

1 Writ Appeal No.498/2007

High Court of Madhya Pradesh
Bench at Gwalior

**DIVISION BENCH : Hon.Shri Justice Sanjay Yadav &
Hon.Shri Justice Vivek Agarwal**

Writ Appeal No.498/2007

State of M.P. & Anr. Appellants

Vs.

SRF Ltd. & Ors. Respondents

Shri Ankur Mody, learned Additional Advocate General for
the appellants/State.

Shri N.K.Gupta, learned senior counsel with Shri Harish
Dixit, counsel for respondent No.1.

Whether approved for Reporting :

J U D G M E N T
(03rd day of September, 2019)

Per Justice Vivek Agarwal :

This writ appeal has been filed by the State being aggrieved by order dated 29.11.2004 passed in W.P.No.21/2002 by learned Single Judge setting aside the order dated 7.11.2001 passed by the Collector of Stamps, Bhind, and order dated 3.1.2002 passed by the Board of Revenue as Chief Controlling Revenue Authority and consequential demand notices dated 12.11.2001 and 22.12.2001.

2. Brief facts leading to the present appeal are that one

2 Writ Appeal No.498/2007

company Ceat Ltd. registered under the provisions of the Companies Act, 1956 in its annual general meeting convened on 24th March, 1995 resolved to authorize its Board of Directors to sell, lease or otherwise dispose of the whole or substantially the whole of the Tyre Cord Undertaking of the company having its plant at Malanpur near Gwalior in the State of M.P. on such terms and conditions as the Board of Directors of the Company may consider to be in the interest of the company, copy of such resolution is enclosed to the writ appeal as Annexure A.

3. Consequently respondent No.1 herein SRF Ltd. passed a resolution by the Board of Directors at its meeting held on 29.6.1995 according approval to the acquisition by the company of the Tyre Cord Division (TCD) of Ceat Ltd. located at village Ghirongi, Malanpur, Distt. Bhind (MP) as a 'going concern' at a consideration of Rs.325 crores approx.

4. Thereafter a joint resolution was passed by the representatives of the respective companies to confirm that Ceat Ltd. has sold as a 'going concern' its Tyre Cord Division (TCD) located at Malanpur Industrial Area, village Ghirongi, Distt. Bhind, near Gwalior, to SRF Ltd. It is further mentioned that the properties, licences, benefits of contracts and various other tangible rights relating to the business of the undertaking

3 Writ Appeal No.498/2007

stand vested in the SRF immediately after midnight of 8th February, 1996 subject to completion of certain formalities and from such date, the operations of the business of TCD are in the exclusive possession, control and management of SRF.

5. In terms of such resolution respectively passed by Ceat Ltd. and SRF Ltd., a deed of conveyance was executed between the two entities on 13th June, 1996 enclosed herewith as Annexure F. This deed of conveyance dated 13th June, 1996 is the bone of contention in the present litigation. When this deed of conveyance was presented to the Sub-Registrar, then exercising his authority under Section 33 of the Indian Stamp Act, Sub-Registrar, Gohad, Distt. Bhind, noted vide his report No.153 dated 2.7.1996 that conveyance deed which has been received in his office on 13.6.1996 for registration is deficiently stamped, and therefore, he confiscated such document exercising authority vested in him under Section 33 of the Stamp Act and forwarded the original document to the office of the Collector of Stamps, Bhind.

6. It will not be out of place to mention that Collector of Stamps passed order dated 30.5.1998, Annexure J, mentioning therein that a notice was sent by registered post to the seller, but nobody appeared for them, however, purchaser i.e. SRF Ltd. authorized its representative Shri I.J. Joshi who appeared

before the Collector of Stamps on 31.1.1997. Reply furnished by the purchaser company by registered post on 21.1.1997 was taken on record. Thereafter, another reply was filed on 16.10.1997 and thereafter statements of Shri I.J.Joshi, representative of the company, were recorded. On 13.11.1997 SRF filed copies of valuation report and balance sheet of SRF for the year 1996-97 and 1995-96.

7. Sub-Registrar, Gohad, alongwith Sub-Registrar at the headquarters conducted spot inspection and filed their report. On the basis of such document as were produced before the Collector of Stamps, Collector of Stamps passed an order that deed of conveyance which was presented to the Sub-Registrar on 13.6.1996 was containing recitals to transfer properties having market value of 303 crores for which stamp duty payable will be Rs.25,75,50,000/- (Rs. Twenty Five Crores, Seventy Five Lacs and Fifty Thousand Only) and there was payment of deficient stamp duty to the tune of Rs.23,72,50,000/-. Thus demanding such deficit stamp duty, it was directed that a penalty of Rs. one lac be also deposited alongwith the deficit stamp duty.

8. This order of the Collector of Stamps was challenged before the Board of Revenue which passed order dated 11th May, 2000 remanding the matter to the Collector of Stamps on

the ground that no notice was issued by the Collector of Stamps under the provisions of Section 47-A of the Stamp Act and no opportunity of hearing was afforded to the respondent-SRF, whereas notices were issued only under Section 33 of the Stamp Act, therefore, it was directed that Collector of Stamps shall make available a report of valuation or revaluation on the basis of which stamp duty has been finalized to be provided to the counsel for the respondent-purchaser company and after giving an opportunity of hearing, appropriate orders be passed by the Collector of Stamps.

9. On remand Collector of Stamps again passed an order dated 7.11.2001 clearly noting a fact that no proceedings were undertaken by him under the provisions of Section 47-A and the proceedings were in fact under Section 33 of the Stamp Act, and therefore, affirmed its earlier order maintaining the demand of deficit stamp duty to the tune of Rs.25,72,50,000/- besides imposing a penalty of Rs.5,09,05,000/- taking into consideration loss of revenue since 13.6.1996.

10. This order of Collector of Stamps was again assailed before the Board of Revenue which affirmed the order vide order dated 31.12.2001 which became bone of contention for the respondent (writ petitioner) SRF before the learned Single Judge.

11. Learned Single Judge has held that the conveyance deed in question purports to transfer of only super-structure and not entire undertaking, therefore, assessment of stamp duty made and demand for payment raised by the State is unsustainable in the eyes of law.

12. Learned counsel for the State submits that vide resolution dated 24.3.1995 Ceat Ltd. had resolved to transfer Tyre Cord Division at Malanpur. SRF Ltd. Vide its resolution dated 29.6.1995 SRF agreed to acquire the Tyre Cord Division of Ceat Ltd. located at village Ghirongi, Malanpur, as a going concern at a consideration of Rs.325 crores and thereafter a joint declaration has been made in February, 1996 to the effect that Ceat Ltd. has sold as a going concern its Tyre Cord Division to SRF Ltd. and while construing the contents of the deed of conveyance dated 13th June, 1996, learned Single Judge has lost sight of such facts while allowing the writ petition.

13. Learned counsel for the State submits that definition of conveyance as provided under Section 2(10) of the Indian Stamps Act, 1899 reads as under :-

“(10) “**Conveyance**” includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule I or by Schedule 1-A, as the case may be;”

Definition of instrument as provided under Section 2(14) of the Indian Stamp Act, 1899 reads as under :-

“(14) “Instrument” includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded;”

It is submitted that law laid down in case of **Duncans Industries Ltd. v. State of U.P. and others** as reported in **AIR 2000 SC 355** is relevant to the present controversy inasmuch as Section 27 of the Stamp Act for the State of M.P. provides as under :-

“27. **Facts affecting duty to be set forth in instrument.**—(1) The consideration, if any, the market value of the property and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

(2) In the case of instrument relating to immovable property chargeable with an ad valorem duty on the market value of the property, and not on the value set-forth, the instrument shall fully and truly set-forth the annual land revenue in the case of revenue paying land, the annual rental or gross assets, if any, in the case of other immovable property, the local rates, municipal or other taxes, if any, to which such property may be subject, and any other particulars which may be prescribed by rules made under this Act.”

and therefore, an agreement to transfer on an “as is where is basis” includes entire fertilizer business including plant and machinery, land, building thereon. It is held that machinery is to be treated as immovable property. Implicit reference to sale

of fertilizer factory as 'going concern' in deed of conveyance means vendor conveys title of plant and machinery under the deed of conveyance. Value of plant and machinery alongwith value of land can be taken into consideration for purpose of stamp duty payable. In para 10, it has been noted by Supreme Court :

10.....Apart from the recitals in the agreement of sale, it is clear from the recitals in the conveyance deed itself that what is conveyed under the deed dated 9.6.1994 is not only the land but the entire fertilizer business including plant and machinery. A perusal of Clauses 10, 11 and 13 of the said deed shows that it is the fertilizer factory which the vendor had agreed to transfer along with its business as a going concern and to complete the same the conveyance deed in question was being executed. There is implicit reference to the sale of fertilizer factory as a going concern in the conveyance deed itself. That apart, the inclusion of Schedule III to the conveyance deed wherein a Plan delineating the various machineries comprising of the fertilizer factory is appended shows that it is the land with standing fertilizer factory which is being conveyed under the deed, though an attempt to camouflage this part of the property sold is made in the recitals, in our opinion, the parties concerned have not been able to successfully do so. While considering this question of transfer of plant and machinery being part of the conveyance deed or not, reliance can also be placed on the application filed by the appellant before the appropriate authority of the Income-Tax Department wherein while disclosing the market value of the immovable property sought to be transferred the appellant himself has mentioned the value of the property so transferred as Rs.70 crores which is the figure found in the agreement of sale which agreement includes the sale of plant and machinery along with the land. A certificate issued by the appropriate authority under Section 269 UL(3) of the Income Tax Act evidences this fact. In the said application made by the appellant for obtaining the said certificate, the appellant has in specific terms at serial No. (iv) of the

Schedule included plant and machinery, railway sliding and other immovable properties as part of the fertilizer business undertaking. It is also found on record that by a supplementary affidavit dated 8.9.1993 filed before the Income Tax department while filing Form 37-I prescribed under the Income-tax Rules the petitioner has again shown all these plant and machinery along with the Plan which is now attached to the conveyance deed as part of the property that is being conveyed. Merely because in some of the relevant paragraphs of the Conveyance Deed the appellant has tried to highlight the fact that what is being sold under the conveyance deed is only the land and a reference is made in regard to the handing over of possession of the machinery on an earlier date does not ipso facto establish that the vendor did not convey the title of the plant and machinery under the conveyance deed dated 9.6.1994.”

14. Placing reliance on such judgment, it is submitted that subject matter of the conveyance deed is squarely covered by the ratio of law laid down in case of **Duncans Industries Ltd. (supra)** and therefore, writ appeal be allowed and the impugned judgment passed by learned Single Judge be set aside.

15. Shri N.K.Gupta, learned senior counsel appearing for respondent- SRF Ltd. submits that Board of Revenue vide its order dated 11th May, 2000 had remanded the matter with a specific direction that Collector of Stamps shall provide material on the basis of which valuation/ revaluation was made in regard to such property forming subject matter of the conveyance deed and after accepting objections and hearing

the arguments shall decide the matter in a rationale and wise manner. Caveat was also added that no ex-parte decision should be taken by the Collector of Stamps, but overlooking the fact that no proceedings were undertaken under Section 47A of the Stamp Act, therefore, judgment rendered in case of **Duncans Industries Ltd. (supra)** is not applicable, Collector of Stamps has again passed an order raising demand for deficit stamp duty. It is further submitted that vide report dated April, 23, 1996, valuer had already identified and valued the immovable assets of the Tyre Cord Division of Ceat Ltd. as on December, 31st 1995, therefore, in view of transfer of movable licences, properties, benefits of contracts and other tangible rights relating to the business of the undertaking taking place in favour of SRF after midnight of 8th February, 1996, therefore, these aspects already stood excluded from the scope of conveyance deed dated 13th June, 1996. Therefore, learned Single Judge has rightly held that only building & superstructure are to be construed to have been transferred through conveyance deed dated 13th June, 1996. It is also held that the revenue authorities have misdirected themselves and have invoked the provisions of Section 33 of the Stamp Act in a manner not permissible in law and by misreading the

instrument in question, stamp duty has been assessed. Learned Single Judge observed that in the facts and circumstances of the present case, there was no occasion for the petitioner company to transfer any other property, apart from the super-structure mentioned therein as the entire property had already been transferred even prior to execution of the instrument. It further observed that under law there is no compulsion on the petitioner to acquire the title to the undertaking only through a written instrument and has referred to the judgment rendered by Karnataka High Court in case of **L & T Komatsu Ltd. vs. Senior Sub-Registrar** as reported in **AIR 2004 Karnataka 306**. It has also distinguished the judgment in case of **Duncans Industries Ltd. (supra)** on the ground that in case of **Duncans Industries Ltd. (supra)** there was a specific recital in regard to transfer of plant and machinery relating to business so also other items mentioned therein, and therefore, it has been held by learned Single Judge that in that backdrop of specific stipulation in the document case of **Duncans Industries Ltd. (supra)** was decided and such ratio is not available in the present case.

16. Learned counsel for the respondent- SRF Ltd. has placed reliance on the judgment of the Supreme Court in case of

Himalaya House Co. Ltd., Bombay vs. The Chief Controlling Revenue Authority as reported in (1972) 1 SCC 726 wherein two questions were referred to the High Court for the opinion of the High Court, namely :

“(1) Whether Himalaya House Co. Ltd. the Assignee in the Assignment dated December 30, 1955 is the nominee of the several flat-holders who have purchased the flats in the Himalaya House and whether the Assignment in question is a Conveyance or a sale for a price which has passed from the hand of the flat-holders long before the date of assignment.

(2) Whether it was competent to the Assistant Superintendent of Stamps, under section 40 of the Indian Stamp Act, 1899 (now section 39 of the Bombay Stamp Act, 1958), to go beyond the terms of the document when it is mentioned in the document that no consideration is passed and assess the stamp duty in the manner mentioned by him in his order dated June 26, 1956.”

This has been answered in paragraphs 10 to 12 as under :-

“**10.**For the purpose of this case, we shall proceed on the assumption, without deciding, that the charging words in Article 23 of the Stamp Act "where the amount or value of the consideration for such conveyance as set forth therein" do not mean that the Revenue must have regard only to what the parties to the instruments have elected to state the consideration to be, but the duty must be assessed upon the amount or value of the consideration for the transfer as disclosed upon an examination of the terms of the instrument as a whole. We are of the opinion that the learned Chief Justice and Naik J. were not justified in holding that the Deed of Assignment incorporates into itself the various agreements entered into between Uttamchand and the persons to whom he assigned flats, offices and shops. The only reference to those persons in the Deed of Assignment is in the preamble wherein it is stated "AND WHEREAS the Assignor having erected a building known is Himalaya House on the said piece of land had granted to certain persons the right to occupy flats, offices and shops in

the said building AND WHEREAS the Assignee Company has been formed for the better administration of the said building and for the protection of the interests of the persons occupying the flats, offices and shops therein." These clauses merely refer to the earlier transactions. They do not incorporate into the Assignment Deed the earlier agreements with the persons referred therein. Mere reference to some earlier transactions in a document does not amount to an incorporation in that document, of the terms and conditions relating thereto. From the language used in the Assignment Deed, it is not possible to come to the conclusion that the terms and conditions of the earlier transactions have been made a part of that Deed. Further barring one particular agreement, other agreements were not before the Court. Therefore, it is not possible to know what the terms and conditions of those agreements were. Before the terms and conditions of an agreement can be said to have been incorporated into another document, the same must clearly show that the parties thereto intended to incorporate them. No such intention is available in this case.

11. It was urged that in view of section 27 of the Stamp Act, it was permissible for the Revenue to look into the terms and conditions of the agreements entered into by Uttamchand with the various persons to whom he had assigned flats, offices and shops, particularly in view of the fact that the impounded document makes reference to those agreements. We are not able to accept that contention. Section 27 prescribes that "The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable shall be fully and truly set forth therein." It is true that in view of this provision, the parties to a document are required to set forth in the document fully and truly the consideration (if any) and all other facts and circumstances affecting the chargeability of that document with the duty or the amount of the duty with which it is chargeable. But a failure to comply with the requirements of that section is merely punishable under section 64 of the Stamp Act. No provision in the Stamp Act empowers the Revenue to make an independent inquiry of the value of the property conveyed for determining the duty chargeable. Article 23 is the Article that governs the charging of Stamp

duty on "conveyance". That Article to the extent relevant for our present purpose reads :

"23. Conveyance as defined by section 2(10) not being a transfer charge or exempted under section 52. Where the amount or value of the consideration for such conveyance as set forth therein....."

12. This Article has come up for consideration before various High Courts on a number of occasions. In *Raman Chetty v. Mohamed Ghouse*, ILR 16 Cal 432 the Calcutta High Court held that in determining whether a document is sufficiently stamped for the purpose of deciding upon its admissibility in evidence, the document itself as it stands, and not any collateral circumstances which may be shown in evidence must be looked at. In *Sakharam Shankar and others v. Ramchandra Babu Mohire*, ILR 27 Bom 279 it was held that in determining the question whether a particular document is sufficiently stamped, the Court should look at the instrument as it stands. Full Bench of the Allahabad High Court in the matter of *Muhammad Muzaffar Ali*, ILR 44 All 339 held that if in a deed of gift the value of the property dealt with is not set forth, the deed does not require any stamp, and it is not within the competence of the Collector to have the said property valued in order to assess the duty payable. If, however, the value of the property is intentionally omitted with a view to defraud the Revenue, a prosecution will lie under section 64 of the Stamp Act. A Division Bench of the Patna High Court in *Sri Sitaram Ramalia and Another v. State of Bihar*, ILR 39 Pat 228 held that the Collector had no power under section 40 of the Stamp Act to embark upon an inquiry with regard to the market value of the properties covered by the document and require the payment of further stamp duty in accordance with his finding as to valuation and, therefore, that the impugned orders of the Collector, Commissioner and the Board were ultra vires and were liable to be set aside under Article 227 of the Constitution. Therein the Court was considering the scope of section 58 of the Stamp Act which requires that an instrument of settlement should be stamped with the same duty as a bond "for a sum equal to the amount or value of the property settled as set forth in such settlement." The Court observed that the words 'as set forth in the

settlement" in the section refer back to the word "value" and not to the words "property settled". Recently the same view was taken by the Andhra Pradesh High Court in *Bharpet Mohammad Hussain Sahib and Another v. District Registrar, Kurnool*, ILR 1964 AP 1. No decision taking a contrary view was brought to our notice. The question arising for decision in this case is settled by stare decisis. We are entirely in agreement with the view expressed in those decisions. Even if we had been inclined to place a different interpretation on Article 23, we would have hesitated to do so in view of the long line of decisions to some of which we have already made reference. The Legislature may have had good reasons for not empowering the Revenue to make an independent inquiry as regards the valuation of the right sought to be assigned.

17. Learned counsel for the respondent has also placed reliance to the judgment of the Supreme Court in case of **Collector of Stamps vs. Hem Lata and another** as reported in **(2003) 6 JT 91** wherein placing reliance on the judgment in case of **Himalaya House Co. Ltd. (supra)** in para 4 it has been held as under :-

“4. In our judgment, the views taken by the learned single judge and the Division Bench of the High Court are perfectly justified and unexceptionable. This Court in Himalaya House Co. Ltd., Bombay v. The Chief Controlling Revenue Authority, had occasion to consider almost a similar situation. This Court noticed that Article 23 of Schedule 1A to the Indian Stamp Act 1899 had come up for consideration before various High Courts on a number of occasions. Approving the view taken in *Raman Chetty v. Mohammed Ghouse*, ILR 16 Calcutta 432, *Sakharam Shankar v. Ramchandra Babu Mohire*, (1903) 11.R Bombay 27, *Mohammed Muzaffar Ali*, ILR 44 Allahabad 339 and *Sitaram Kamalia v. State of Bihar*, ILR 39 228 it was held by this Court that the question which arose for decision was settled by a series of judgments that stamp duty was chargeable only on the

basis of the consideration set forth in the instrument to be stamped. It was also held that the collector under the India Stamp Act had no jurisdiction to embark upon an enquiry with regard to the market value of the property assigned by the document nor did he have the power to adjudicate further stamp duty on the basis of his own evaluation. This Court expressed its agreement with the view taken in the aforesaid decisions. In view of the long line of decisions it was observed that the legislature may have had good reasons not to empower the revenue to make an independent enquiry as regards the valuation of the right sought to be assigned.”

18. Reliance has also been placed on the judgment of Karnataka High Court in case of **L & T Komatsu Ltd. vs. Senior Sub-Registrar, Yelahanka and others** as reported in **AIR 2004 Kar 308** wherein in paragraphs 19, 23, 24, 25 and 26 it has been held as under :-

“19. Let me deal with the contentions urged on behalf of the petitioner in this order. It is firstly urged that the respondents did not have jurisdiction to initiate action under Section 33 of the Stamp Act in the context of the presentation of the instrument by the petitioner for registration before the first respondent. In so far as the question of jurisdiction is concerned, jurisdiction is conferred on the authorities under the provisions of the statute. It is essentially the provisions of the statute that confers particular jurisdiction on an authority, The, question is as to whether the first respondent had jurisdiction to act under the provisions of Section 33 of the Act is essentially dependent on the provisions of Section 33 of the Act which confers such jurisdiction. The fact situation conferring jurisdiction is as to whether the first respondent is one such officer who has been entrusted with the jurisdiction to act when the officer comes across an instrument which is not duly stamped. Though the submission of Sri R. N. Narasimhamurthy, learned Senior Counsel appearing for the petitioner is that the essential requirements for assuming jurisdiction under this provision by an officer is the existence of a not duly stamped

instrument before him and if the instrument is not one which can be characterised as not duly stamped, the officer does not assume jurisdiction, I am not inclined to accept this submission. I say so because the conferring of jurisdiction to exercise power under Section 33 of the Act is in respect of such class of officers who are officers before whom is produced an instrument of that nature while they are discharging their duties. It cannot be gainsaid that the Registering Authority is an officer before whom is presented an instrument for registration, may be one duly stamped or not duly stamped. The factum of an instrument being duly stamped or not duly stamped is not the criteria for conferring jurisdiction on the Registering Authority, but the factum that such officer is an officer before whom is produced an instrument while he is in the discharge of his duties. It is within the jurisdiction of the Registering Authorities to always inspect as to whether an instrument that is presented before him is duly stamped or not duly stamped and if he is of the opinion that it is not duly stamped, he can always impound the same. If an officer of such nature and power, on a given occasion also impounds an instrument which is also duly stamped, then it can only be a case of improper exercise of the power or jurisdiction conferred on him and it is not a case of acting without jurisdiction. It cannot be characterised that the Registering authority has acted without jurisdiction in initiating action under Section 33 of the Act as he was prima facie of the opinion that the instrument had not been duly stamped. But the manner of exercise of power or jurisdiction by the officer conferred with such jurisdiction can also be a question that may have to be looked into when it is alleged that such power or jurisdiction has not been exercised either in the proper manner or for the reasons mentioned in the very statute conferring such power or jurisdiction.

23. The Revisional Authority, while examining the correctness or otherwise of this order of the Deputy Commissioner, by his order dated 15-4-2000 (Annexure-M), has gone a little further and has held that the usage of the word "appurtenances" in the Deed of Transfer is a clear indication that what is transferred under the instrument is not only the land, building or structure, but also the plant and machinery and other movables which are 'appurtenances' to the schedule property. The Revisional Authority has

relied on the circumstance that though the Deed of Transfer has recited that the movable assets referred to in the agreement dated 30-7-1997 has already been delivered and made over and the receipt of which had been acknowledged by the transferee separately and which version was disputed by the Registering authority and the Deputy Commissioner as not correct, the fact of non-production of any separate deed evidencing the transfer of movables earlier, as a circumstance to disbelieve the version of the petitioner and to accept the version of the Registering Authority and to affirm the order of the Deputy Commissioner.

24. It is a well settled principle of interpretation that in understanding a Deed or a document, particularly a document conveying title, it should be read as a whole and the property transferred under the instrument is the property which is expressly recited as to be transferred under the instrument itself. The question of payment of stamp duty under the Act is essentially dependent on the nature of the instrument namely the nature of the transaction and what is conveyed or transferred under the instrument. It is not in dispute that the instrument is one of conveyance as understood within the meaning of Section 2(1)(d) of the Act and attracting stamp duty under Article 20 of the schedule to the Act. Then the next question will be what is the subject matter of conveyance. It is only on this aspect there is dispute.

25. The instrument very clearly recites that what is conveyed is the land, building and structures. The instrument also refer to the earlier agreements dated 30-7-1997 and under the agreement, the entire factory so sought to be sold or conveyed and as part of that agreement under the present Deed, the land, building and structure, portion of which is sought to be conveyed. The instrument itself recites that the movables had already been transferred and given possession of also etc. It is also expressly mentioned that the value of the land, building and structure which is conveyed under the Deed of Transfer is a sum of Rs. 59,31,00,000/- and the stamp duty paid on the instrument is on such valuation. It is in this regard Sri R. N. Narasimhamurthy, learned Senior Counsel appearing for the petitioner submits that when there was no compulsion on the petitioner either to have a written Deed of Transfer in respect of the movables and when once it is the case of the petitioner that the

movables had been independently transferred and possession also taken by the petitioner and the very instrument recites that what is transferred now is only the land, building and structure valued at Rs. 59,31,00,000/- there was no occasion at all to come to any other conclusion other than that the property conveyed under the instrument is only the land, building and structure valued at Rs. 59,31,00,000/- and nothing else.

26. What is to be looked into in the instrument for the purpose of enquiry under Section 33 of the Act is as to whether the stamp duty payable on the instrument and on the valuation of the subject matter has been paid or not. If the instrument is accepted at its face value, the stamp duty paid even according to the respondents, is the correct stamp duty and it is an instrument which is duly stamped. But what the respondents have done is that the version of the instrument itself is disbelieved and the instrument is interpreted and understood as an instrument conveying properties of the value of Rs. 210,64,00,000/-. No doubt respondents have sought to place reliance on the recitals in the agreement dated 30-7-1997 for transfer, for such conclusion. But it is not open to the authorities acting under Section 33 of the Act to interpret a document or understand a document in such a manner as to discard the express recitals therein and substitute their own understanding of the recitals and arrive at a conclusion that the value mentioned is not the proper value of the property conveyed and as such it is not duly stamped. This is not the function of an officer exercising power or jurisdiction under Section 33 of the Act or under Section 39 of the Act. The power under Section 33 of the Act is not one for interpretation of a document, but one for inferring as to whether proper stamp duty on the nature of the transaction has been paid. May be a transaction in the nature of conveyance being wrongly described as a transaction in the nature of a mere lease or a mortgage and stamp duty paid on such an instrument becomes subject matter of Section 33 of the Act, but not on the understanding that the value of the subject matter and the very subject matter has not been properly described. The clear intention under the instrument being one to convey the property comprising land, building and structures, stamp duty payable is only on the value of these properties and nothing more. The interpretation sought to be placed

on the instrument for exercise of power under Section 33 of the Act was not one which is either tenable or acceptable on the face of the recitals in the instrument itself or and said to constitute a justifiable fact situation for exercise of power under Section 33 of the Act and for pursuing further action.”

19. Reliance has also been placed on the judgment of Rajasthan High Court in case of **State of Rajasthan vs. Bhilwara Spinners Ltd. and others** as reported in **AIR 2001 Raj 154** wherein in para 46, 49 and 56 it has been held as under :-

“(46). We are therefore, in agreement with the conclusion reached by the learned Single Judge for the reasons aforesaid that the instrument is a lease-deed and chargeable to duty under Article 35(a)(iii) of the Rajasthan Stamps Act and the duty leviable is the same as on conveyance on the consideration equal to the amount of the average annual rent reserved.

(49). With the parity of reasonings, it can be said that the consideration that was passed from BSL to RSWM for conveyance of the property comprised in Bhilwara Unit from RSWM is, independent of the instrument in question. Whether the title obtained by BSL from the RSWM was perfect or not is also independent of the instrument in question and that cannot affect the Stamp Duty payable on construction of instant document as executed between the State of Rajasthan and the BSL on the premise of their respective position vis a vis the property described in the instrument.

(56). Having agreed with the conclusion reached by the learned Single Judge about the true nature of the instrument and its chargeability to the stamp duty under Article 35, we are of the opinion that prima facie case of malice in law appears to have been made out. The manner in which the proceedings have taken place, the fact that the very same officer has accorded approval for execution of a supplementary lease deed on behalf of the State of Rajasthan which was in consonance with the conditions of permission granted vide Annex. P/3 dated 14.7.83 and the said document

having been registered on 25th March, 1983, the Sub Registrar barely three days thereafter makes a reference to treat it not as a supplementary lease under Article 25-A but a fresh lease yet thereafter another reference is made by the Registrar of the Stamp on 28th April, 1988 to the Collector (Stamps), who is the same officer as District Collector who had executed the document in question slating to treat the supplementary lease a document of conveyance of the property from RSWM to BSL. Taking notice of the said reference on the very date, the Stamp Collector made an order for appointing DRDA for valuing the market value of the property which is apprehended to be a subject matter of conveyance. Then after directing the DRDA to appoint a person and submit a report of valuation, the said officer without waiting for the report, on the very same day decides to accept the valuation disclosed by the Registrar in his communication dated 28th April, 1988 on the basis of Audited Annual Accounts of the Company 1986 and issues a notice describing the amount of duty and penalty to be levied thereon to show cause against it. Having issued this notice by treating it to be a document of conveyance resulting in creation of right in property, subject matter of transaction between RSWM and BSL, in his capacity as District Magistrate, Bhilwara, cancels the said lease by holding that it was not required to be executed at all and when the order of cancellation is challenged, a categorical stand is taken that the document in question does not purport to transfer any interest in favour of BSL by the State Government inasmuch as State Government had no interest on that date and persuades this Court to dismiss the writ petition. One fails to comprehend that when all concerned viz. the State of Rajasthan, the District Collector, the Collector (Stamps) unanimously held that the view that the State of Rajasthan the designated lessor or the transferee under the instrument did not have any interest in property which it could have transferred, and the document was a superfluous act, any belief at all could be held by the Collector stamps at any time that it created as interest in property of Bhilwara Unit by way of conveyance and construing the document to be a document of conveyance which it did not ever purport to be. Then the order of cancellation of lease has been revoked only in 1997 and thereafter the manner in which the hearing has been fixed and adjudicated by

the then Collector (Stamps) particularly keeping in view that the date of hearing was fixed on a holiday and when pointed out that it was a gazetted holiday, notice fixing next date was still issued on gazetted holiday as if even a delay of one day in fixing the date was not palatable. Ignoring the fact that until 1997 the proceedings were stayed under the orders of competent superior court. He refused to grant opportunity to the company for even producing relevant documents or calling upon its senior executive to be examined as witness and refused to supply document which formed the foundation for initiating the proceedings. The chain of events clearly indicates that the decision to impose the stamp duty and penalty was a pre-determined. We leave it at that.

20. In this backdrop, it is to be examined that whether the deed of conveyance, Annexure F, dated 13th June, 1996 deals with only super-structure or contains some other recitals which have their bearing on computation of stamp duty. Therefore, for the ease of reference, relevant recitals of conveyance deed are produced herein:-

(1) The vendor had in the year 1992-93 or thereabouts constructed its Tyre Cord Division (TCD) for manufacture of Nylon Tyre Yarn and Fabrics and purposes ancillary thereto, on a piece of land leased out to the Vendor by the Madhya Pradesh Audyogik Kendra Vikas Nigam (MPAKVN) Ltd., Gwalior, a Government of Madhya Pradesh undertaking. The plot numbers on which the said Tyre Cord Division is situate bears Plot Nos. E1 to E23, D and D1 to D4, G1 and G2, Part of H1 and H4 of village Ghirongi of the Malanpur Industrial Area in Tehsil Gohad, District Bhind in the State of Madhya Pradesh admeasuring approximately 29.543 Hectares equivalent to 295433.17 Sq. meters (hereinafter referred to as "Factory Land") demised to Vendor by Lease Deed executed on 20.7.1990 duly registered with the Sub-Registrar, Gohad, Dist. Bhind on 25.7.90 vide

Registration No.1768 in Additional Book No.1 Volume No.1741, subsequently amended by an Amendment Deed executed on 26.8.95 and duly registered on 31.8.95 with the Sub-Registrar, Gohad, Dist. Bhind bearing the same Registration particulars as hereinabove (hereinafter collectively referred to as the “said Lease Deed”).

(2) The said TCD comprised civil structures including administrative buildings, factory building, boundary wall, stores, tanks, pump houses and other civil works and immovable plant more particularly described in First Schedule annexed hereto (hereinafter referred to as “superstructures”) and movables including moveable machinery, vehicles, office equipment, spares, materials, finished goods, work in progress etc.

(3) The Vendor had in the year 1992, also acquired a piece of land for setting up a Housing Colony, leased out by the Madhya Pradesh Audyogik Kendra Vikas Nigam (MPAKVN) Ltd., Gwalior, a Government of Madhya Pradesh undertaking. The plot numbers of the said Housing Colony Land bears No.C-30, C-31, C-38 and C-39 of Village Ghirongi of the Malanpur Industrial Area, Tehsil Gohad, District Bhind in the State of Madhya Pradesh admeasuring approximately 2.023 Hectares or 5.01 acres equivalent to 218295 Sq. Ft. (hereinafter referred to as “Housing Colony Land”) demised to Vendor by Lease Deed executed on 23.3.92 duly registered with the Sub-Registrar, Gohad, Distt. Bhind on 30.3.92.

(4) Pursuant to (i) the resolution dated 24th March, 1995 of M/s. Ceat Ltd. passed by the shareholders in annual general meeting, (ii) the resolution of 29th June, 1995 passed by the Board of Directors of M/s SRF Limited and (iii) the Joint Declaration dated 8.2.96 of Ceat Ltd. and SRF Limited, copies of which are annexed hereto, the parties have executed this Deed.

(5) Simultaneously with the execution of these presents,

(a) The Vendor has by joining as consenting party also confirmed transfer of the vendor's leasehold interest in the Factory Land for the residual period of 94 years, 1 month and 6 days by MPAKVN in favour of SRF by the execution of an Amendment in the said Lease Deed.

(b) The Vendor has by joining as a consenting

party also confirmed transfer of the Vendor's leasehold interest in the Housing Land for the residual period of 25 years, 9 months and 10 days by MPAKVN in favour of SRF by the execution of an amendment in the Housing Lease Deed.

(6) Consistent with the sale of the Tyre Cord Division as a going concern by the Vendor to the Purchaser, various moveable assets have been transferred by delivery on the midnight of 8th February, 1996 together with handing over of possession, management and control of the Tyre Cord Division to the Purchaser by execution of a separate document. Upon the completion of the transfer by execution of the present deed of the immovable property including the superstructures conveyed herein, the ownership interest in the Tyre Cord Division would vest with the purchaser as aforesaid.”

21. We have to examine the scope of Section 33 of the Indian Stamp Act vis-a-vis that of Section 47A of the Stamp Act.

22. Section 33 of the Stamp Act authorizes all public officers with certain exceptions, to examine every instrument chargeable with duty which comes before them in the performance of their official functions and to impound any instrument which appears not to be duly stamped. In the State of M.P. there is a State Amendment to the following effect:-

“Madhya Pradesh- In Section 33, after converting the full-stop, at the end of sub-section (1) into a colon, add the following proviso:

“Provided that nothing contained in this sub-section, shall be deemed to authorize the Collector to impound any instrument which has not been executed but is

brought to him under section 31 for determining the duty with which the instrument is chargeable or any instrument which he is authorized to endorse under section 32.”

Thus, it is evident that the officer before whom a document is brought is duty bound to impound such instrument if on examination it appears to such officer that instrument is not duly stamped. Only exception is a document which is produced before the authority under Section 31 for determining the duty for which the instrument is chargeable or not which he is authorized to endorse under Section 32.

23. Scope of Section 47A is different from the scope of Section 33. Section 47A as obtaining in the State of M.P. provides and deals with an instrument which is undervalued. Therefore, the scope of Section 47A is only to examine whether the properties mentioned in an instrument presented to the officer concerned is properly valued or not i.e. true and correct value of the property as per the market guidelines has been disclosed or not. Sub-Section 1 of Section 47A clearly provides that while registering any instrument, if the registering authority finds that the market-value of any property which is the subject matter of such instrument has been set-forth less than the minimum value determined in accordance with any rules under this Act, he shall before registering such instrument refer the same to the Collector for

determination of the market-value of such property and the proper duty payable thereon. Thus, there is no provision under Section 47-A to impound a document. It only deals with determination of market value, whereas Section 33 empowers an authority except an officer of police, before whom any instrument chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same. In this Section, 'shall' cannot be read as 'may', as has been held by Supreme Court in case of **Government of Andhra Pradesh v. P. Laxmi Devi (2008) 4 SCC 720(735)**. Under Section 47A market value of any property, which is subject matter of conveyance as fixed by or on behalf of the Central Government or the State Government or any authority or body incorporated by or under any law for the time being in force, 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 market on the date of execution of instrument, whereas under Section 33 of the Stamp Act requirement is two fold; firstly to examine such document or conveyance whether such instrument is duly stamped or not and if in the opinion of such officer, it is not duly stamped, then to impound the same. Sub-section 2 of Section 33 clearly provides that for the purpose of Section 33 every such person shall examine every instrument so chargeable and so produced or

coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force when such instrument was executed or first executed. Once a document is impounded, then the course which follows is prescribed under Section 38 of the Stamp Act or under Section 40 or 41, as the case may be.

24. Section 27 of the Indian Stamp Act provides under the State Amendment for Madhya Pradesh as under :-

“27. Fact affecting duty to be set forth in instrument.-
(1) The consideration if any, the market value of the property and all other facts and circumstances affecting the chargeability of any instrument with duty or the amount of the duty, with which it is charged, shall fully and truly be set forth therein.
(2) In the case of instruments, relating to immovable property, chargeable with an ad valorem duty on the market value of the property, and not on the value, set-forth, the instrument shall fully and truly set-forth the annual land revenue in the case of revenue paying land, the annual rental or gross assets, if any, in the case of other immovable property, the local rate, municipal or other taxes, if any, to which such property may be subject, and any other particulars which may be prescribed by rules made under this Act”

This aspect has been dealt with by this Court in W.A.No.303/2013 **(Surendra Sharma (D) Through L.R. Smt. Renu Sharma & Ors. Vs. Ramcharanlal (D) Through L.R. Gajendra Kumar & Ors.)** wherein placing reliance on the judgment of the Supreme Court in case of **Veena Hasmukh Jain and Another Vs. State of Maharashtra and Others, AIR 1999 SC 807** it has been noted that it is also true that legislature may by a legal fiction enlarge the

description to be given to an instrument for imposition of stamp duty. For example, an agreement where possession is or is to be transferred before execution of conveyance may be declared to be as conveyance for imposition of stamp duty. Similarly, reliance can be placed on the judgment of the Supreme Court in case of **Shanti Prasad Vs. Director of Enforcement AIR 1962 SC 1764** wherein it has been held that on the general principle that when alternative constructions are open, a statute should be so construed as to give effect to its object or policy, the Courts, to the extent the language permits, will be slow, to adopt such a construction which may “lead to large scale evasion of the tax resulting in its object being defeated”. Similar view has been taken by the Supreme Court in a recent judgment in case of **Commissioner of Customs (Import), Mumbai Vs. M/s. Dilip Kumar and Company & Ors.** as reported in **2018 (9) SCC 1.**

25. In case of **Himalaya House Co. Ltd., Bombay (supra)** the question was whether it was competent to the Assistant Superintendent of Stamps, under section 40 of the Indian Stamp Act, 1899 (now section 39 of the Bombay Stamp Act, 1958), to go beyond the terms of the document when it is mentioned in the document that no consideration is passed and assess the stamp duty in the manner mentioned by him in his order dated June 26, 1956. Answering this, in paragraph 10 it has been held that “where the amount or value of the consideration for such

conveyance as set forth therein" do not mean that the Revenue must have regard only to what the parties to the instruments have elected to state the consideration to be, but the duty must be assessed upon the amount or value of the consideration for the transfer as disclosed upon an examination of the terms of the instrument as a whole. It has been further held that we are of the opinion that the learned Chief Justice and Naik J. were not justified in holding that the Deed of Assignment incorporates into itself the various agreements entered into between Uttamchand and the persons to whom he assigned flats, offices and shops. The only reference to those persons in the Deed of Assignment is in the preamble wherein it is stated "AND WHEREAS the Assignor having erected a building known as Himalaya House on the said piece of land had granted to certain persons the right to occupy flats, offices and shops in the said building AND WHEREAS the Assignee Company has been formed for the better administration of the said building and for the protection of the interests of the persons occupying the flats, offices and shops therein." These clauses merely refer to the earlier transactions. They do not incorporate into the Assignment Deed the earlier agreements with the persons referred therein. Mere reference to some earlier transactions in a document does not amount to an incorporation in that document, of the terms and conditions relating thereto. From the language used in the Assignment Deed, it is not possible to

come to the conclusion that the terms and conditions of the earlier transactions have been made a part of that Deed. Further barring one particular agreement, other agreements were not before the Court. Therefore, it is not possible to know what the terms and conditions of those agreements were. Before the terms and conditions of an agreement can be said to have been incorporated into another document, the same must clearly show that the parties thereto intended to incorporate them. No such intention is available in this case. Thus, in case **Himalaya House Co. Ltd., Bombay (supra)** it has been held that if earlier agreements are not incorporated in the assignment deed, then mere reference to some earlier transactions in a document does not amount to an incorporation in that document of the terms and conditions relating thereto.

26. In case of **Bhilwara Spinners Ltd. and others (supra)** in paragraph 49 it has been held as under :-

“(49). With the parity of reasonings, it can be said that the consideration that was passed from BSL to RSWM for conveyance of the property comprised in Bhilwara Unit from RSWM is, independent of the instrument in question. Whether the title obtained by BSL from the RSWM was perfect or not is also independent of the instrument in question and that cannot affect the Stamp Duty payable on construction of instant document as executed between the State of Rajasthan and the BSL on the premise of their respective position vis a vis the property described in the instrument.”

In fact, such proposition came to be laid down in view of the facts

of that case which have been set forth in paragraph 48 as under :-

“(48). It has been urged by learned counsel for the State that instrument in question makes a mention of transaction between original lessee RSWM and its assignee BSL, therefore the said transaction is subject matter of the instrument in question. We are unable to accept. Merely because a reference has been made in the instrument to the original lease, and about the sanction granted in favour of the RSWM and the transaction between RSWM and BSL, it does not amount to be incorporating, the terms and conditions of transaction between RSWM and BSL, as the terms and conditions of the agreement between State of Rajasthan and BSL as part of the instrument in question. To draw any such inference, it must be clearly shown that the parties to the instrument intended to incorporate them in the deed. In this connection, attention may be invited to the decision of the Supreme Court in Himalaya House Co. Vs. Chief-Controlling Revenue Authority. It was a case in which a person obtained a laid on lease from the Government and constructed a building thereon consisting of several flats, offices and shops. Under various agreements, he appears to have assigned the right of occupation to several persons. The occupants formed a company under the Companies Act. Lessee executed deed whereby he surrendered right in the land in favour of the company for no consideration. The authorities under the Stamp Act sought to levy the stamp duty on the said instrument executed between the person holding lease hold rights from the Govt. and the company in whose favour these lease hold rights were assigned for no consideration as conveyance of the property. The value of consideration was sought to be taken as the total amount received from the occupants of the flats under agreements executed between the original lessee and the occupants on the like plea as has been raised before us. The Court rejected the contention of the revenue while allowing the appeal by the assignee and held that there was no basis to hold that consideration in the total amount received under the agreements between him and the persons to whom he had assigned certain rights in the flats, offices and shops in the building, those persons had independent right of their own, their rights did not flow from the impugned Assignment Deed. Whether the title obtained by them

was perfect or not, there is no denying of the fact that they had acquired valuable rights even before the impounded deed was executed.”

27. In case of **L & T Komatsu Ltd. (supra)** the first issue which was raised on behalf of the petitioner was that revenue authorities were not having jurisdiction to initiate action under Section 33 of the Stamp Act in the context of the presentation of the instrument by the petitioner for registration before the first respondent. Answering this question, it has been held that in so far as the question of jurisdiction is concerned, jurisdiction is conferred on the authorities under the provisions of the statute. It has been held that it is within the jurisdiction of the Registering Authority to always inspect as to whether an instrument that is presented before him is duly stamped or not duly stamped and if he is of the opinion that it is not duly stamped, he can always impound the same. Please see paragraphs 24 and 26 of the decision in case of **L & T Komatsu Ltd. (supra)** quoted above. Similarly, in case of **Hem Lata and another (supra)** reliance has been placed on the judgment of Supreme Court in case of **Himalaya House Co. Ltd., Bombay (supra)** and same ratio has been laid down but in none of the decisions there was a stipulation of transferring a going concern.

28. “Going concern” concept is a fundamental principle of accounting. It assumes that during and beyond the next fiscal period a company will complete its current plans, use its existing

assets and continue to meet its obligations. This underlying principle is also known as continuing concern concept. In other words, it allows the reader of financial statement to assume that company will continue operating long enough to carry out its obligations and commitments. In other words, the Accountant believe that the company will not liquidate in near future. Thus, the principle underlying the going concern concept takes existing assets as a composite entity to meet its financial obligations.

29. Recently Institute of Chartered Accountant of India (ICAI) in consultation with and after examination of the recommendation made by the National Financial Reporting Authority (NFRA) and referring to the provisions contained in clause (7) of Section 2 read with Sections 143 (3) and 143 (10) of the Companies Act, 2013 has issued newly revised standard of Auditing 570 on Going Concern.

30. Standard of Auditing (SA-570) deals with the auditor's responsibilities in the audit of financial statements relating to going concern and the implications for the auditor's report.

31. Under the going concern basis of accounting, you are required to prepare the financial statements on the assumption that:

- i) the entity is a going concern; and
- ii) the entity will continue its operations for the foreseeable future.

Further, the assets and liabilities are recorded on the basis that the

entity will be able to realize its assets and discharge its liabilities in the normal course of business.

32. However, if the management intends to liquidate the entity or cease operations or the entity has no realistic alternative then, there is no need to prepare the financial statements using the going concern basis of accounting. Additionally, the going concern basis of accounting is not relevant while preparing financial statements on a tax basis.

33. Responsibility of management has also been mentioned providing that management is required to assess the entity's ability to continue as a going concern even if the financial reporting framework does not include an explicit requirement to do so.

34. These standards on auditing is a revised version of the erstwhile Auditing and Assurance Standard (AAS) 16, "Going Concern" issued by the CA Institute in 1998.

35. This has been reproduced only to highlight that the objectives of SA-570 are; to obtain sufficient appropriate audit evidence regarding, and conclude on, the appropriateness of management's use of the going concern basis of accounting in the preparation of the financial statements; to conclude, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the entity's ability to continue as a going concern.

36. It is true that these revised guidelines have come into effect

after coming into force of Companies Act, 2013 but nonetheless, the purpose of producing or referring to such guidelines is that the concept of going concern includes a certification and acknowledgment that there is no uncertainty or doubt on the entity's of going concern as has been mentioned in 1957 Act so to understand the concept of going concern as was existing under the provisions of Companies Act, 1956.

37. In this regard, reliance can be placed on a decision of the Supreme Court in case of **Allahabad Bank Vs. ARC Holding Ltd. and others** as reported in **AIR 2000 (SC) 3098**. Facts of the case as given in paragraph 2 are necessary to understand and appreciate concept of going concern, which is reproduced as under

: -

“2. The appellant-Allahabad Bank the decree-holder has raised a question, whether after an order passed in execution proceedings for the sale of plant, machinery and moveable lying at the factory, can the same Court later pass an order for sale of the factory of the company as a 'going concern'. The submission is, by introducing into the sale of the factory as a 'going concern' has in fact, nullified the execution itself.”

Paragraphs 8, 14, 15 and 16 are also relevant, therefore, they are also reproduced as under :-

8. On these facts the appellant-bank has filed these appeals against two orders dated 23rd February, 1998 and 10th July, 1998. Learned counsel submits, the Division Bench of the High Court fell in error in not directing plant, machinery and securities to be sold separately, by this, vast land and building of the factory would still be left, which would fetch much higher price, which may cover the

total balance liabilities of the company in liquidation. On the other hand, selling of the factory as a 'going concern' with a rider to absorb all the employees would not only bring low sale price but would negate the execution of the decree.

14. When indisputably the order of winding up made on 4.6.1990 had become final and company has become non-functional for long, even BIFR could not come to its rescue and the attempt of the workers union to resuscitate the company by getting a committee constituted for management was repelled by a Division Bench of the High Court and this Court when the SLP filed by the workers Union came to be dismissed on 5.12.1997, it would no doubt be ironical and unjust to get order for the sale of the assets of the company - as a going concern. But, at the same time to give a last try to the fond hopes expressed on behalf of the erstwhile workers, we consider giving one more chance to have it so done within a strict frame of time limit.

15. After considering submission of the learned counsel for the parties, we are granting this indulgence, by permitting the sale of the company as a 'going concern' with certain conditions only.

16. The Official Liquidator for this purpose shall advertise the sale of the company in liquidation-judgment debtor as a 'going concern' as ordered by the High Court. Such publication shall indicate that the reserve price, shall be the amount equal to the total decree including interest which has accrued upto 31st December, 1999 in favour of the appellant-bank, and shall also has to pay the balance interest which accrues, till full payment is made. The publication shall also indicate that purchaser has also to pay the liabilities of other claimants in the proceeding for the liquidation of the company.

Thus, these facts clearly stipulate that when sale of an entity takes place as a 'going concern', then sale of plant, machinery and movable cannot be detached from the immovable as has been sought to be done by the respondents, seller and buyer.

38. Unlike deed of assignment which was the subject matter in

case of **Himalaya House Co. Ltd., Bombay**, so also in case of **Hem Lata and another, L & T Komatsu Ltd. and Bhilwara Spinners Ltd. and others** where it was not possible to know about terms and conditions of the earlier agreements so to give a meaning that they have been incorporated into another document and parties intended to incorporate them and where it has been held that no such intention is available in these cases, on conjoint reading of clauses 1 to 6 of the conveyance deed reproduced hereinabove, it is apparent that it is not only a bald reference whose terms and conditions cannot be deduced, but they have been explicitly mentioned so to allow the officer under Section 33 to record a satisfaction that they have been incorporated into this document. On internal page 21 of the conveyance deed, there is a specific mention of incorporating the earlier agreements, documents, deeds, resolutions and for this purpose, clause 4 of the conveyance deed is reproduced as under :-

“4. The terms of this conveyance shall be subject to the terms agreed between the vendor and the Purchaser for sale of the Nylon Tyre Cord Division (TCD) at Madhya Pradesh. The possession of the said Superstructures has already been given to the Purchaser on the midnight of 8th / 9th February, 1996.”

39. Thus, it is apparent that though the conveyance deed in

question only purports to convey civil structures including administrative buildings, factory building, boundary wall, stores, tanks, pump houses and other civil works and immovable plant, more particularly described in First Schedule (hereinafter referred to as superstructures) and moveables including moveable machinery, vehicles, office equipment, spares, materials, finished goods, work in progress etc. and valued said super-structures at Rs.27,76,18,912/-, but transfer of said superstructures was made subject to the terms and conditions agreed between the vendor and the purchaser for sale of Nylon Tyre Cord Division as is mentioned in para 4 on internal page 21 of the conveyance deed by necessary implication incorporating the extract from the minutes of the annual general meeting of Ceat Ltd. held on 24th March, 1995, resolution of Board of Directors of SRF at its meeting held on 29.6.1995 and also the deed executed on 8th /9th February, 1996, and therefore, the Sub-Registrar being competent under Section 33 of the Stamp Act was justified in exercising his authority under Section 33 so to give true and correct meaning to the provisions contained in Section 27 by examining the instrument and ascertaining its chargeability.

40. We have no hesitation to say that in terms of Section 27, respondent/Company had failed to set forth in the document fully and truly the consideration though they have mentioned other facts and circumstances as have been referred to above, and therefore,

no infirmity can be attributed to such act of the Sub-Registrar in impounding the document and referring it to the Collector of Stamps who has passed the impugned order clearly holding that he has exercised his authority under Section 33 and not under Section 47-A as was asked for by the Board of Revenue while passing its impugned order. Once the Collector of Stamps has noted that he has exercised the authority under Section 33 of the Indian Stamp Act and that order has been affirmed by the Board of Revenue, then learned Single Judge ought to have seen the intent, motive and recitals of the conveyance deed before coming to a finding that Collector of Stamps was not authorized to read anything more than what is mentioned in the conveyance deed.

41. We have no hesitation to set aside the order of learned Single Judge and hold that learned Single Judge has failed to apply himself and to take into consideration the provisions contained in Section 27 and distinguish the ratio of law laid down in case of **Himalaya House Co. Ltd., Bombay, Hem Lata and another, L & T Komatsu Ltd. and Bhilwara Spinners Ltd. and others (supra)**, and therefore, in the light of the law laid down in case of **Duncans Industries Ltd. (supra)** and **Vinayak Dattatraya v. Hasanali Haji Nazarali** as reported in **AIR 1961 MP 6** order of Collector of Stamps and order of Board of Revenue passed thereafter in revision need to be

40 Writ Appeal No.498/2007

given a seal of approval and are affirmed. The order of learned Single Judge is set aside.

With the aforesaid, this appeal stands disposed of.

(Sanjay Yadav)
Judge

(Vivek Agarwal)
Judge

ms/-