Order Below Exh.61 in Spl.Darkhast 30/2019

(CNR No. MHSN 020018382019)

C.R.Constructions Vs. Maharashtra Jivan Pradhikaran

The D.H. has filed this application for issuing the necessary orders in respect of impounding of Bank Guarantee furnish by the J.D. on insufficient stamp duty.

2. The Hon'ble Bombay High Court in Second Appeal No.149/2021 pass the order staying the execution of decree subject to the furnishing of Bank Guarantee equivalent to 50% of balance amount due Rs.48,12,129/-. Accordingly, the J.D. furnished the Bank Guarantee issued by State Bank of India for Rs.24,06,100/- with revenue stamp of value Rs.500/-. D.H. argued that as the instrument of Bank Guarantee is nowhere covered under any other article of Stamp Act, applicable stamp duty shall be considered in term of article 5 (h)(A)(iv)(b) which provides that when obligation, rights or interest and having monitory value has been created in respect of amount more than 10 lakh, then 0.2% stamp duty on the amount agreed in the guarantee shall be paid. Accordingly, the stamp duty on value of guarantee of Rs.24,06,100/- works out at Rs.4,900/-. However, the bank guarantee produced on record is embossed with revenue stamp of only Rs.500/-

which is grossly inadequate and insufficient and therefore the bank guarantee is liable to impounded u/s. 33 for recovery of balance amount of stamp duty with penalty.

3. The J.D. resisted the application by filing say on Exh.64 on the ground that Stamp Act nowhere provides the requirement of stamp duty on the instrument of Bank Guarantee. The contention of D.H. in this regard is false and contrary to the law. This execution petition is stayed by the Hon'ble High Court and in spite of that D.H. is repeatedly moving worthless applications which conduct is abuse of process of law. The Bank Guarantee does not create the immediate obligation and therefore not falls within the scope of article 5 (h)(A)(iv)(b).

4. I have gone through the provision of article 5 (h) (A)(iv)(b) minutely. It does not mention anywhere the word 'Bank Guarantee'. D.H. has submitted that Bank Guarantee should be treated on the par of agreement. However, I am not satisfied with this submission that bank guarantee partakes the character of agreement. No material I found which suggest that that stamp duty on Bank Guarantee is chargeable in the terms of article 5 (h)(A)(iv)(b). There is reasonable merit in the submission of J.D. that the Bank Gurantee does not create the immediate obligation and therefore not falls within the scope of article 5 (h)(A)(iv)(b).

Hence, having found the application not maintainable, I pass following order -

-:- ORDER -:-

1. Application stands rejected.

Sd/-xx
(Vijay F. Chaugule)
7^{th} Jt. Civil Judge Senior Division,
Sangli.

Sangli.
Date : 08/07/2021

I affirm that the contents of this P.D.F. file judgment/order are same, word to word, as per the original judgment/order.

Name of Stenographer	:-	Ketan Ashok Sargar, Jr.cl.
Name of Court	:-	**Mr. Vijay F. Chaugule,** 7th Jt. Civil Judge (S.D.), Sangli.
Date of decision/typed	:-	08/07/2021
Judgment/order signed by the P.O. on	:-	08/07/2021
Judgment/order uploaded on	:-	13/07/2021