

Delhi High Court

Chief Controlling Revenue ... vs Marshal Produce Brokers Co. Pvt. ... on 22 September, 1978

Equivalent citations: AIR 1980 Delhi 249, 15 (1979) DLT 13

Author: S Chadha

Bench: T Tatachari, S Chadha, N Goswami

JUDGMENT S.S. Chadha, J.

(1) This reference made under Section 57 of the Indian Stamp Act, 1899 by the Chief Controlling revenue Authority, Delhi, has arisen in the following circumstances :

(2) The instrument of Lease made on twentieth day of November 1975 between Dr. Sarwan Singh Sidhu Karta H. U. F. and other (the landlords) and M/s. Marshall Produce Brokers Co. Pvt. Ltd. (the lessees) and drawn up non-judicial stamps of the value of Rs. 535 was presented for registration before the Sub-Registrar, New Delhi. In consideration of the monthly rent of Rs. 4.455 and of the convenanits, conditions and agreement contained in the deed, the landlords had granted lease for three years of a flat known as Flat No. 302 in the building called as the New Delhi House situated at 27, Bara Khamba Roard. New Delhi. A Sum of Rs. 53,460 had been paid as advance rent adjustable in twenty four equal Installments, i.e. Rs. 2,227.50 per month. In addition to the monthly rent, the lessees had agreed to deposit and always keep in deposit six months rent towards security for due performance of the obligations of the lease and this amount was to be dealt with in the manner provided. It is apposite to reproduce the relevant clauses of the instrument of lease here : "2(2)To deposit and always keep in deposit with the landlords a sum of Rs. 26,730 (Rs. Twenty Six thousand seven hundred and thirty only) equal to six months' rent towards security of the performance of the obligation of the Lessees. The deposit shall carry eight percent simple interest per annum. The Lessee shall be entitled to and the landlords shall be liable to pay the interest either in cash or by way of adjustments of the rent due yearly. The refund or the appropriation of the deposit shall be governed by the provisions contained in Clause 4(3) and Clause 4(6) hereof. (3) In case the rent hereby reserved or any part thereof, or any other outgoing be in arrears for twenty one days after becoming payable (whether legally demanded or not) or if any covenant on the Lessees part herein contained shall not be performed or observed, the Landlords, notwithstanding any right herein contained will be entitled to absolutely appropriate the deposit mentioned in the provisions contained in Clause 1(2) hereinabove, and not liable to pay the interest thereon without prejudice to their any other right to take legal action. 4(6) The deposit kept by the Lessees as mentioned in the provisions contained in Clause 1(2) hereinabove shall be refunded to the Lessees within seven days after the Lessees have handed over the vacant possession with all its fixtures and fittings therein belonging to the landlords with the interest due against the receipt issued and signed by a person duly authorised in this behalf by the Lessee, unless under Clause 4(3) hereinabove the said deposit has priorly been appropriated."

(3) The Sub-Registrar, New Delhi before whom the instrument of lease was presented expressed the opinion that the instrument is chargeable to a stamp duty of Rs. 1,345 under Article 35(c) of Schedule 1-A of the Indian Stamp Act, 1899 (hereinafter called the Act) and being deficiently stamped impounded it under section 33 of the Act and sent it in original under section 38(2) of the Act to the Collector of Stamps, Delhi for necessary action under section 40 of the Act. The Collector

of Stamps, Delhi heard the parties, on the dispute whether any duty was chargeable on the amount of the security deposit under Article 35(c) of the Schedule 1-A of the Act, in addition to the duty paid on the rent reserved under Article 35(a)(ii) and sustained the objections raised by the Sub-Registrar, New Delhi. The Collector of Stamps, New Delhi took a lenient view and directed the lessees to pay a penalty of Rs. 100 only in addition to the deficient stamp duty of Rs. 810. Aggrieved by the aforesaid order, the lessees agitated the matter in revision under section 56(2) of the Act before the Chief Controlling Revenue Authority, Delhi who took the view that the matter involved a substantial question of law regarding the scope of applicability of Article 35(c) to deposit/advance made under the lease and it would be appropriate to state and refer the case to this Court under Section 57 of the Act for opinion on the subject.

(4) The following questions of law were formulated and referred for opinion of this Court : "(1) Whether any duty is chargeable under Article 35(c) of Schedule I -A of the Indian Stamp Act, 1899 on the amount of security/deposit/advance which is refundable on determination of the lease, in addition to the duty paid on the rent reserved under Article 35(a) of the Schedule ; (2) Will it make any difference in the chargeability of duty, if such deposit/advance is adjustable in rent/other charges dues payable under the lease? (3) Whether such amount of security deposit paid for the due performance of the contract of the lease can be charged under Article 57 of the Schedule appended to the Act ?

(5) Proper Stamp Duty as provided in the column against Article 35 (c) of Schedule I-A of the Act would be payable in case of a lease, including an under lease or sub-lease and any agreement to let or sublet "where the lease is granted for a fine or premium or for money advanced in addition to the rent reserved". It is the common case of the parties that the amount of Rs. 26,730 deposited by the lessees as security for due performance of the obligations of the lease is neither a fine nor a premium. The only question for decision is whether the said sum of Rs. 26,730 on the construction of the terms contained in the instrument of lease is money advanced in addition to the rent reserved. Clause 2(2) of the instrument of lease calls it as deposit of Rs. 26,730 towards security for due performance of the obligations of the lessees. It carries an interest of 8 per cent per annum and it is the amount of interest and not the principal, which may either be paid in cash by the landlords or adjusted in the rent due yearly. The appropriation or refund of the deposit is governed by clauses 4(3) and 4(6) quoted above, which entitle the landlords to appropriate the deposit in case of non-payment of rent reserved or any other outgoings or in case of non-performance of the obligations but otherwise refund the deposit to the lessees within seven days of the handing over the vacant possession.

(6) Under Section 105 of the Transfer of property Act 1882 a lease of immoveable property is a transfer of a right to enjoy such property. made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops. service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. The transferor is called the Lesser, the transferee is called the lessee the price is called the premium, and the money. share, service, or other thing to be so rendered is called the' rent. The consideration for the lease is thus of two types. First one is the price paid or promised. The price paid may be cash or may be an adjustment of an outstanding debt

or its payment may be deferred or made payable in Installments. It is always in the nature of a capital income when the interest of the Lesser is parted with for a price. This price is called premium. The second type of consideration is of recurring character on specified occasions, which is the indication of rent. The liability to pay rent arises at stated periods or specific occasions. When such a liability is met in advance, it will still be 'rent' and not advance in addition to rent reserved. For this reason the payment of Rs. 53,460 as advance rent under the lease of instrument is rent for which there is both liability and covenant to pay. The revenue has treated this payment of Rs. 53,460 as rent paid rightly so in view of the Full Bench Judgment in Union of India v M/s Caltex (India) . The deposit of Rs. 26,730 is not rent v.r adv., i.e. rent. Its payment or liability is not of a recurring character on specified occasions and this not a revenue receipt, it cannot assume the character of price paid, because under the instrument of lease it is liable to be refunded to the lessees within seven days after the lessees have handed over the vacant possession.

(7) The consideration of lease is only two fold 'premium' and 'rent'. There is no third type of consideration when the interest of the Lesser is parted with. None is provided in Section 105 of the Transfer of Property Act, 1882. The Legislature, therefore, was providing under Article 35 (a) for instruments of lease, whether an underlease or sub-lease and any agreement to let or sublet, where by such lease the rent is fixed and no premium is paid or "rent" according to the period of lease. Under Article 35(b) proper stamp duty is provided where the lease is granted for a fine or premium or for money advanced and where no rent is reserved. Under Article 35 (c) it provided where the lease is granted for a fine or premium or for money advanced in addition to rent reserved. Fine is not defined in either Transfer of Property Act, 1882 or in the Indian Stamp Act, Fine in relation to leases is something which is to go irrevocably into the pocket of the landlord who requires it as a condition of consenting to a transfer of right to enjoy property. Fine is indistinguishable from premium and is money payment in consideration of a demise. Money paid as fine is money paid with the intention of passing over the property in it to the landlord so that it should become his. Fine is also given the name of "Salami" in some parts of this country. Such money payments are known by several other names, e.g. Nazrana Pugree etc. The legislature must be aware of money payments in consideration of the lease, when it sought to cover "fine or premium or for money advanced" in Articles 35(b) and (c). The words used here "for money advanced" do not connote any idea of repayment. Money advanced here is a condition for creation of an interest in the enjoyment of the property. Money advanced here is money which is not to revert to the lessee. If the advance is repayable, then it is a loan or deposit which word would have been used by the legislature in Articles 35(b) and (c) instead of "for money advanced", if it was intended to cover such payments. Money advanced here by the lessees to the landlords is with the intention expressed by the parties that the landlords should keep the money till appropriated or refunded. Such transaction is a deposit. In my opinion, when the legislature used the word "for money advanced" after "fine or premium" it was intended that it is a sum of money in the nature of fine or premium which goes irrevocably in the pocket of the landlord. It is a rule of legal construction that general words following enumeration of particulars are to have their generality limited by reference to the preceding particular enumeration and to be construed as including all other things of the like nature and quality. Where general words immediately follow or are closely associated with specific words, their meaning has to be limited by reference to the preceding words and has to be presumed to be restricted to the same genus as those specific words. This is the rule of construction known as

Ejusdem Generis and gives aid to the ascertainment of the true meaning of the statute.

(8) The contention of Mr. K. K. Sud, learned counsel for the Revenue, is that the object of the addition of the words "or for money advanced" in Article 35 (c) is apparently to rope in transactions which are a combination of a lease and a mortgage but embodied in the form of a lease providing for repayment of an advance. There are no words in the instrument before me indicating that the demised property should constitute security for the deposit or for its repayment. Unless the said property constitutes security for the debt of Rs. 26,730, it will not be a mortgage, but only a relationship of debtor and creditor is created. A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced. The essence of a transaction by way of loan on security is that the lender unwilling to rely solely on the personal liability of the borrower requires in addition to be given a right in the property to be available against any person in whose hands the property is transferred. From the language of the instrument of lease it is clear that there is no provision by which a right in property is bestowed. The Lessors are not put in possession of any property as usufructuary mortgage but have been granted only the tenancy rights which is only transfer of right to enjoy the property.

(9) Reliance is placed on Reference No. 1 of 1883 under Indian Stamp Act, 1879 reported in I. L. R. 7 Madras 208(2). In that case by a document purporting to be a lease, certain land was leased for four years at a rent of Rs. 15 per annum. Out of the total rent, it was stipulated that Rs. 50 should be paid in advance and the balance of Rs. 10 should be paid at the end of the term. It was held that the payment of Rs. 50 in advance was not payment of a premium or fine within the meaning of Article 39(c) of the Indian Stamp Act, 1879. In the second document in that case there was a deposit of one year's rent with the Lesser, it being arranged that it should be credited by the Lesser in the last year of the term. It was held that the stipulation amounts to no more than an agreement that the lessee shall pay a year's rent in advance, and, therefore, did not fall within the said Article 39(c), because the deposit of one year's rent was not a fine or premium. This decision can have no application to the case before me as the words "or for money advanced" did not exist in the Article 39(c) of the Indian Stamp Act, 1879. Apart from it a full Bench of Punjab High Court at Delhi in "Union of India v M/s. Caltex (India) Ltd." observed that merely because rent is paid in advance under a covenant its character does not change. In that case a sum of Rs. 25,500 was paid to the Lesser on the date of occupancy as advance rental for the first 36 months from the date of occupancy. It was held that this payment could not be "in addition, to the rent reserved" to come within Article 35(c). This view is contrary to the view expressed by the Madras High Court in Stamp Duty Reference, "Board of Revenue Madras v M/s Simpson and Mc Conechy Ltd", relied upon by the counsel for the revenue. There is also no helpful discussion in "Collector of Madras v A. B. J. Runaeres" reported in Air 1943 Madras 643(4), another case relied upon by the counsel for the revenue though the conclusion drawn is against the view taken by me.

(10) The clause in the instrument of lease is that in addition to the monthly rent, the lessees had agreed to deposit and keep in deposit with the landlords a sum of Rs. 26,730. This money is required to be paid as a deposit only as security for due performance of the obligations of the lease. If the contract of lease is carried out, and the stipulations contained therein are observed, the money has to be refunded to the lessees within seven days after the lessees have handed over the vacant

possession. This money cannot assume the character of "for money advanced in addition to the rent reserved" used in Article 35(c). "For money advanced" denotes a consideration irrevocably passing from the lessees to the landlords over and above the consideration for the lease which is given in the form of a rent. My answer to the first question is thus in the negative. If the amount deposited is adjustable in rent or other charges in terms of the instrument of lease, then the legal character of such a deposit would still be rent paid in advance. It will not make any difference to the chargeability of duty and I answer second question accordingly.

(11) There is a stipulation to deposit and always keep in deposit with the landlords a sum of Rs. 26,730 equal to six months' rent towards security of the performance of the obligations of the lease. If clauses 2(2), 4(3) and 4(6) with other requisite recitals had been incorporated in a separate instrument, then it is the common case that such an instrument amounts to security bond chargeable under Article 57. Under section 5 of the Act any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments each comprising or relating to one of such matters, would be chargeable under the Act. The answer to third question is unhesitatingly in the affirmative.

(12) In the result we are of the opinion that the duty is not chargeable under Article 35(c) of Schedule 1-A of the Indian Stamp Act, 1899 on the amount of security/deposit/advance, which is refundable on determination of the lease, in, addition to the duty paid on the rent reserved under Article 35 (a) of the Schedule. It will not make any difference in the chargeability of duty. If such deposit/advance is adjustable in rent/other charges/dues payable under the lease. The amount of security deposit paid for the due performance of the contract of lease is chargeable under Article 57 of the Schedule read with section 5 of the Act.