2025 INSC 1207

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7661 OF 2014

M/S GODWIN CONSTRUCTION PVT. LTD. ....APPELLANT(S)

VERSUS

COMMISSIONER, MEERUT DIVISION & ANR. .... RESPONDENT(S)

WITH

CIVIL APPEAL NO.12552 OF 2025
(ARISING OUT OF S.L.P. (CIVIL) NO.36434 OF 2014)

J U D G M E N T

PRASHANT KUMAR MISHRA, J.

1. Leave granted in SLP (Civil) No.36434 of 2014.

FACTUAL MATRIX IN CIVIL APPEAL NO. 7661 OF 2014

2. Civil Appeal No.7661 of 2014 calls in question the impugned order dated 22.01.2013 passed by the High Court of Judicature at Allahabad in Writ Petition No. 31966/2012, whereby the High Court dismissed the writ petition filed by the appellant, affirming the order dated 11.06.2012 passed by respondent No.1, which in turn affirmed the order dated 15.09.2010 passed by respondent No.2, directing the

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appellant to pay Rs.4,61,760/- (Rupees Four Lakh Sixty-one Thousand Seven Hundred and Sixty) as deficient stamp duty under Article 40(b) of Schedule 1-B of the Stamp Act, together with penalty of Rs.100/- along with interest at the rate of 1.5% per month from the date of execution of the instrument till recovery.

3. On 18.12.2006, the Meerut Development Authority allowed the appellant to develop a colony known as "Global City, Abdullahpur, Meerut". On 19.12.2006, the appellant executed a "Security Bond cum Mortgage Deed" in favour of the Meerut Development Authority under Article 57 of Schedule 1-B of the Indian Stamp Act, 1899 to secure performance of all obligations relating to the development of the colony, including payment of external development charges and provision of requisite amenities. The appellant mortgaged specified plots of land under the deed, totalling 2,934.45 square meters.

4. The appellant transferred all their interest in the properties specified in the deed to the Meerut Development Authority, intending that they shall remain mortgaged. In case of default of liability, the Meerut Development Authority shall be entitled to sell the mortgaged properties to realize an amount of ₹1,00,44,000/- (Rupees One Crore and Forty-four Thousand). The appellant had also deposited an advance deposit of ₹15,00,000/- (Rupees Fifteen Lakh) and upon the full discharge of all obligations, the surety under the bond and

obligation will be void. A stamp duty of ₹100/- was paid, in accordance with Article 57 of Schedule 1-B of the Indian Stamp Act.

5. On 16.02.2008, the Deputy Commissioner (Stamps), Meerut Circle, Meerut, issued a notice to the appellant stating that the stamp duty was payable under Article 40 of Schedule 1-B of the Indian Stamp Act, and initiated recovery proceedings under Section 33(4) for remaining deficit stamp duty of ₹4,61,660/- (Rupees Four Lakh Sixty-one Thousand Six Hundred and Sixty).

6. On 07.07.2010, the appellant filed objections to the notice dated 01.05.2008 before respondent No.2. By order dated 15.09.2010, respondent No.2 held that the instrument described as "Security Bond cum Mortgage Deed" was chargeable under Article 40 of Schedule 1-B of the Indian Stamp Act and not under Article 57 as claimed by the appellant. Accordingly, he confirmed the demand for deficit stamp duty of ₹4,61,660/- together with a penalty of ₹100/- totalling ₹4,61,760/- and interest at the rate of 1.5% per month with effect from the date of execution of the said instrument till the date of recovery.

7. Aggrieved by the order dated 15.09.2010 passed by respondent No.2, the appellant filed Stamp Appeal No.8/2010 under Section 56(1)(b) of the Indian Stamp Act before the respondent No.1.

However, the said appeal was dismissed by respondent No.1 vide order dated 11.06.2012.

8. Aggrieved, the appellant preferred Writ Petition No.31966/2012 before the Hon'ble High Court. Vide judgment dated 22.01.2013, the High Court dismissed the writ petition, holding that the Security Bond cum Mortgage Deed dated 19.12.2006 was executed solely between the appellant and the Meerut Development Authority as a mortgage deed. In the absence of any surety or third party, it was chargeable under Article 40 of Schedule 1-B of the Indian Stamp Act, 1899. Pursuant to the above dismissal, the present Civil Appeal has been filed.

FACTUAL MATRIX IN CIVIL APPEAL ARISING OUT OF SLP (C) NO.36434/2014

9. The appellant applied for a business loan of Rs.1,66,00,000/- (Rupees One Crore and Sixty-six Lakh) from the Allahabad Bank. To ensure re-payment of loan, he executed a "Security Bond or Mortgage Deed" placing immoveable property being plot No.122-M measuring 0.202 hectares, situated in Village Jugauli Tappa Sirsia, Pargana Vinayakpur, Tehsil Nautanwa, District Maharajganj as security with the bank. The deed was executed on a stamp paper of ₹.100/- in compliance with Article 57 of Schedule 1-B of the Indian Stamp Act, 1899.

10. The deed was presented before Sub-Registrar for registration on 04.12.1995 which was forwarded to the Deputy Collector (Stamp), with his report dated 06.01.1996, observing that the document was a mortgage deed, and chargeable under Article 40, Schedule 1-B of the Indian Stamp Act, thus, indicated a stamp deficit of Rs.1,37,500/- (Rupees One Lakh Thirty-seven Thousand and Five Hundred). The Deputy Collector (Stamp) vide order dated 10.04.1997, concurred with the Sub-Registrar's report and held that the deed in question was a simple mortgage deed chargeable with stamp duty at the rate of Rs.62.50 per thousand. Aggrieved thereto, appellant preferred Stamp Revision No.59/1997-98 but the same was dismissed. Assailing the orders dated 10.04.1997 and 10.08.2001; the appellant filed Writ Petition No.33415/2001 before the High Court. The High Court after dealing with the issue on merits, dismissed the writ petition, finding no perversity in the impugned orders.

SUBMISSIONS

11. Learned counsel for the appellants in both the Appeals submit that the instrument executed by the appellants should be charged for stamp duty as per Article 57 of Schedule 1-B of the Indian Stamp Act. Learned counsel further asserted that the subject deeds are not s*implicitor* mortgage deeds as defined under Section 2(17) of the Indian

Stamp Act, 1899. Hence, the stamp duty cannot be levied under Article 40 of the Indian Stamp Act, 1899.

12. *Per contra*, the learned counsel for the respondents contended that the impugned orders have rightly held that the deeds executed by the appellants in favour of the Meerut Development Authority and the Allahabad Bank respectively are chargeable under Article 40 of Schedule 1-B of the Indian Stamp Act, 1899. Learned counsel assert that the orders of the High Court do not require any interference.

13. The question which falls for our consideration in both the Appeals is whether the stamp duty on the instrument "Security Bond cum Mortgage Deed", is chargeable under Article 40 or Article 57 of Schedule 1-B of the Indian Stamp Act 1899.

ANALYSIS

CIVIL APPEAL NO.7661 OF 2014

14. It is trite that, in matters of stamp duty, the decisive factor is not the nomenclature assigned to the instrument, but the substance of rights and obligations it embodies. The Court is duty-bound to ascertain the true legal character of the instrument. In the instant case, the appellant has executed a "Security Bond cum Mortgage Deed" in favour of the Meerut Development Authority. Unless the nature and effect of such an instrument are conclusively identified,

the application of any provision for the determination of stamp duty on instruments under the Indian Stamp Act, 1899, cannot be undertaken. It is necessary to have regard to the operative recitals and clauses of the deed executed by the appellant. For this purpose, the relevant portions of the "Security Bond cum Mortgage Deed dated 19.12.2006 are extracted below:

> "STAMP DUTY RS 100/- IMPROVEMENT TRUST DUTY NILL TOTAL RS 100/- THIS SECURITY Bond CUM MORTGAGE DEED is being executed by surety to secure due performance of contract and for due discharge of liability. The stamp duty is being paid under Article 57 of the schedule I-B of the Indian Stamp Act, 1989, as amended in its application of Uttar Pradesh.
> THIS INDENTURE IS MADE at Meerut on the 19th day December 2006.
>
> BETWEEN
>
> Godwin Construction Pvt. Ltd. through Director Shri Jitender Bajwa R/o A-151, Defence Colony, Meerut hereinafter called SURETIES of the one part which expression shall, unless repugnant to the context or in consistent with the subject, include their heirs, executors and administrators etc.
>
> AND
>
> MEERUT DEVELOPMENT AUTHORITY, Vikas Bhawan, Meerut hereinafter called MDA of the other part, which expression, unless repugnant to the context or inconsistent with the subject shall include its interest assigns, transferees in interest etc.
>
> WHEREAS M/S Godwin Construction Pvt. Ltd., A-151, Defence Colony, Meerut hereinafter referred to as the COLONIZER is developing a colony, under the name and style of Global City, Abdullapur Meerut hereinafter referred to as colony and,
>
> WHEREAS MDA has agreed to approve the lay out plan of the colony and colony itself provided to Colonizer discharges all the liability to develop and colony together with all required amenities and for due discharge of the liabilities of the Colonizers the MDA has asked to furnish security of Rs. 1,15,44,000/- for external development charge which will be

released after the payment of external development charge of the colony as per terms and conditions and bye laws *(sic)* of the MDA And.

WHEREAS the sureties or the Guarantors have in consideration of approving the lay out of colony by the MDA has agreed to give security of 1,00,44,000/- in the manner hereinafter mentioned & have deposited Rs. 15,00,000/- as advance in the shape of Demand Draft.

NOW THIS DEED WITNESSES :-

1. THAT the sureties to secure the due performance the contract and for due discharge of the liability to pay of external development charge of the colony Global City, Abdullapur, Meerut and all amenities, work of the Colony, the surety hereby transfer to MDA all their interests in the property detailed in the schedule here to with intent that the same shall remain and be charged by way of mortgage.

2. THAT the Sureties declare that:-

a. THAT Sureties are the absolute owners of the property and free from encumbrances of any kind.

b. THE SURETIES are entitled to sell, transfer or alienate the said property.

c. THAT SURETIES have not deposited delivered that the title deed/s of the property with any one else and have not created any charge by way of mortgage or any other encumbrance on the property.

3. THAT SURETIES undertake not be create charge or mortgage or transfer or part with possession of the said property without the consent of the MDA in writing.

4. THAT SURETIES hereby authorise and appoint the Colonizer as agent to acknowledge on behalf of the Sureties the liability and security hereby created.

SURETIES covenant in case of non-discharge of the liability by the Colonizer within the stipulated period, the MDA shall be within its rights so cause the property mortgaged to be sold for the realization of the amount to the extent of Rs. 1,00,44,000/-.

NOW THIS CONDITIONS of the written bond are such that if the colonizer performs and fulfills the obligations and discharge all the liability regarding Completion of the said company, the said surety under the above said written bond and obligation shall be void and of no effect otherwise the same shall be and remain in full force.

SCHEDULE REFERRED TO ABOVE

All the land Global City, Abdullapur Meerut

LIST FOR MORTGAGE PLOTS

Plot No.	Area (in sq. mts)
01 to 03	486.00
13 to 16	648.00
69 to 71	336.00
73 to 82	1464.45
Total	**2934.45**

IN WITNESS WHEREOF the above written surety Bond has signed these present at Meerut 19th day of December year 2006."

15. Having set out the operative clauses of the instrument executed by the appellant, it is evident that the instrument records that the appellant transferred all their interest in the properties detailed in the schedule to the Meerut Development Authority. The transfer was made with the intent that the same shall remain charged by way of mortgage to secure due performance of obligations in developing the colony and payment of external development charges.

16. The instrument further stipulates that, in the event of default, the Meerut Development Authority shall be entitled to sell the mortgaged properties to realize the amount. Having thus analysed the operative clauses and substance of the instrument, it is apposite to refer to the definition of "Mortgage Deed" under Section 2(17) of the Indian Stamp Act ,1899 which reads as follows:

> "**2. Definitions.** — In this Act, unless there is something repugnant in the subject or context,—
> ....

> "(17) **"Mortgage-deed"**. — "mortgage-deed" includes every instrument whereby, for the purpose of securing money advanced, or to be advanced, by way of loan, or an existing or future debt, or the performance of an engagement, one person transfers, or creates, to, or in favour of, another, a right over or in respect of specified property:"

17. When juxtaposed with Section 2(17) of the Indian Stamp Act, it is evident that the instrument executed by the appellant fulfils the essential characteristics of a mortgage deed. In substance and effect, the deed confers a right over specified properties in favour of the Meerut Development Authority to secure performance of an obligation, while preserving the appellant's interest until full discharge of obligation. The nomenclature "Security Bond cum Mortgage Deed" is, therefore, inconsequential, as it is the substance and operative provisions of the instrument which govern its character for the purposes of stamp duty.

18. With the nature and substance of the deed thus established, we now turn to the pivotal question of chargeability of the instrument under the Indian Stamp Act, 1899. In light of its nomenclature as a "Security Bond cum Mortgage Deed", the relevant provisions for determining the stamp duty are confined to Articles 40 and 57 of Schedule 1-B of the Indian Stamp Act, 1899. The relevant provisions are reproduced below for ready reference:

> "**40. MORTGAGE-DEED**, not being an AGREEMENT RELATING-TO DEPOSIT OF TITLE-DEEDS, PAWN OR PLEDGE (NO. 6), BOTTOMRY BOND (NO. 16), MORTGAGE

OF A CROP (NO. 41), RESPONDENTIA BOND (No. 56), OR SECURITY BOND (NO. 57)—
(a) when possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given;
(b) when possession is not given or agreed to be given as aforesaid;

Explanation.—A mortgagor who gives to the mortgagee a power-of-attorney to collect rents or a lease of the property mortgaged or part thereof, is deemed to give possession within the meaning of this Article.

(c) when a collateral or auxiliary or additional or substituted security, or by way of further assurance for the abovementioned purpose where the principal or primary security is duly stamped—

for every sum secured not exceeding Rs.1,000 and for every Rs. 1,000 or part thereof secured in excess of Rs. 1,000.

Exemptions

(1) Instruments, executed by person taking advances under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loan Act, 1884 (XII of 1884), or by their sureties as security for the repayment of such advances.

(2) Letter of hypothecation accompanying a bill of exchange.

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57. SECURITY-BOND OR MORTGAGE-DEED, executed by way of security for the due execution of an office, or to account for money or other property received by virtue thereof or executed by a surety to secure the due performance of a contract,—
(a) when the amount secured does not exceed Rs. 1,000;

(b) in any other case……"

19. It is contended on behalf of the appellant, that the deed falls within the ambit of Article 57 of Schedule 1-B of the Indian Stamp Act, 1899, on the footing that it partakes the character of a security bond. Hence, it is necessary to examine the scope and application of Article 57.

20. Article 57 of Schedule 1-B of the Indian Stamp Act operates in two distinct limbs. The first limb covers security bond or mortgage deed executed by way of security for the due execution of office, or to account for money or other properties received by virtue thereof.

21. The second limb, demarcated by the words "*or executed by a surety to secure the due performance of a contract*", is restricted in its application to the execution of security bond or mortgage deed by a surety to secure the obligations of another, and does not extend to cases where the principal itself executes the deed to secure its own obligations.

22. The term "surety" must be strictly understood in accordance with Section 126 of the Indian Contract Act, 1872. Section 126 is reproduced below for reference:

> "**126. "Contract of guarantee", "surety", "principal debtor" and "creditor".—**A "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the "surety"; the person in respect of whose default the guarantee is given is called the "principal debtor", and the person to whom the guarantee is given is called the "creditor". A guarantee may be either oral or written."

23. It follows that a contract of guarantee is inherently tripartite, consisting of the surety, principal debtor, and a creditor. Consequently, the essential requirement for invoking Article 57 is the presence of a surety distinct from the principal debtor. Where the

principal debtor itself executes a deed mortgaging its own property, Article 57 is inapplicable.

24. In the case at hand, it is apparent from the recitals of the instrument titled "Security Bond cum Mortgage Deed" executed by the appellant that only two parties are involved — the Meerut Development Authority and the appellant, M/s. Godwin Construction Pvt. Ltd.

25. It stands beyond doubt, that the deed was not executed by a surety but by the principal debtor/appellant, the company, through its director. It is evident that the company itself mortgaged the properties and not the director in his individual capacity. A company, though a juristic person, is not a sentient being, consequently, it must act through its directors. This firmly establishes that the properties were not mortgaged by a third party, but by the principal debtor itself, which, in our opinion, does not attract Article 57.

26. In the absence of any surety, to attract Article 57 of the Indian Stamp Act, the deed executed by the appellant cannot be termed as a security bond. It, however, fulfils all the requirements of a mortgage deed, falling under the ambit of Article 40 of Schedule 1-B of the Indian Stamp Act.

CIVIL APPEAL ARISING OUT OF SLP (C) NO.36434/2014

27. In the Civil Appeal arising out S.L.P. (Civil) No. 36434/2014, as well, it is similarly observed that the instrument executed by the appellant in favour of the Allahabad Bank, carries the nomenclature "Security Bond or Mortgage Deed". This instrument created a mortgage over certain immoveable property at Village Jugauli Tappa Sirsia, Pargana Vinayakpur, Tehsil Nautanwa, District Maharajganj to secure the loan repayment of the business loan. A careful perusal of the operative provisions of the instrument clearly indicates that it confers a right over specified property to secure repayment.

28. This Court finds that the instrument satisfies the essential characteristics of a mortgage deed as defined under Section 2(17) of the Indian Stamp Act, 1899. The nomenclature "Security Bond or Mortgage Deed" is not determinative; the substance of the instrument governs its character while assessing stamp duty.

29. As observed by us in the preceding paragraphs, the second limb of Article 57 of Schedule 1-B of the Indian Stamp Act, 1899, is confined to instruments executed by a surety to secure the obligations of another. In the present case, although clause III of the deed stipulates that the mortgagor shall be personally liable to repay the loan, a careful reading of the deed makes it manifestly clear that Shri Naveen Mittal executed the deed solely in his capacity as the director

of the company M/s Ajay Forging Pvt. Ltd, acting on behalf of the company. No distinct surety exists apart from the principal debtor. Accordingly, reference to personal liability in the deed pertains to the director acting on behalf of the company and does not transform the instrument into a security bond under Article 57 of Schedule 1-B of the Indian Stamp Act, 1899. In substance and effect, the deed constitutes a mortgage executed by the principal debtor itself, thereby attracting the provisions of Article 40 of the Schedule 1-B of the Indian Stamp Act, 1899, for the purposes of stamp duty.

30. In our opinion, the impugned judgments passed by the High Court of Judicature at Allahabad do not suffer from any infirmity as to warrant interference by this Court. The Appeals are, accordingly, dismissed.

.....J.
(AHSANUDDIN AMANULLAH)

.....J.
(PRASHANT KUMAR MISHRA)

NEW DELHI;
OCTOBER 08, 2025.