies constituted under Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 in respect of such transaction. The State of U.P. may keep in view that the banks like Kotak Mahindra Bank Limited is also running similar business like ARCS, the respondent in the present case is also purchasing NPAS in addition to their regular banking activity.

Considering the fact that the benefit of ceiling has been

provided in other States like Maharashtra and Gujarat etc. even to the Banks in this regard as held by this Court in the judgment of ICICI Bank Limited, it would be in order for the State of U.P. to examine the matter and take an appropriate decision as to whether the benefit provided to the Asset Reconstruction Companies by capping the limit could be extended to the banks as well.

To enable such consideration and report in that regard, list the matter on 13th April, 2020.

(MADHU BALA)
AR-CUM-PS

(BEENA JOLLY)
BRANCH OFFICER