

Government Of Andhra Pradesh vs Marvel Hostings Pvt. Ltd on 18 October, 2022

Author: Prashant Kumar Mishra

Bench: Prashant Kumar Mishra

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA, CHIEF JUSTICE
&
HON'BLE MR. JUSTICE D.V.S.S. SOMAYAJULU

I.A.No.1 of 2022 in/and WRIT APPEAL No.17 of 2022
&
WRIT APPEAL No.22 of 2022
(Through physical mode)

WRIT APPEAL No.17 of 2022:

State of Andhra Pradesh,
Rep. by its Principal Secretary,
Revenue Registration 1 Department,
Amaravathi, Guntur, and others.

.. Appellants

versus

Marvel Financial Services Ltd.,
Flat No.104A, Sneha Prabhas Apts,
Chinna Thokata, Opp: Bata Showroom,
Above bread 2 kakes Bakery,
New Bowenpally, Secunderabad-500011,
Represented by its Director
Mr P. Srinivas Chowdary and another.

.. Respondents

Counsel for the appellants	: Mr. Narasimha Reddy G.L., GP for Registration & Stamps
Counsel for respondent No.1	: Mr. K.S. Murthy, Senior Counsel for Ms. Sridevi Jampani
Counsel for respondent No.2	: Mr. Kunuku Raja Sekhar

WRIT APPEAL No.22 of 2022:

Government of Andhra Pradesh,
Rep. by the Inspector General of Stamps and Registration,
Edupugallu, Vijayawada, Krishna District, and others.

.. Appellants

versus

Marvel Hostings Pvt. Ltd.,
New Bowenpally, Secunderabad,
Represented by its Director Mr. P. Srinivas.

.. Respondent

Counsel for the appellants	: Mr. Narasimha Reddy G.L., GP for Registration & Stamps
Counsel for the respondent	: Mr. K.S. Murthy, Senior Counsel for Ms. Sridevi Jampani

COMMON JUDGMENT (ORAL)

Dt: 18.10.2022 (per Prashant Kumar Mishra, CJ) Both these appeals are interconnected and, therefore, they are heard together and are being disposed of by this common judgment.

2. Writ Appeal No.17 of 2022 is preferred by the State and registration authorities against the order dated 24.01.2020 passed by the learned single Judge in W.P.No.15400 of 2018, directing the Sub-Registrar, Gunadala, Vijayawada Region, Krishna District, to receive the sale certificate dated 02.12.2017 issued by Tata Capital Financial Services Limited and register the same in favour of the writ petitioner as per the value shown in the sale certificate as market value, for determination of stamp duty, and release the document within a period of four weeks from the date of receipt of a copy of the order. As there is a delay of 627 days in filing the appeal, I.A.No.1 of 2022 has been filed seeking condonation of the said delay.

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3. In Writ Appeal No.22 of 2022 also, the State and registration authorities are the appellants and the said appeal is directed against the order dated 14.09.2021 passed by the learned single Judge in W.P.No.20142 of 2021, allowing the said writ petition in terms of the order dated 24.01.2020 in W.P.No.15400 of 2018.

4. The relevant facts, which are necessary for the purpose of consideration of the issue in the present appeals, are as follows: The petitioner in W.P.No.15400 of 2018, namely, Marvel Financial Services Limited, has purchased a property in an auction conducted by Tata Capital Financial Services Limited under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'). After the sale certificate was issued in its favour, Marvel Financial Services Limited has presented the same for registration, but the registration authorities refused to register the same stating that the company has to enter into a proper sale deed with the vendor and pay the stamp duty on the market value but not on the

value mentioned in the sale certificate since the market value was much higher than the value mentioned in the sale certificate. In such circumstances, W.P.No.15400 of 2018 came to be filed. While deciding the said writ petition, the learned single Judge relied upon the common order dated 24.01.2014 passed by this Court in W.P.Nos.17600 of 2011 & 32791 of 2013 (Indian Bank, ARM Branch, Coimbatore v. Sub- Registrar, Nagari Mandal; K.S. Devarajan v. State of A.P.), to hold that HCJ & DVSS,J no separate deed of transfer is required and the valuation mentioned in the sale certificate would be the criteria to determine the stamp duty payable for registration and, thus, the writ petitioner is not required to pay stamp duty equivalent to the market value fixed by the authorities. Accordingly, W.P.No.15400 of 2018 was allowed with the directions as already noted in the second paragraph. While so, after the said order was passed, the name of the company has been changed from 'Marvel Financial Services Limited' to 'Marvel Hostings Private Limited'. Contending that though the fact regarding change of name of the company as per the procedure has been brought to the notice of the registration authorities, they refused to register the sale certificate as per the directions issued in W.P.No.15400 of 2018 and demanded payment of stamp duty on market value, the Marvel Hostings Private Limited preferred W.P.No.20142 of 2021. When the said writ petition was taken up for hearing before the learned single Judge, learned counsel for the petitioner and the learned Government Pleader for Stamps & Registration submitted that the issue involved is squarely covered by the earlier order dated 24.01.2020 passed in W.P.No.15400 of 2018. In view of the said submission made by both the sides, the learned single Judge allowed W.P.No.20142 of 2021 in terms of the order dated 24.01.2020 passed in W.P.No.15400 of 2018. Thereafter, the State has preferred the present appeals against the orders passed in both the writ petitions.

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5. Mr. Narasimha Reddy G.L., learned Government Pleader appearing for the appellants, strenuously urged that the value shown in the sale certificate is different from the market value and cannot be the criteria to determine the stamp duty. He would submit that the value shown in the sale certificate may not always be fixed as per the market value prevailing at the relevant point of time and it may be higher or lower than the market value. In view of the same, he would contend that it is necessary to re-consider the ratio laid down in the case of Indian Bank as well as in the earlier writ petition, i.e., W.P.No.15400 of 2018.

6. Per contra, Mr. K.S. Murthy, learned senior counsel assisted by Ms. Sridevi Jampani, learned counsel for the writ petitioner, would submit that W.A.No.17 of 2022 preferred against the order passed in W.P.No.15400 of 2018 is barred by limitation and there is no sufficient cause for condonation of the enormous delay in filing the said appeal. He would further submit that W.A.No.22 of 2022 preferred against the order in W.P.No.20142 of 2021 is also not maintainable for the reason that the said order has been passed based on the concession of the learned State counsel that the issue is covered by the earlier order in W.P.No.15400 of 2018. In support of his contention that no appeal is maintainable against a consent order, learned senior counsel would rely upon the order dated 23.09.2021 passed by the Hon'ble Supreme Court in S.L.P(C).No.13911 of 2021 (State of Andhra Pradesh v. Devi Sea Foods Limited), wherein the Hon'ble Supreme Court came down heavily on the State HCJ & DVSS,J of Andhra Pradesh for filing a frivolous Special Leave Petition in the matter in which a consent order was passed by the High Court based on the statement made by

the State counsel, and imposed costs of Rs.1,00,000/- upon the petitioners.

7. Having heard the learned counsel for the parties and having considered the matter in its entirety, we are of the considered opinion that both the writ appeals must fail for reasons more than one. Admittedly, the State did not choose to challenge the judgment in the matter of Indian Bank by filing any appeal before the superior Court. The said judgment has, thus, attained finality and is holding the field for the last eight years. Even, when W.P.No.15400 of 2018 was decided following the decision in Indian Bank, initially, the State did not choose to prefer any writ appeal contending that the ratio in the said decision cannot be made applicable and the matter needs re-consideration. Having accepted the ratio settled in the matter of Indian Bank and having remained silent for about two years after the earlier order in W.P.No.15400 of 2018 has been passed following the said judgment, the State is now seeking re-consideration of the ratio laid down in those matters after the order in the subsequent writ petition, i.e., W.P.No.20142 of 2021 has been passed.

8. Be that as it may, on merits also, we are in complete agreement with the reasoning assigned by the learned single Judge while allowing W.P.No.15400 of 2018, reinforcing the view taken earlier in the matter of Indian Bank. In the matter of Indian Bank, the learned Judge discussed HCJ & DVSS,J the law in extensio to hold that if the sale certificate is issued by the Court or officer authorized by the Court, any further deed of transfer is not required and that while undertaking registration of the document in relation to the property purchased in an open auction conducted by the bank, the valuation mentioned in the sale certificate shall alone be the criteria to determine the stamp duty payable for registration. It was also observed that when auction is conducted in pursuance to the statutory mandate by the Court or State or instrumentality of the State, no intention to manipulate the stamp duty and undervaluing the property can be inferred, more particularly, when the same is confirmed in an open auction. Having relied upon the said order, the learned Single Judge, while deciding W.P.No.15400 of 2018, has rightly opined that when the sale certificate was issued under the authority of Central enactment, i.e., SARFAESI Act, the value set forth in the said document cannot be doubted and it can be taken as market value of the property for the purpose of registration.

9. Under Section 47-A(6) of the Indian Stamp Act, 1899 (for short, 'the Act of 1899'), it is provided that for the purposes of the said Act, market value of any property shall be estimated to be the price which in the opinion of the Collector or the appellate authority, as the case may be, such property would have fetched or would fetch if sold in the open market on the date of execution of any instrument referred to in sub-section (1). A sale in open auction in proceedings under the SARFAESI Act is akin to a sale in 'open market', the expression used in Section 47-A(6) of the Act of 1899. It is also to be seen HCJ & DVSS,J that the proviso to Section 47-A(6) of the Act of 1899 clearly says that in respect of instruments executed by or on behalf of the Central Government or the State Government or any authority or body incorporate by or under any law for the time being in force and wholly owned by Central/State Government, the market value of any property shall be the value shown in such instrument. Even if a sale officer under the SARFAESI Act is not an officer of the Government, the fact remains that he is an officer of the corporate entity, and that while conducting the sale, he follows the procedure prescribed under the SARFAESI Act and the Rules framed thereunder. Further, Rule 8(5) of the Security Interest (Enforcement) Rules, 2002 (for short, 'the

Rules of 2002') provides that before effecting sale of the immovable property referred to in sub-rule 1 of Rule 9, the authorized officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property and may sell the whole or any part of such immovable secured asset by any of the following methods:- (a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying such assets; or (b) by inviting tenders from the public; (c) by holding public auction including through e-auction mode; or (d) by private treaty. Thus, the Rules of 2002 provide for sufficient guidelines for fixing the valuation of the property put for auction sale and, therefore, the value mentioned in the sale certificate issued in favour of the auction purchaser HCJ & DVSS,J consequent upon auction under the SARFAESI Act, cannot be presumed to have been fixed at a lesser rate by undervaluing the sale value of the property.

10. In addition to what has been discussed above, it is also to be seen that the order in the subsequent writ petition - W.P.No.20142 of 2021 has been passed based on the statement made by the learned Government Pleader along with the learned counsel for the writ petitioner, that the matter in issue is covered by the earlier order passed in W.P.No.15400 of 2018. In its order dated 23.09.2021 passed in S.L.P(C).No.13911 of 2021 (State of Andhra Pradesh v. Devi Sea Foods Limited), the Hon'ble Supreme Court has observed that the order in the writ petition has been passed on the basis of the statement made by the State counsel and the writ appeal preferred against the same has been dismissed by the Division Bench on the basis that the challenged order was a consent order and the conduct of the State in preferring Special Leave Petition thereagainst shows that they have no respect for the statements they make in the Court or the law. Having opined thus, the Hon'ble Supreme Court dismissed the said S.L.P. with costs of Rs.1,00,000/-. Thus, besides the fact that the law on the issue has already been settled in the matter of Indian Bank, the writ appeal against the order passed in the subsequent writ petition - W.P.No.20142 of 2021 is also not maintainable on the ground that the order sought to be challenged is a consent order. Viewed from any angle, no interference is warranted with the orders passed by the learned single Judge and the writ appeals fail.

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11. Accordingly, both the Writ Appeals as well as I.A.No.1 of 2022 in W.A.No.17 of 2022 are dismissed. No costs. Pending miscellaneous applications, if any, shall stand closed.

PRASHANT KUMAR MISHRA, CJ

D.V.S.S. SOMAYAJULU, J