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STAMP DUTY RATE DEPENDENT ON INSTRUMENT'S LEGAL CHARACTER

The Supreme Court (“**SC**”) in *M/s. Godwin Construction* case¹ examined whether a ‘Security Bond or Mortgage Deed’ is chargeable under Article 40² or Article 57³ of Schedule I-B of the Indian Stamp Act, 1899 (“**the Act**”).

BRIEF FACTS:

The SC has clubbed the following two civil appeals that deal with similar questions of law:

1. *M/s. Godwin Construction case*:⁴ M/s. Godwin Construction Pvt Ltd., (“**GC**”) executed a ‘Security Bond or Mortgage Deed’ in favour of the Respondent, transferring its interest in property with the intent that the same shall remain and be charged by way of mortgage to secure development obligations, while paying Rs. 100 stamp duty under Article 57 of the Act. The Deputy Commissioner (Stamps) (“**DCS**”) held it chargeable under Article 40 of the Act and ordered deficit duty to be paid.
2. *Kaustubh Mittal case*:⁵ Kaustubh Mittal (“**KM**”) executed a ‘Security Bond or Mortgage Deed’ mortgaging immovable property to secure loan repayment with his bank, stamped at Rs. 100 under Article 57. DCS held it to be a simple mortgage under Article 40 and hence ordered the deficit to be paid.

In both cases, the statutory appellate forums and the High Courts (“**HC**”) affirmed the DCS’s orders, leading to dismissal of the challenges. Aggrieved, GC and KM invoked the SC’s jurisdiction through separate civil appeals. However, as both appeals addressed a similar issue, the SC clubbed them for consideration in the Petition.

PARTIES’ CONTENTIONS:

- GC and KM contended that the instrument should be charged for stamp duty as per Article 57 of the Act as the subject deeds are not *simplicitor* mortgage deeds.⁶
- The Respondents contended that the HC’s orders do not warrant any interference as the deeds executed by the Appellants are chargeable under Article 40 of the Act.⁷

¹ *M/s. Godwin Construction Pvt. Ltd vs Commissioner, Meerut Division* | 2025 INSC 1207 | Click [here](#) to read the judgement.

² Article 40 of the Act: “Mortgage”.

³ Article 57 of the Act: “Security Bond or Mortgage Deed”.

⁴ *M/s. Godwin Construction Pvt. Ltd vs Commissioner, Meerut Division* | Civil Appeal No. 7661 of 2014.

⁵ *Kaustubh Mittal and Others vs Chief Controlling Revenue Authority* | SLP (C) NO.36434/2014.

⁶ Paragraph No. 11 of the Judgement.

⁷ Paragraph No. 12 of the Judgement.

SC'S JUDGEMENT & REASONING:

The SC, in Civil Appeal No.7661 of 2014:

- Emphasized that instruments' names cannot determine chargeability as the *"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"*.⁸
- Examined the operative recitals of the instrument and found that it satisfied the elements of a mortgage-deed, which is a decisive factor in characterising the instrument as a mortgage for stamp purposes.⁹
- Held that the second limb of Article 57: *"or executed by a surety to secure the due performance of a contract"* is confined to instruments executed by a surety distinct from the principal debtor. SC relied on Section 126 of the Indian Contract Act, 1872 and observed that *"a contract of guarantee is inherently tripartite"* (surety, principal debtor, creditor). Thus, the essential requirement for invoking Article 57 is the presence of a surety distinct from the principal debtor.¹⁰
- Concluded that as the instrument was not executed by a surety, it cannot be termed as a security bond and hence, falls under the ambit of Article 40.¹¹

The SC, in SLP (C) NO.36434/2014:

- Observed that the operative provision of the instrument clearly indicates that it confers a right over specified property therein to secure repayment, despite it being titled a 'Security Bond or Mortgage Deed'.¹²
- Found that that the instrument satisfies the essential characteristics of a mortgage deed as defined under Section 2(17) of the Act and further held that *"the nomenclature is not determinative, the substance of the instrument governs its character while assessing stamp duty."*¹³
- Held that as no distinct surety exists apart from the Principal Debtor, the personal liability in the instrument pertains to the director acting on behalf of the company and hence, does not transform the instrument into a security bond under Article 57.¹⁴

Hence, the SC dismissed both the appeals holding that the HC's orders disclose no infirmity warranting any interference.

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⁸ Paragraph No. 14 of the Judgement.

⁹ Paragraph No. 15 of the Judgement.

¹⁰ Paragraphs No. 21 and 23 of the Judgement.

¹¹ Paragraph No. 26 of the Judgement.

¹² Paragraph No. 27 of the Judgement.

¹³ Paragraph No. 28 of the Judgement.

¹⁴ Paragraph No. 29 of the Judgement.