

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2519 OF 1988

1. The Indian Hume Pipe Co. Ltd.,
having its registered office at
Construction House, Walchand
Hirachand Marg, Bombay- 400 038.
2. Mr.Bhaskar S. Nadkarni,
residing a 16A, K.G.S. Co-operative
Housing Society, Saraswati Baug,
Jogeshwari (East), Bombay- 400 060. ... Petitioners.
V/s.
1. State of Maharashtra.
2. The Superintendent of Stamps, Bombay
having his office at Town Hall, Fort,
Bombay- 400 023. ... Respondents.

WITH
WRIT PETITION NO. 2488 OF 1988
AND
WRIT PETITION NO. 2534 OF 1988

1. Reliance Industries Limited,
A Joint Stock Public Limited Company
incorporated under and governed by
the provisions of the Companies Act, 1956
(Act I of 1956) and having its registered
office at 3rd floor, Maker Chambers IV,
222, Nariman Point, Bombay- 400 021.
2. K. Sethuraman
of Bombay Indian Inhabitant, the Secretary
of the 1st Petitioner, Having his office at

Maker Chambers IV, 222, Nariman Point,
Bombay- 400 021.

... Petitioners.

V/s.

1. State of Maharashtra.
2. Superintendent of Stamps, Bombay
having his office at General Stamp Office,
Town Hall, Fort, Bombay- 400 023.
3. Collector, Bombay
Having his office at Old Customs House,
Fort, Bombay- 400 023.

* * * * *

WITH

WRIT PETITION NO. 2194 OF 1988

1. The Antifriction Bearings Corporation
Limited, a public limited Company
incorporated under the Companies Act I
of 1956, having its registered office at
402-B, Poonam Chambers, Dr. Annie
Besant Road, Worli, Bombay- 400 018.
2. Shri S.V.Subramania Iyer,
Secretary and shareholder of the 1st
Petitioner and having his office at
402-B, Poonam Chambers, Dr. Annie
Besant Road, Worli, Bombay- 400 018.

... Petitioners.

V/s.

1. State of Maharashtra.
2. The Superintendent of Stamps,
having his office at General Stamps Office,
Town Hall, Fort, Bombay- 400 023.
3. The Industrial Credit and Investment
Corporation of India Limited,

a public limited company incorporated
under the Indian Companies Act, 1913
having its registered office at 163,
Backbay Reclamation, Bombay- 400 020.

... Respondents.

WITH
WRIT PETITION NO. 2280 OF 1988

1. The Indian Hotels Co. Ltd., having their
registered office at Taj Mahal Hotel,
Apollo Bunder, Bombay- 400 039.

2. Shri V.R.Agnihotri, Indian Inhabitant,
residing a Plot 70-L, Central Avenue Road,
Chembur, Bombay- 400 071.

... Petitioners.

V/s.

1. State of Maharashtra.

2. The Superintendent of Stamps, Bombay
having his office at General Stamps Office,
Town Hall, Fort, Bombay- 400 023.

3. The Recovery Officer, Collector of Bombay
having his office at Old Custom House,
Fort, Bombay.

... Respondents.

WITH
WRIT PETITION NO. 215 OF 1989

1. The Dharamsi Morarji Chemicals Company
Limited, a Public Limited Company
incorporated under the Companies Act
I of 1956, having its Registered Office at
Prospect Chambers, 317/21, Dr.D.N.Road,
Fort, Bombay- 400 001.

2. Dinesh Gatulal Mehta, of Bombay Indian
Inhabitant, Secretary and Shareholder of

the Petitioner No.1 and having its office
at Prospect Chambers, 317/21, Dr.D.N.Road,
Fort, Bombay- 400 001.

... Petitioners.

V/s.

1. State of Maharashtra.

2. Superintendent of Stamps, Bombay
having his office at General Stamp Office,
Town Hall, Fort, Bombay- 400 023.

3. Central Bank of India, a body corporate
constituted under the provisions of the
Banking Companies (Acquisition &
Transfer of Undertakings) Act, (V of 1970),
having its office at Chandermukhi, Nariman
Point, Bombay- 400 021, and one of its
Branches amongst others at Ashram Road,
Ahmedabad.

... Respondents.

Mr.Santosh Bharucha with Mr.Shrey Fatterpaker i/b. D.F. & Diwan
for the petitioners in WP No.2519/1988.

Mr.Mustafa Doctor, Senior Advocate with Mr.Abhinav Chandrachud
i/b. Mulla & Mulla for the petitioners in WP No.2280/1988.

Mr.Milind Sathe, Senior Advocate with Mr.Vikramaditya Deshmukh,
Mr.Amey Nabar and Ms. Reshma Randive i/b. M/s.A.S.Dayal and
Associates for the petitioners in WP Nos.2534/1988 and 2488/1988.

Mr. Arunn Siwach with Mr.A.Sikka and Mr.B.Lalal i/b. Cyril Amarchand
Mangaldas for the petitioners in WP No.215/1989.

Mr.Amit Borkar with Mr.Akshay Shinde for the State in all the matters
except WP No.2534/1988.

Mr. Amitt Borkar with Ms. Geetaa Shastri, Addl.GP for the State
in WP No.2534/1988.

[As Smt. Vibha V. Kankanwadi, J is sitting at Aurangabad Bench, signed judgment is pronounced by A.S.Oka, J as per Rule 296(iii) Chapter XX of the Bombay High Court (Original Side) Rules.]

**CORAM : A.S.OKA AND
SMT.VIBHA V. KANKANWADI, JJ.**

RESERVED ON : 3rd August 2017.

PRONOUNCED ON : 9th January 2018.

JUDGMENT : (Per A.S.Oka, J.)

1 Writ Petition No.2488/1988 was not on board. By consent of parties the said petition was taken up on the board. These petitions can be disposed of by a common judgment. One of the common challenges in these petitions is to the constitutional validity of section 7 of the Bombay Stamp Act, 1958 (for short "the said Act"). A brief reference to the facts of the case will be necessary.

2 In Writ Petition No.2519/1988, a declaration is sought that the provisions of sections 3, 7 and 19 of the said Act to the extent to which the same seek to levy stamp duty on the copies of the instruments executed outside the State of Maharashtra are null and void. It is stated in the said petition that a Debenture Trust Deed dated 6th April 1987 (for short "the

deed”) was executed by the first petitioner company in the State of Gujarat. The first petitioner and the State Bank of India are the parties to the said deed. The State Bank of India is a trustee. A mortgage of the immovable properties of the first petitioner company was made under the deed with a view to secure the issue and allotment of the debentures of the first petitioner. As a substantial part of the mortgaged property was situated in the State of Gujarat, the deed was executed in the State of Gujarat and was stamped as per the law prevailing in the State of Gujarat (the Bombay Stamp Act, 1958-as applicable to the State of Gujarat). As the registered office of the first petitioner company is situated in Mumbai, the charge of mortgage was required to be registered with the Registrar of Companies in Mumbai pursuant to the provisions of the Companies Act, 1956 (for short “Companies Act”). In response to the query made by the second respondent- the Superintendent of Stamps, the petitioners contended that the said original deed is not received in the State of Maharashtra. A demand in the sum of Rs.3,66,220/- was made by the second respondent being the difference between the stamp duty payable on the said deed in the State of Maharashtra and the stamp duty paid in the State of Gujarat which is the subject matter of challenge in the petition.

3. In Writ Petition No.2488/1988, a similar deed was executed by the first petitioner- company in the State of Gujarat. Stamp duty was paid and it was registered in the State of Gujarat. A copy of the said deed was filed with the Registrar of Companies in Mumbai for registering the

charge as the registered office of the first petitioner is in the State of Maharashtra. A demand for the difference in the stamp duty payable in the State of Maharashtra and the stamp duty paid in the State of Gujarat was made by the second respondent. That is how this writ petition is filed challenging the demand. Even in this petition, there is a challenge to the constitutional validity of the relevant provisions of the said Act in so far as they permit levy and recovery of stamp duty in respect of copies of instruments.

4. In Writ Petition No.2534/1988, a similar deed was executed and registered in the State of Gujarat. A copy of the said deed was filed in the office of the Registrar of Companies in Mumbai for registration of charge as the registered office of the first petitioner is in Mumbai. Even in this case, a demand is made by the second respondent for payment of differential duty. The demand is for payment of difference between the duty payable on the said deed in the State of Maharashtra and duty paid in the State of Gujarat. In the petition, there is a challenge to the demand and, in the alternative, to the constitutional validity of the provisions of the said Act as in other petitions.

5. In Writ Petition No.2194/1988, none has appeared for the petitioners for pressing the petition on merits. However, we find that the challenge is similar as in the other petitions.

6. In Writ Petition No.2280/1988, a similar deed was executed

by the first petitioner- company in the State of Gujarat. Stamp duty was paid and the deed was registered in the State of Gujarat as in other cases. A verified copy of the said deed was filed with the office of the Registrar of Companies at Mumbai pursuant to the provisions of the Companies Act for the purpose of registration of charge as the registered office of the first petitioner is in Mumbai. In this petition, the challenge is to the similar demand of difference in the duty. A prayer is made in the petition for making a reference under section 54 of the said Act on the question whether any stamp duty is payable in the State of Maharashtra on the copy of the deed which is registered in the State of Gujarat. There is similar challenge in Writ Petition No.215/1989.

7. Earlier, these petitions were heard on merits and were dismissed by a judgment and order dated 9th September 1998. The Apex Court by judgment and order dated 2nd March 2005 remanded the matters to this Court. The main ground on which the remand order was passed is that the challenge to the constitutional validity of section 7 of the said Act was not at all considered on merits.

8 With a view to appreciate the submissions made by the learned counsel for the parties, it will be necessary to make a reference to the provisions of the said Act as the same existed before it was amended by the Maharashtra Act No.XVII of 1993. The Sections which are relevant for our consideration are Sections 3, 7 and 19, which read thus:

“3. Instruments chargeable with Duty.

Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in Schedule I as the proper duty therefor respectively, that is to say--

(a) every instrument mentioned in Schedule I, which not having been previously executed by any person, is executed in the state on or after the date of commencement of this Act;

(b) every instrument mentioned in Schedule I, which, not having been previously executed by any person, is executed out of the state on or after the said date, relates to any property situate, or to any matter or thing done or to be done in this State and is received in this State:

Provided that no duty shall be chargeable in respect of--

(1) any instrument executed by or on behalf of, or in favour of, the Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument or where the Government has undertaken to bear the expenses towards the payment of the duty;

(2) any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered under the Bombay Coasting Vessels Act, 1838, or Merchant Shipping Act, 1958."

(emphasis added)

"7. Payment of higher duty in respect of certain instruments.- (1) Notwithstanding anything contained in section 4 or 6 or in any other enactment, **unless it is proved that the duty chargeable under this Act has been paid,--**

(a) on the principal or original instrument, as the

case may be, or

(b) in accordance with the provisions of this section, the duty chargeable on an instrument of sale, mortgage or settlement other than a principal instrument or on a counterpart, duplicate or copy of any instrument shall, if the principal or original instrument would, when received in this State have been chargeable under this Act with a higher rate of duty, be the duty with which the principal or original instrument would have been chargeable under section 19.

(2) Notwithstanding anything contained in any enactment for the time being in force, no instrument, counterpart, duplicate or copy chargeable with duty under this section shall be received in evidence unless the duty chargeable under the section has been paid thereon:

Provided that any Court before which any such instrument, duplicate or copy is produced may permit the duty chargeable under this section to be paid thereon and may then receive it in evidence.”

“19. Payment of duty on certain instruments liable to be increased duty in Maharashtra State.-

Where any instrument of the nature described in any article in Schedule I and relating to any property situate or to any matter or thing done or to be done in this State is executed out of the State and subsequently received in the State,--

(a) the amount of duty chargeable on such instrument shall be the amount of duty chargeable under Schedule I on a document of the like description executed in this State less the amount of duty, if any already paid under any law in force in India excluding the State of Jammu and Kashmir on such instrument when it was executed;

(b) and in addition to the stamps, if any, already

affixed thereto such instrument shall be stamped with the stamps necessary for the payment of the duty chargeable on it under clause (a) of this section, in the same manner and at the same time and by the same persons as though such instrument were an instrument received in this State for the first time at the time when it became chargeable with the higher duty; and

(c) the provisions contained in clause (b) of the proviso to sub-section (3) of section 32 shall apply to such instrument as if such were an instrument executed or first executed out of this State and first received in this State when it became chargeable to the higher duty aforesaid, but the provisions contained in clause (a) of the said proviso shall not apply thereto.”

9. The submissions made by the learned counsel representing the petitioners can be summarized as under:

It is submitted that under Section 19(a) of the said Act, at the relevant time, the words “a copy of the instrument” were not present as the same were subsequently added by the Maharashtra Act No.XVII of 1993. Secondly, it was submitted that merely because a copy of the deed or a certified or a verified copy thereof is filed in the office of the Registrar of Companies in Mumbai as per the requirement of Section 125 of the Companies Act, it cannot be said that the original deed was received in the State of Maharashtra. It was urged that even the charging section i.e. Section 3 makes it clear that the stamp duty is chargeable, provided an instrument mentioned in Schedule-I to the said Act is executed out of the

State and is received in the State. It was submitted that Section 7 of the said Act has no application as the same refers to Sections 4 and 6.

Relying on the definition of “instrument” under section 2(l) of the said Act, it was submitted that a copy of the deed does not create or purport to create, transfer or extinguish any right. Reliance was placed on the decisions of the Apex Court in the case of *Jupudi v. Pulavarthi*¹ and *Hariom Agrawal v. Prakash Chand Malviya*². Reliance was also placed on the decision of a Full Bench of the Gujarat High Court in the case of *Chief Controlling Revenue Authority v. Nutan Mills Ltd.*³. It was pointed out that by Maharashtra Act No.XI of 1998, first proviso was inserted in Section 3 which provides that stamp duty will be payable even on a copy or facsimile image of an instrument, if full stamp duty on the original is not paid. It was submitted that this shows that till the Maharashtra Act No.XI of 1998 came into force, stamp duty was not payable on a copy of an instrument. It was submitted that the amendment made to Section 3 was not retrospective. Reliance was placed on the decision of the Apex Court in the cases of *Ruby Sales and Services (P) Ltd. v. State of Maharashtra and others*⁴ as well as *Jupudi Kesava Rao v. Pulavarthi Venkata Subbarao and others* (supra).

Detailed submissions were also made on the constitutional validity of various provisions of the said Act. It was pointed out that Entry

1 AIR 1971 SC 1070

2 (2007) 8 SCC 514

3 AIR 1978 Gujarat 1

4 (1994) 1 SCC 531

91 in List-I of Schedule VII of the Constitution of India deals with the rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, etc. It was contended that the entry 91 is only in respect of “instruments” and hence, entry 63 of List-II which deals with rates of stamp duty in respect of documents other than those specified in the provisions of List-I is in relation to instruments and not any document. It was submitted that the State Legislature cannot levy stamp duty on a copy of an instrument as the relevant entry is in respect of instruments which do not include copies thereof. It was submitted that a word “document” used in Entry 63 of List-II would have to be construed as an instrument as entry 91 of List-I refers only to instruments and not to an ordinary document. It was submitted that even according to the provisions of the Indian Stamp Act, 1899 (for short “Indian Stamp Act”), the stamp duty is leviable only on the instruments. Relying upon the decision of the Apex Court in the case of *Bhopal Sugar Industries v. D.P.Dube*⁵, it was submitted that the State Legislature is powerless to enact a law providing for levy of stamp duty on a document which is not an instrument. Relying upon the decision of the Apex Court in the case of *Bar Council of Uttar Pradesh v. State of U.P.*⁶, it was urged that both Entry 91 of List-I and Entry 63 of List-II are empowering fixation of rates of stamp duty in respect of instruments. It was urged that a copy of an instrument is not an instrument and, therefore, if Section 7 of the said Act is construed as empowering levy of stamp duty on a copy of an instrument, to that extent the section will be

5 AIR 1964 SC 1037

6 (1973) 1 SCC 261

ultra vires the Entry 63 of List-II. Relying upon the decision of the Apex Court in the case of ***Sushil Kumar v. State of Haryana***⁷, it was urged that the word “document” can only include the original document and not a copy thereof.

10. The learned Special Counsel for the State of Maharashtra relied upon the decision of the Apex Court in the case of ***New Central Jute Mills Co. Ltd. v. State of West Bengal***⁸. He relied upon paragraph-16 of the said decision. He submitted that liability will arise when the instrument is executed in one State is used for doing things in another State. In such a case, the liability to pay stamp duty will arise in both the States. Inviting our attention to Section 125 of the Companies Act, he urged that even going by the case of the petitioners, the verified copies of the instruments executed in the State of Gujarat were filed with the Registrar of Companies in Mumbai for the purposes of registration of the charge of mortgage. He invited our attention to the provisions of the said Act as it stood in January 1992. He submitted that under clause (b) of sub-section (1) of Section 7, a duty was always payable on a copy of the instrument. He submitted that even without amendment to Section 3 made by adding a proviso, stamp duty was always leviable on a copy of the instrument covered by clause (b) of sub-section (1) of Section 7 of the said Act. He submitted that in the present case, differential duty has been charged in accordance with Section 19 of the said Act. He submitted that even a true copy of the instrument which is executed in one State but

⁷ AIR 1988 SC 418

⁸ AIR 1963 SC 1307

which is used in another State will become an instrument for the purposes of the said Act. He would, therefore, submit that Entry 63 of List-II will cover copies of instruments to which Section 7 is applicable.

11. We have given careful consideration to the submissions. Firstly, it will be necessary to look at the provisions of the said Act as the same existed at the relevant time. We have already quoted Sections 3,7 and 19 of the said Act in the earlier part of this Judgment. Schedule-I prescribes the rates of stamp duty on various documents/instruments. The definition of “instrument” as contained in clause (l) of Section 2 of the said Act reads thus:

“2. Definitions. In this Act, unless there is anything repugnant in the subject or context.-

.....
(l) “instrument” includes every documents by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded, but does not include a bill of exchange, cheque, promissory note, bill of lading, letter of credit, policy of insurance, transfer of share, debenture, proxy and receipt”

12 Firstly, we are dealing with the question whether the copies of the deeds which are the subject matter of these petitions were liable for payment of stamp duty under the said Act. In the present case, we were dealing with the said deeds styled as Debenture Trust Deeds which are executed in the State of Gujarat in respect of immovable properties in Gujarat. Under the deeds subject matter of these petitions, a mortgage of

immovable properties was created in favour of a bank or a consortium of banks by way of security for the debentures and the interest payable thereon. Stamp duty was paid on the deeds in the State of Gujarat. We may note here that Chapter-II of the said Act has the heading “Stamp Duties”. Chapter-II has five sub-headings. Under sub-heading (A) styled as “Of the Liability of Instruments to Duty”, Sections 3 to 9 are included. Section 3 which we have quoted above specifically states that subject to the provisions of the said Act and the exemptions contained in Schedule-I, the instruments set out in clauses (a) and (b) are chargeable with duty of the amounts indicated in Schedule-I as the proper duty therefor respectively. It is true that Section 3, at the relevant time, did not refer to a copy of an instrument and it referred to only an instrument. It is also true that at the relevant time, the proviso to Section 3 which deals with the copies of the instruments was not on the statute book. Section 4 provides that where, in case of any sale or mortgage or settlement, several instruments are employed for completing the transaction, only the principal instrument is chargeable with duty prescribed in Schedule-I and each of the other instruments shall be chargeable with a duty of ten rupees instead of the duty prescribed for it in the Schedule-I. Section 5 provides that 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 said Act. Section 6 provides that subject to the provisions of Section 5, an instrument so framed as to come within two or more of the descriptions in Schedule-I shall be chargeable

only with the highest of such duties when the duties chargeable are different. Section 7 has a title "Payment of higher duty in respect of certain instruments". Sub-section (1) of section 7 starts with a non-obstante clause which seeks to override Sections 4 and 6 or any other enactment. Thus, in a way, this Section is by way of an exception to Sections 4 and 6. It provides that unless it is proved that the duty chargeable under the said Act has been paid, (a) on the principal or original instrument, as the case may be, or (b) in accordance with the provisions of this section, the duty chargeable on instrument of sale, mortgage or settlement, other than a principal instrument or a copy of any instrument shall, if the principal or original instrument, when received in the State would have been chargeable under the said Act with a higher rates of duty, be the duty with which the principal or original instrument would have been chargeable under Section 19. In the present case, the deeds have been executed and stamped in the State of Gujarat and, therefore, admittedly, the stamp duty chargeable under the said Act has not been paid on the original deeds. As stated earlier, the deeds create a mortgage in respect of immovable properties of the first petitioner Companies in Gujarat. It is also not in dispute that the deeds subject matter of these petitions, if received in the State, would have been chargeable under the said Act with a higher rate of duty. Sub-section (1) of Section 7 provides that in case of a copy of any such instrument, stamp duty under the said Act will be payable which is equivalent to the duty with which the principal or the original instrument would have been chargeable under Section 19. Sub-section (2) of Section 7 provides that a

copy of the instrument chargeable with duty as provided in sub-Section (1) shall not be received in evidence unless the duty chargeable under the said section has been paid thereon. Section 7 is also a charging section which comes under sub-heading (A) "Of the Liability of Instruments to Duty". Sub-section (1) of Section 7 specifically provides for payment of duty on a copy of the instrument. The duty is payable, provided if the principal or the original instrument executed outside the State, when received in the State, would have been chargeable for stamp duty under the said Act with a higher rate of duty. It is true that Section 19 by itself does not provide for payment of stamp duty on a copy of the instrument. But sub-section (1) of Section 7 which is a charging section, by a legal fiction makes Section 19 applicable to a copy of an instrument to which clause (b) of sub-section (1) of Section 7 is applicable. That is how, in the case of a copy of the instrument to which provisions of clause (b) of sub-section (1) of Section 7 are applicable, the duty as provided under Section 19 will be chargeable. Section 19 comes under the sub-heading (C) "Of the time of Stamping Instruments". Section 19 is applicable to an instrument of the nature described in any article in Schedule-I and relating to any property situate or to **any matter or thing done or to be done in the State** is executed out of the State and is subsequently received in the State. In such a case, an amount of duty chargeable on such instrument shall be the amount of duty chargeable under Schedule-I on a document of the like description executed in this State less the amount of duty, if already paid under any law in force in India. As stated earlier, Section 7 which is a charging section specifically provides that the

duty under Section 19 will be payable on a copy of the instrument to which provisions of clause (b) of sub-section (1) of Section 7 are applicable.

13. There is no dispute that in the present petition, the copies of the deeds were received in the State. The verified copies were brought into the State for registration of charge as provided in Section 125. Sub-sections (1), (2) and (3) of Section 125 of the Companies Act which are relevant, which read as under:

“125. Certain charges to be void against liquidator or creditors unless registered.-- (1)

Subject to the provisions of this Part, every charge created on or after the 1st day of April, 1914 , by a company and being a charge to which this section applies shall, so far as any security on the company's property or undertaking is conferred thereby, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the charge, together with the instrument, if any, by which the charge is created or evidenced, or a copy thereof verified in the prescribed manner, are filed with the registrar for registration in the manner required by this Act within thirty days after the date of its creation:

Provided that the Registrar may allow the particulars and instrument or copy as aforesaid to be filed within thirty days next following the expiry of the said period of thirty days on payment of such additional fee not exceeding ten times the amount of fee specified in Schedule X as the Registrar may determine, if the company satisfies the Registrar that it had sufficient cause for not filing the particulars, and instrument or copy within that period.

(2) Nothing in subsection (1) shall prejudice any contract or obligation for the repayment of the money secured by the charge.

(3) When a charge becomes void under this section, the money secured thereby shall immediately become payable.”

14. As pointed out earlier, Section 3 as well as Section 7 of the said Act are charging sections. The deeds in this case relate to a thing done or to be done in the State of Maharashtra. The thing done or to be done in the State of Maharashtra is the registration of charge under Sections 125 read with 130 of the Companies Act. The registration of the charge is to be made as provided in sub-section (1) of Section 125 by submitting the instrument with prescribed particulars or a copy thereof verified in a prescribed manner. Such a charge is required to be entered by the Registrar of Companies in a Register of charge as provided in Section 130 of the Companies Act. Thus, in the cases in hand, copies of the deeds executed outside the State were brought into State for a thing to be done in the State. In the circumstances, in view of Section 7 read with Section 19 of the said Act, differential stamp duty was payable on the verified copies of the deeds in question brought into the State and submitted to the Registrar of Companies at Mumbai in accordance with Section 125 read with section 130 of the Companies Act.

15. Though we are not concerned with the proviso which was

added by the Maharashtra Act No.XI of 1998 to Section 3, we may note here that the effect of the proviso is that a copy or extract or a facsimile image or otherwise of the original instrument on which stamp duty is chargeable under the provisions of this section, shall be chargeable with full stamp duty as provided in Schedule-I, if the proper duty payable on such original instrument is not paid. The proviso operates in a completely a different field. It will apply when the original document is executed in the State but stamp duty is not paid on the same. In such a case, stamp duty will be payable on a copy of such instrument.

16 At this stage, we may make a useful reference to the decision of the Full Bench of the Gujarat High Court in the case of **Chief Controlling Revenue Authority v. Nutan Mills Ltd.** (supra). There were two questions framed which were referred to the Full Bench, which read thus:

“(1) Whether a copy of an instrument produced under Section 125 of the Companies Act is an Instrument chargeable with duty under Section Section 7(1) read with Section 19 and Section 2 of the Bombay Stamp Act, 1958?

(2) Whether the Collector & Assistant Supdt. Of Stamps was right in impounding the copy of the instrument and ordering levy of duty and penalty under the provisions of Sections 33 and 39 of the Bombay Stamp Act, 1958?

The first question was answered in the affirmative. Thus, in so many words the Gujarat High Court held that a copy of the instrument

produced under Section 125 of the Companies Act though is not an instrument within the meaning of the said Act would be chargeable with the difference between the duty payable in accordance with sub-section (1) of Section 7 read with Section 19 of the said Act and the duty payable under the Bombay Stamp Act as applicable to the State of Gujarat. The Full Bench clarified that such a copy of the original instrument cannot be called as an instrument within the meaning of Section 2 of the said Act.

17. Reliance was placed by the petitioners on a decision of the Apex Court in the case of *Jupudi v. Pulavarthi* (supra). The issue before the Apex Court was whether the reception of secondary evidence of a written agreement to grant a lease is barred by the provisions of Sections 35 and 36 of the Indian Stamp Act. The Apex Court considered the issue in the light of Section 33 of the Indian Stamp Act read with Section 35. Both the sections deal with the instruments chargeable with duty. Section 33 deals with power of every person having by law or by consent of parties an authority to receive evidence. It confers power on such person, if he finds that the instrument produced before him is not duly stamped, to impound the said document. Section 35 provides that no instrument chargeable with the duty shall be admitted in evidence for any purpose by any person having by law an authority to receive evidence unless such document is duly stamped. It is in this context, that the Apex Court in paragraph 13 has held that there is no scope for inclusion of a copy of a document as an instrument for the purpose of the Stamp Act. It was held that Section 35 only deals with original instruments and not the

copies thereof. In the case in hand, under sub-section (2) of Section 7 of the said Act, even a copy of the instrument covered by clause (b) of sub-section (1) of Section 7 cannot be received in evidence unless duty chargeable thereon is fully paid. Therefore, the said decision will not help the petitioners.

18 In the case of *Hariom Agrawal v. Prakash Chand Malviya* (supra), the Apex Court was dealing with a photostat copy of the instrument/ agreement produced as a secondary evidence when on the original document proper stamp duty was not paid. The question was whether such a copy can be impounded under the provisions of the Indian Stamp Act as amended by the Madhya Pradesh amendment. After considering the provisions of Sections 33 and 35 of the Indian Stamp Act, the Apex Court came to the conclusion that a copy of the instrument cannot be impounded. Even this decision will have no application as the issue which arises in the cases in hand never arose before the Apex Court. In the cases in hand, Section 7 of the said Act which is a charging Section provides for levy of stamp duty on a copy of an instrument to which clause (b) of Sub-section 1 thereof is applicable.

19 Therefore, we find that the difference of duty was payable on the copies of deeds, which were filed under Section 125 of the Companies Act, in the light of the provisions of Section 7 read with Section 19 of the said Act. In fact none of the decisions interpret Section 7 of the said Act or a provision which is *pari materia* thereto.

20 Now, the other issue survives for our consideration is regarding the constitutional validity of Section 7 in so far as it is applicable to the copies of the documents. It was pointed out that Entry 91 in List-I of Schedule 7 of the Constitution of India deals with rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, etc. Entry 63 of List-II deals with rates of stamp duty in respect of documents other than those specified in the entries in List-I. It was submitted that the State Legislature is not competent to levy stamp duty on a copy of an instrument. It was urged that the word “document” used in Entry 63 of List-II will have to be construed as an instrument. It was submitted that even according to the provisions of the Indian Stamp Act, stamp duty is leviable only on the instruments. Relying upon the decision of the Apex Court in the case of *Bhopal Sugar Industries v. D.P.Dube* (supra), it was submitted that the State Legislature is powerless to enact a law providing for levy of stamp duty on a document which is not an instrument. Relying upon the decision of the Apex Court in the case of *Bar Council of Uttar Pradesh v. State of U.P* (supra), it is pointed out the Apex Court has observed that both Entry 91 of List-I and Entry 63 of List-II are empowering fixation of rates of stamp duty only in respect of instruments and not in respect of any document. It was urged that a copy of an instrument is not an instrument and, therefore, if Section 7 of the said Act is construed as empowering levy of stamp duty on a copy of the instrument, to that extent, the section will be ultra vires the Entry 63 of List-II. Relying upon the decision of

the Apex Court in the case of *Sushil Kumar v. State of Haryana* (supra), it was urged that the word “instrument” can only include the original document and not a copy thereof.

21. Entry 91 of List-I reads thus:

“91. Rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts.”

Entry 66 of List-II reads thus:

“63. Rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.”

Both the entries do not contain the word “instrument”. It is true that the Apex Court in the case of *Bar Council of UP vs. State of UP* has observed that Entry 91 of List-I refers to “instruments”. There are judicial pronouncements which hold that the word “instrument” occurring in the definition clauses of both the Indian Stamp Act and the said Act refers only to an original instrument and not to a copy of an instrument. The argument is that both the above entries in Schedule VII relate only to instruments and not the copies thereof and therefore, the provision of section 7 of the said Act lacks legislative competence in so far as it seeks to levy stamp duty on copies of instruments.

22. In several decisions, the Apex Court has laid down the law relating to the interpretation of various entries in the Lists in the Schedule VII. The Apex Court in the case of *State of Gujarat v. Akhil Gujarat Pravasi V.S. Mahamandal*⁹, in paragraph 10 held thus:

“10. In interpreting the scope of various entries in the legislative lists in the Seventh Schedule, widest-possible amplitude must be given to the words used and each general word must be held to extend to ancillary or subsidiary matters which can fairly be said to be comprehended in it. The entries should, thus be given a broad and comprehensive interpretation. In order to see whether a particular legislative provision falls within the jurisdiction of the legislature which has passed it, the Court must consider what constitutes in pith and substance the true subject-matter of the legislation and whether such subject-matter is covered by the topics enumerated in the legislative list pertaining to that legislature.”

In the case of *Offshore Holdings (P) Ltd. v. Bangalore Development Authority*¹⁰, the Apex Court held thus:

“67. The entries in the legislative lists are not the source of powers for the legislative constituents but they merely demarcate the fields of legislation. It is by now well-settled law that these entries are to be construed liberally and widely so

9 (2004) 5 SCC 155

10 (2011) 3 SCC 139

as to attain the purpose for which they have been enacted.

Narrow interpretation of the entries is likely to defeat their object as it is not always possible to write these entries with such precision that they cover all possible topics and without any overlapping.

69. A Constitution Bench of this Court in *Ujagar Prints (2) v. Union of India* [(1989) 3 SCC 488] described these entries and also stated the principles which would help in interpretation of these entries. While enunciating these principles, this Court held as under: (SCC pp. 512-13, para 48)

"48. Entries to the legislative lists, it must be recalled, are not sources of the legislative power but are merely topics or fields of legislation and must receive a liberal construction inspired by a broad and generous spirit and not in a narrow pedantic sense. The expression 'with respect to' in Article 246 brings in the doctrine of 'pith and substance' in the understanding of the exertion of the legislative power and wherever the question of legislative competence is raised the test is whether the legislation, looked at as a whole, is substantially 'with respect to' the particular topic of legislation. If the legislation has a substantial and not merely a remote connection with the entry, the matter may well be taken to be legislation on the topic."

70. This Court, while referring to the principles of interpretation of entries in the legislative lists, expanded the application to all ancillary or subsidiary matters in *Jijubhai Nanabhai Kachar v. State of Gujarat* [1995 Supp (1) SCC 596] and held as under: (SCC p. 609, para 7)

"7. It is settled law of interpretation that entries in the Seventh Schedule are not powers but fields of legislation. The legislature derives its power from Article 246 and other related articles of the Constitution. Therefore, the power to make the Amendment Act is derived not from the respective entries but under Article 246 of the Constitution. The language of the respective entries should be given the widest scope of their meaning, fairly capable to meet the machinery of the Government settled by the Constitution. Each general word should extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it. When the vires of an enactment is impugned, there is an initial presumption of its constitutionality and if there is any

difficulty in ascertaining the limits of the legislative power, the difficulty must be resolved, as far as possible in favour of the legislature putting the most liberal construction upon the legislative entry so that it may have the widest amplitude."

This line of interpretation had been stated in *Hoechst Pharmaceuticals Ltd. v. State of Bihar* [(1983) 4 SCC 45] and followed in different judgments of this Court including the judgments cited above."

(emphasis added)

In the case of *Indian Handicrafts Emporium v. Union of India*¹¹, in paragraph 62, the Apex Court held thus:

62. That the appellants used to trade in ivory stands admitted. They, thus, would come within the purview of the definition of trader also is undisputable. The manner in which despite legal ban on trade a person may not take recourse to illegal trading is a matter which squarely falls within the purview of the legislative competence. **It is now well settled that Parliament can not only enact a law for avoidance or evasion of commission of an illegal trade but also may make law to see that the law is not evaded by taking recourse to machination or camouflage. The loopholes, if any, in such matters can and should be plugged. "Means affecting means" principle as adumbrated in *United States v. Darby* [312 US 100 : 85 L Ed 609 (1941)] is an illustration on the point. Both substantial and procedural provisions can be made to make a law in furtherance of the object for which the Act has been enacted and to see that what is sought to be prohibited directly may not be achieved by the traders indirectly.**

(emphasis added)

23. We are dealing essentially with a deed/an instrument which is executed and stamped in another State where the stamp duty payable is less than the stamp duty payable on a similar deed executed in the State

11 (2003) 7 SCC 589

of Maharashtra. The said deed is used in the State of Maharashtra for registering a charge by lodging a verified copy of the deed in the office of the Registrar of Companies in accordance with sections 125 read with 130 of the Companies Act. The deeds were chargeable in the State of Gujarat as the same are executed in the said State. Copies of the same are received in the State of Maharashtra for registering a charge in the office of the Registrar of Companies. The entries in the Schedule VII extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it. If the entry 63 applies to instruments, it will extend to all subsidiary and ancillary matters connected with the said entry. Section 7 of the said Act which deals with copies of the instruments has a direct and substantial connection with the said entry 63. The said entry cannot be given a restricted meaning and interpretation which is contrary to the law laid down by the Apex Court. Liberal construction will have to be put so that it can be of a wide amplitude. The entry 63 will encompass in itself even copies of instruments.

24. Moreover, clause (b) of Sub-section 1 of Section 7 is intended to ensure that no one evades the stamp duty payable on an instrument under the said Act by executing and stamping the original in another State where a lesser stamp duty is payable and thereafter, bring a copy thereof within the State for doing something on the basis of the rights and liabilities created by it. The legislative intent is to ensure that there is no evasion of duty on such instruments. The provision is to levy only a differential duty. There is no double taxation.

25 We, therefore, reject the argument that Section 7 read with Section 19 in so far as the same apply to the copies of the instruments are not constitutionally valid.

26. Hence, the petitions must fail. The writ petitions are accordingly rejected. Rule is discharged with no order as to costs. The interim/ad-interim orders operative till today are extended by a period of ten weeks from today.

(VIBHA V. KANKANWADI, J.)

(A.S.OKA, J.)

