

ITEM NO.2

COURT NO.12

SECTION XVI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 21405/2010

(Arising out of impugned final judgment and order dated 13-05-2010 in WP No. 1295/2009 13-05-2010 in WP No. 1295/2009 passed by the High Court At Calcutta)

REGISTRAR OF ASSURANCES & ANR.

Petitioner(s)

VERSUS

ASL VYAPAR PRIVATE LTD. & ANR.

Respondent(s)

WITH

SLP(C) No. 22197/2010 (XVI)

Date : 06-02-2020 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE K.M. JOSEPH

For Petitioner(s) Mr. Soumya Chakraborty, Sr. Adv.
Mr. Suhaan Mukerji, Adv.
Mr. Vishal Prasad, Adv.
Mr. Abhishek Manchanda, Adv.
Ms. Kajal Dalal, Adv.
Mr. Nishit Shah, Adv.
M/S. Plr Chambers And Co., AOR

For Respondent(s)

R-1

Mr. Partha Sil, AOR
Mr. Shubhayu Roy, Adv.
Mr. Tavish B. Prasad, Adv.

R-2

Mr. Sanjoy Kumar Ghosh, Adv.
Ms. Rupali S. Ghosh, Adv.
Mr. Avijit Bhattacharjee, AOR

Mr. Gaurav Kejriwal, AOR
Mr. Gurpreet Singh Hora, Adv.
Mr. Abdul Hamid, Adv.

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

We have heard learned counsel for the parties.

The impugned judgment draws strength from the observations of this Court in *V.N. Devadoss v. Chief Revenue Control Officer-Cum-Ins. And Ors.* - (2009) 7 SCC 438 more specifically para 13 dealing with the issue of the objects sought to be sub-served by an amendment in the State of West Bengal by introduction of Section 47A to the Indian Stamp Act, 1899.

It has been opined that considering the phraseology used that "*market value of the property*" has not been duly set forth would imply that it is meant to cure the legislative mischief arising from the conveyance presented for registration where there is fraudulent under valuation of the subject matter of the suit property with the intent to cause loss of revenue. It is, thus, not to apply to Court auctions as the Court takes care of the appropriateness of the transactions.

Learned counsel for the appellants has brought to our notice the judgment of this Court in *M/s Kayjay Industries Pvt. Ltd. v. M/s Asnew Drums (P) Ltd. and Ors.* - (1974) 2 SCC 213 to contend that such judgment has not been taken note of in *V.N. Devadoss case* (supra). Our attention has been invited to para 7 which highlights the salient aspects in respect of Court sales which is a forced sale and observes that notwithstanding the competitive element of a public auction, the best price is not always forthcoming. However, the discussion thereof in the said paragraph is more contextual to sales of plants and machinery.

We may notice that the mischief which is sought to be cured by the introduction of Section 47A deals with a scenario where there is a conscious endeavour to show the consideration at less than what it has actually been transacted for. It is this aspect which has been dealt with in para 21 of the impugned order with reference to the judgment of this Court in *State of Travancore-Cochin & Ors. v. Shanmugha Vilas Cashewnut Factory* - AIR 1953 SC 333 and *Bengal Immunity Co. Ltd. v. State of Bihar & Ors.* - AIR 1955 SCC 661. The gravamen of reasoning is that a legal fiction is to be limited to the purpose for which it was created and should not be extended beyond that legitimate field.

We may, however, notice that the impugned order has traversed certain areas over which we have reservations; a) the interpretation of Section 2(16B) of the said Act as set out in para 24 referring to two options contrary to the wordings of the statute; (b) observations in para 27.4 which seeks to give a registering authority a new channel to open up final transaction having far reaching repercussions; and c) the conclusion contained in para 29.1 and 29.2 are beyond what we have observed aforesaid.

We would have proceeded to enunciate the legal position but for the fact that learned counsel for the respondent have very fairly brought to our notice the judgment of two Judges Bench of this Court in *Additional Distt. Sub-Registrar, Siliguri v. Pawan Kumar Verma*- (2013) 7 SCC 537 more specifically para 14. The observations to the effect that a registering authority cannot be compelled to follow the value fixed by the Court for purposes of suit valuation seeks, respectfully, to traverse a different path.

We are thus, of the view that a legal principle in this case should be settled in the context of the amendment introduced to the said Act by the State of the West Bengal i.e. Section 47A after taking into consideration the fact that similar amendments have been made in the State of Tamil Nadu and Andhra Pradesh though they are not identical. This is also in the context of the explanation to sub-rule (5) of the Tamil Nadu Rules which finds elucidation in para 16 of the *V.N. Devadoss case* (supra) with there being no corresponding provision in the West Bengal Act.

We thus, require the papers to be placed before Hon'ble the Chief Justice of India so that it may be assigned to a Three Judges Bench.

(ASHA SUNDRIYAL)
A.R. -cum-P.S.

(ANITA RANI AHUJA)
COURT MASTER