

PETITIONER:
SOMATYA ORGANICS (INDIA) LTD., ETC.

Vs.

RESPONDENT:
BOARD OF REVENUE, U.P., ETC.

DATE OF JUDGMENT 29/11/1985

BENCH:
VENKATARAMIAH, E.S. (J)
BENCH:
VENKATARAMIAH, E.S. (J)
MISRA, R.B. (J)

CITATION:
1986 AIR 403 1985 SCR Supl. (3) 786
1986 SCC (1) 351 1985 SCALE (2) 1107

ACT:

Indian Stamp Act, 1899 ss.4 and 24, Article 23, Schedule I-B - Immovable property - property subject to equitable mortgage - Sale of property - Consideration for sale - Computation of - For levy of stamp duty on sale deed Debt, actual or contingent - Whether to form part of consideration.

Words & Phrases: 'contingent liability' - Meaning of Indian Stamp Act, 1899 s.24.

HEADNOTE:

Godavari Sugar Mills - appellant in Civil Appeal No. 989 of 1972 - was the owner of a distillery plant consisting of the lands, buildings, machinery etc. It entered into a technical collaboration Agreement and obtained a deferred payment guarantee up to the limit of Rs. 65,00,000 from the Punjab National Bank in favour of M/s. Speichim, Paris under an equitable mortgage by deposit of title deeds of its property including the aforesaid lands and buildings. Godavari Sugar Mills resolved to sell the lands, buildings and machinery to Somaiya Organics - appellant in Civil Appeal No.988 of 1972 - for a consideration of Rs.36,64,678 and a sale deed was executed on May 20, 1968. The sale deed recited that out of Rs. 36,64,678 Rs. 28,88,678 represented the price payable for the machinery, vehicles, stores, finished goods etc. being all moveable items, the sale and transfer of which had been completed by the parties to the document by manual delivery and the balance of Rs. 7,76,000 represented the price payable in respect of the lands and buildings as described in Schedule 'A' attached to the said document and that the said document was being executed for the purpose of conveying title in respect of the lands and buildings free of all encumbrances. The document further stated that in case the vendee was to pay any amount on account of any charge or encumbrances created by the vendor on the properties sold, the vendee would be entitled to get back the entire sale consideration with interest from the vendor on October 28, 1968 a declaration was signed by each appellant to the effect that the properties which were being transferred under the document dated May 20, 1968 were being sold subject to the equitable mortgage which had been created in favour of the Punjab National Bank Ltd. in

connection with the deferred payment guarantee, after the Board of Directors of the two appellants had

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passed resolutions to that effect. All the three documents, namely, the sale deed dated May 20, 1968 and the two deeds of declarations executed by the appellants acknowledging that the sale was subject to the equitable mortgage were presented for registration. The document dated May 20, 1968 had been written on a stamp paper of Rs. 35,000 treating that the consideration for the sale deed was Rs. 7,76,000.

The Sub-Registrar was of the view that the properties had been sold subject to two liabilities, one for Rs.1,20,00,000 and another for Rs.65,00,000 and therefore, the total consideration payable for sale was Rs. 1,92,76,000 that there was deficiency of stamp duty of Rs. 8,32,420 and that each of the two supplementary deeds of declarations which had been written on stamp papers of Rs. 3.50 should have been written on stamp papers of Rs.4.50 and one rupee was payable on each of them as deficient duty. The Sub-Registrar accordingly impounded the sale deed and the deeds of the declarations and forwarded them to the Collector for necessary action.

The Collector referred the matter to the Chief Controlling Revenue Authority - Board of Revenue, under s.56 (2) of the Indian Stamp Act 1899.

The Board of Revenue made a reference to the High Court under s 57 of the Act for its opinion.

The High Court held that the two deeds of declarations were supplementary to the sale deed dated May 20, 1968 and all the three should be read together to ascertain the terms of sale settled between the parties, that the intention of the parties was that the immovable property was being transferred subject to the equitable mortgage created in favour of the Punjab National Bank Ltd. for Rs. 65,00,000 that under s.4 of the Act the duty of Rs. 4.50 was payable as against Rs. 3.50 on the two declarations, that the inclusion of Rs. 1,20,00,000 in the consideration for the sale was incorrect because the property sold was not subject to the payment of that loan; that was a loan facility given by the Punjab National Bank to Somaiya Organics and the property given as security therefor was the property of Somaiya Organics and not the property which was being sold and the sale was also not subject to that debt, that Rs. 28,88,678 which was the price of the moveables i.e. the machinery etc. was not part of the consideration as they did not constitute the subject matter of sale and they had already been sold by manual delivery,

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that the sum of Rs. 65,00,000 for which the equitable mortgage had been created on the property transferred under the sale was to be treated as part of the consideration for the conveyance in question under s.24 of the Act, that the value on which stamp duty was payable under the Act as per Article 23 in Schedule I-B thereto was Rs. 72,76,000 being the total of Rs. 7,76,000 mentioned in the deed and Rs. 65,00,000 being the contingent liability under the equitable mortgage and that appropriate stamp duty should be collected on Rs. 72,76,000 in the case of the document dated May 20, 1968 and Rs. 4.50 as against Rs. 3.50 on each of the two declarations.

Dismissing the Appeals to this Court,

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HELD: 1. The High Court has rightly taken the view that the amount of Rs.65,00,000 should also be deemed as part of the consideration for the sale and that stamp duty was

leviable on Rs.72,76,000 under s.24 of the Indian Stamp Act, 1899. [804 D]

2. The object of s.24 of the Act is very clear. That section means that when a purchaser purchases a property for a certain amount subject to the payment of another debt, actual or contingent, he is virtually purchasing the property for the said amount plus the amount of the debt and the aggregate of the two amounts ought to be treated as the true amount for which the property is being sold. Otherwise, there is bound to be a difference between the true consideration and the consideration which is made liable to stamp duty. [803 D-E]

3. A contingent liability to the payment of any debt means such outstanding debt or possible adverse verdict which has to be complied with but which is not ascertained on the relevant date. A security for any contingent future payments also falls within the meaning of section 24 of the Act. [797 E-F]

In the instant case, though in the first document dated May 20, 1968 it had been recited that the properties mentioned in Schedule 'A' therein were being conveyed free from all encumbrances by the two deeds of declarations dated October 28, 1968 executed by and on behalf of Godavari Sugar Mills and Somaiya Organics it was made very clear that the properties were being conveyed subject to the equitable mortgage upto the limit of Rs. 65,00,000. It may be that on that date no liability as sch had actually arisen. But the terms of the mortgage were such that there was the contingency of the liability up to Rs.65,00,000 materialising. Pursuant to the prior arrangements
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entered into between Godavari Sugar Mills and Somaiya Organics a letter was addressed to the Punjab National Bank on December 15, 1964 and on the basis of the letter the title deeds in respect of the property now sold had been handed over to the bank creating an equitable mortgage up to Rs. 65,00,000. But the bank had not actually paid any amount under the Deferred Payment Guarantee to M/s Speichim even by April 29, 1969 as is evident from the letter written by the bank to Godavari Sugar Mills. The mortgage which had been created on December 14, 1964 was alive on the date of the transaction and it was in force even on April 29, 1969 though the mortgagors had been substituted by the purchaser of the property i.e. Somaiya Organics. The Deferred Payment Guarantee being in force even on April 29, 1969 the contingent liability under the equitable mortgage was also very much in existence on the date of sale i.e. May 20, 1968 even though no payment had been made by the Bank to N/s Speichim, Paris. If on any future date the Bank was compelled to pay any amount under the guarantee given by it, such amount upto the limit of Rs 65,00,000 could be realised by the Bank by enforcing the mortgage against the property in question. If that was not the position, there would have been no necessity to execute the two deeds of declaration stating that the properties were being sold subject to the mortgage. Had the document of May 20, 1968 been the only document then questions would have arisen whether the recital therein that the consideration for the properties which were considered sufficient by the bank to secure Rs. 65,00,000 could truly be Rs.7,76,000 and whether the said recital amounted to a fraud on the stamp law or not. The duty to decide the said questions does not arise in view of the deeds of declaration which treated the sale as one subject to the mortgage the maximum liability under which at a future time could be Rs. 65,00,000. If the sale had been

free from mortgage then any such contingent future liability would have fallen on the vendor Godavari Sugar Mills. But the parties to the sale took adequate precaution to prevent any such liability being there by making it very clear that the said liability to the Bank would be on the properties sold in the hands of the purchaser, Somaiya Organics and by stating that under the tripartite agreement which was to be executed, the Bank would treat Somaiya Organics as the company responsible for that debt in the place of Godavari Sugar Mills. The Bank had in fact written to the Godavari Sugar Mills on April 29, 1969 that on November 6, 1968 the name of Somaiya Organics had been substituted for the name of the Godavari Sugar Mills in the Deferred Payment Guarantee. [797 F-H; 799 D-E; 800 D-G; 802 G-H; 803 A-C]

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Lord Canning v. Raper, 118 English Reports 400; Mortinore v. Inland Revenue Commissioners, [1864] 2 & 838; Independent Television Authority v. Inland Revenue Commissioners, [1960] 2 All E.R. 481 and Coventry City Council v. Inland Revenue Commissioners, [1978] 1 All E.R. 1107 relied on.

Sidhnath Mehrotra v. Board of Revenue, A.I.R. 1959 All 655 and Board of Revenue, Uttar Pradesh v. Rai Saheb Sidhnath Mehrotra, [1965] 2 S.C.R. 269 inapplicable.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 988 and 989 of 1972.

From the Judgment and Order dated 23.12.1971 of the Allahabad High Court in Misc. Stamp Act Reference No. 466 of 1969.

S.T. Desai, Mrs. A.K. Verma, Joel Peres and D.N. Mishra for the Appellants.

Anil Deo Singh, Mrs. Sudhir Kulshreshta and Mrs. Shobha Dixit for the Respondent.

The Judgment of the Court was delivered by

VENKATARAMIAH, J. The appellant in Civil Appeal No. 988 of 1972 is Somaiya Organics (India) Ltd. (hereinafter referred to as 'Somaiya Organics') and the appellant in Civil Appeal No. 989 of 1972 is Godavari Sugar Mills Ltd. (hereinafter referred to as the 'Godavari Sugar Mills'). These two appeals are filed under Article 136 of the Constitution against the judgment of the High Court of Allahabad in Miscellaneous Reference No. 466 of 1969 which was a reference made by the Chief Controlling Revenue Authority - Board of Revenue, Uttar Pradesh under section 57 of the Indian Stamp Act, 1899 (hereinafter referred to as 'the Act') as in force in the State of Uttar Pradesh involving the question relating to the proper stamp duty chargeable in respect of a transaction under which certain lands and buildings belonging to Godavari Sugar Mills were sold in favour of Somaiya Organics. The facts of the case are these.

Godavari Sugar Mills was the owner of a distillery plant consisting of the lands, buildings, machinery etc. situated in the village called Basahia alias Captainganj in the district of Deoria, State of Uttar Pradesh. It had entered into a technical collaboration agreement with M/s. Melle Bezons and in that

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connection pursuant to the resolution of its Board of Directors passed on October 23, 1964 it had obtained a deferred payment guarantee upto the limit of Rs. 65 lakhs

from the Punjab National Bank Ltd. in favour of M/s. Speichim, Paris under an equitable mortgage by deposit of title deeds of its property including the lands and buildings referred to above. That on March 2, 1962 Godavari Sugar Mills had resolved to sell the lands, buildings and machinery to Somaiya Organics for a consideration of Rs. 36,64,678 and pursuant to the said resolution a sale deed was executed on May 20, 1968. The sale deed recited that out of Rs: 36,64,678, referred to above, Rs. 28,88,678 represented the price payable for the machinery, vehicles stores, finished goods etc. being all moveable items, the sale and transfer of which had been completed by the parties to the document by manual delivery and the balance of Rs. 7,76,000, represented the price payable in respect of the lands and buildings of the sugar factory as described in Schedule 'A' attached to the said document and that the said document was being executed for the purpose of conveying title in respect of the lands and buildings free of all incumbrances. The above Rs. 7,76,000 was to be paid not in cash but in the form of allotment of 7760 fully paid-up equity shares of the face value of Rs. 100 each. The document further stated that in case the vendee was to pay any amount on account of any charge or incumbrances created by the vendor on the properties sold, the vendee would be entitled to get back the entire sale consideration with interest at 1 per cent per month from the vendor. That on October 28, 1968 a declaration was signed for and on behalf of the Godavari Sugar Mills by the two Directors of the Godavari Sugar Mills who had been authorised to do so which had the effect of modifying or correcting certain error which had crept into the document dated May 20, 1968. It stated inter alia :

"3. On the 15th day of December, 1964 the company deposited with the Punjab National Bank Ltd. (hereinafter referred to as "the Bank") the title deeds of the Company aforementioned immoveable property with intent to create a security in favour of the Bank by way of equitable mortgage. The creation of such security by way of equitable mortgage was authorised by a resolution of the Board of Directors of the Company passed on the 23rd day of October, 1964. A list of title deeds so deposited with the Bank is set out in the Second Schedule hereto.

4. By a deed of Sale dated the 20th day of May, 1968 and made between the Company of the one part and Messrs. Somaiya Organics (India) Limited (hereinafter

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for the sake of brevity called "the S.O.I.L.") of the other part, the Company transferred with effect from 1st June, 1967 all its right title and interest in the said immoveable property described in the First Schedule hereto along with the Buildings standing thereon in favour of the S.O.I.L. for the consideration and on the terms and conditions set out in the said deed of the Sale dated 20th May 1968.

5. Through inadvertance and oversight it has been stated in the said Deed of Sale that the Company had convenedated that the entire property sold was "free from all sorts of transfer charges or encumbrance created by the Vendor (the company) in favour of any one. "In the said Deed of Sale it was also further stated that in case of vendee

(i.e. the S.O.I.L.) might have to pay any amount by way of charge transfer or encumbrance created by the vendor (i.e., the company) on the said property the vendee (i.e., the SOLL) shall be entitled to get back the entire sale consideration with interest at 1 % per month from the said vendor (i.e. the Company) we say that it was not the intention either of the company or of the S.O.I.L. to transfer the said immovable property described in the First Schedule hereto free from the charge created by the Company in favour of the Bank by way of Equitable Mortgage by deposit of title deeds as aforesaid and it was only through oversight and inadvertence that it was erroneously stated in the said Deed of Sale that the property was free from any encumbrance or charge, or that in the event of the S.O.I.L. having to pay any amount by way of charge transfer or encumbrance the S.O.I.L. should be entitled to get back the entire sale consideration as stated aforesaid.

6. We solemnly and sincerely declare and say that the intention of the company as also the S.O.I.L. was that the said immovable property should be transferred subject to the charge created in favour of the Bank by the Company by deposit of title deeds on the 15th day of December, 1964 as stated in paragraph 3 above." (underlining by us)

As can be seen from the extract of the declaration given above that the properties which were being transferred under the document dated May 20, 1968. were being sold subject to the

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equitable mortgage which had been created in favour of the Punjab National Bank Ltd. in connection with the deferred payment guarantee. Before the above declaration was signed resolutions were passed by the Board of Directors of Godavari Sugar Mills and the Board of Directors of Somaiya Organics on 17th September, 1968 affirming transfer of property under the document dated May 20, 1968 subject to the equitable mortgage in favour of the Punjab National Bank Ltd. upto the limit of Rs.65 lakhs. The resolution passed by the Board of Directors of Somaiya Organics on the 17th September, 1968, referred to above, contemplated the execution of a tripartite agreement by and amongst Gadavari Sugar Mills, somaiya Organics and the Punjab National Bank Ltd. treating the deferred payment guarantee issued in favour of M/s Speichim, Paris as having been given at the instance and on behalf of Somaiya Organics, confirming the equitable mortgage, and transferring the liability thereunder as mentioned in the draft tripartite agreement which had been placed before the Board for its consideration. Somaiya Organics also executed a deed of declaration on October 28, 1968 stating that it had purchased the properties sold under the document dated May 20, 1968 subject to the equitable mortgage executed by Godavari Sugar Mills in favour of the Punjab National Bank Ltd. All the three documents, namely, the sale deed dated May 20, 1968 and the two deeds of declaration executed by Godavari Sugar Mills and by Somaiya Organics respectively acknowledging that the sale was subject to the equitable mortgage were presented before the Sub-Registrar, Hata for registration. The document dated May 20, 1968 had been written on a stamp paper of Rs. 35,000 treating that the consideration for the sale deed was Rs. 7,76,000. The Sub-Registrar was of the view that the properties had been sold

subject to two liabilities, one for Rs. 1,20,00,000 and another for Rs. 65,00,000. According to him the total consideration payable for the sale was in the order of Rs. 1,92,76,000 and there was deficiency of stamp duty of Rs. 8,32,420. He was also of the view that each of the two supplementary deeds of declarations which had been written on stamp papers of Rs.3.50 should have been written on stamp papers of Rs.4.50 and one rupee was payable on each of them as deficient duty. The Sub-Registrar accordingly impounded the sale deed and the deeds of declarations and forwarded them to the Collector for necessary action. The Collector in his turn under section 56(2) of the Act referred the matter to the Chief Controlling Revenue Authority, i.e., Board of Revenue, Uttar Pradesh. The Chief Controlling Revenue Authority, i.e., Board of Revenue thereafter referred the case to the High Court of Allahabad under section 57 of the Act. In its reference the Board of Revenue referred six questions for the opinion of the High Court.

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The reference was first heard by the High Court in March, 1970. By its order dated March 2, 1970 the High Court referred the case back to the Chief Controlling Revenue Authority, Uttar Pradesh directing it to submit a fresh statement of the case incorporating certain additions and alterations referred to in that order along with certain other documents. Accordingly a fresh statement of the case was submitted to the High Court. In the reference the following six questions were referred to the High Court for its opinion

1. Whether in view of the above opinion of the Board, the principal sale deed dated 20.5.1968 is a conveyance not only of the lands and buildings but also the machineries fixed in the earth in consideration of Rs.36,64,678 in the light of section 24 of the Stamp Act and is chargeable with a duty of Rs.9,97,425 under Article 23 Schedule I-B of the U.P. Stamp (Amendment) Act, 1962, as against Rs. 35,000 paid?

or

2. Whether the sale deed aforesaid is a conveyance only of lands and buildings in consideration of Rs.7,76,000 plus Rs.1,85,00,000 total Rs.1,92,76,000 in the light of section 24 of the Stamp Act and is chargeable with a duty of Rs. 8,67,420 under Article 23 aforesaid as against Rs.35,000 paid?

or

3. Whether the sale-deed aforesaid does not fall within the ambit of section 24 of the Stamp Act and is conveyance of the lands and buildings along with machineries fixed in the earth in consideration of Rs. 36,64,678 and is chargeable with a duty of Rs. 1,74,925 under Art.23 aforesaid as against Rs.35,000 paid?

or

4. Whether the sale-deed aforesaid does not fall within the ambit of section 24 of the Stamp Act and is conveyance of lands and buildings only in consideration of Rs.7,76,000 only and is sufficiently stamped with a duty of Rs.35,000 under Article 23 aforesaid?

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or

5. If the sale-deed aforesaid does not fall under any of the alternatives mentioned above what

should be deemed to be its consideration for payment of stamp duty under Article 23 aforesaid read with section 4 and section 24 of the Stamp Act?

or

6. Whether the other two documents are supplementary deeds within meaning of section 4 of the Stamp Act and were liable as such to a duty of Rs.4.50 as against Rs.3.50 paid in each case?

On the basis of the above six questions the High Court formulated two questions for its consideration by reframing the questions referred to it: (1) what was the correct duty chargeable under the Stamp Act in respect of the sale deed dated May 20, 1968, and (2) whether the other two documents were supplementary deeds within the meaning of section 4 of the Stamp Act and were liable as such to duty of Rs. 4.50 as against Rs.3.50 paid in each case? The High Court by its judgment dated December 23, 1971 which is under appeal found that the two deeds of declaration were supplementary to the sale deed dated May 20, 1968 and all the three should be read together to ascertain the terms of sale settled between the parties. It held that the intention of the parties was that the immoveable property was being transferred subject to the equitable mortgage created in favour of the Punjab National Bank Ltd. for Rs. 65,00,000. Accordingly, it held that under section 4 of the Act the duty of Rs. 4.50 was payable as against Rs. 3.50 on the two declarations. The High Court also held that the inclusion of Rs. 1,20,00,000 in the consideration for the sale was incorrect because the property sold was not subject to the payment of that loan. That was a loan facility given by the Punjab National Bank to Somaiya Organics and the property given as security therefore was the property of Somiya Organics and not the property which was being sold. The sale was also not subject to that debt. This need not detain us any longer since the correctness of this part of the order is not questioned by any party before us. Similarly the inclusion of Rs. 28,88,678 which was the price of the moveables i.e. the machinery etc. was also held by the High Court to be not part of the consideration as they did not constitute the subject matter of sale. They had already been sold by manual delivery. This part of the case also

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is not in question before us. The High Court, however, held that the sum of Rs. 65 lakhs for which the equitable mortgage had been created on the property transferred under the sale was to be treated as part of the consideration for the conveyance in question under section 24 of the Act. It accordingly held that the value on which stamp duty was payable under the Act as per Article 23 in Schedule I-B thereto was Rs. 72,76,000 being the total of Rs. 7,76,000 mentioned in the deed and Rs. 65 lakhs being the contingent liability under the equitable mortgage and directed that appropriate stamp duty should be collected on Rs.72,76,000 in the case of the document dated May 20, 1968 and Rs.4.50 as against Rs. 3.50 on each of the two declarations. Aggrieved by the inclusion of Rs. 65 lakhs in the value for purposes of levying duty Godavari Sugar Mills and Somaiya Organics have filed these two appeals.

The provision of law which arises for consideration in this case is section 24 of the Act. It reads thus :

"24. Where any property is transferred to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any

money or stock, whether being or constituting a charge or incumbrance upon the property or not, such debt, money or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with ad valorem duty:

Provided that nothing in this section shall apply to any such certificate of sale as is mentioned in Article No. 18 of Schedule I.

Explanation.- In the case of a sale of property subject to a mortgage or other incumbrance, any unpaid mortgage money or money charged, together with the interest (if any) due on the same, shall be deemed to be part of the consideration for the sale:

Provided that, where property subject to a mortgage is transferred to the mortgagee, he shall be entitled to deduct from the duty payable on the transfer the amount of any duty already paid in respect of the mortgage.

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Illustrations

1. A owes Rs.1,000. A sells a property to B, the consideration being Rs.500 and the release of the previous debt of Rs.1,000. Stamp duty is payable on Rs.1,500.

2. A sells a property to B for Rs.500 which is subject to a mortgage to C for Rs. 1,000 and unpaid interest Rs.200. Stamp-duty is payable on Rs.1,700.

3. A mortgages a house of the value of Rs.10,000 to B for Rs.5,000. B afterwards buys the house from A. Stamp-duty is payable on Rs.10,000 less the amount of stamp-duty already paid for the mortgage."

The meaning of section 24 in short is that where property is conveyed to a person for consideration, wholly or in part, of any debt due to him, subject either certainly or contingently to the payment or transfer of any money or stock whether or not charged on the property then debt money or stock is to be deemed the whole or part as the case may be of the consideration in respect of which the conveyance is charged with ad valorem stamp duty. The Explanation to section 24 of the Act provides that in the case of a sale of property subject to a mortgage or other incumbrance any unpaid mortgage money or money charged together with the interest (if any) due on the same shall be deemed to be part of the consideration for the sale. A contingent liability to the payment of any debt means such outstanding debt or possible adverse verdict which has to be complied with but which is not ascertained on the relevant date. A security for any contingent future payments also falls within the meaning of section 24 of the Act.

In the instant case, though in the first document dated May 20, 1968 it had been recited that the properties mentioned in Schedule 'A' therein were being conveyed free from all incumbrances by the two deeds of declarations dated October 28, 1968 executed by and on behalf of Godavari Sugar Mills and Somaiya Organics it was made very clear that the said properties were being conveyed subject to the equitable mortgage upto the limit of Rs. 65,00,000. It may be that on that date no liability as such had actually arisen. But the terms of the mortgage were such that there was the contingency of the liability up to Rs. 65,00,000 materialising. Pursuant to the prior arrangement

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entered into between Godavari Sugar Mills and Somaiya Organics, a letter was addressed to the Punjab National Bank on December 15, 1964 which read as follows :

"THE GODAVARI SUGAR MILLS LTD.

E334-45/ December 15, 1964

The Punjab National Bank Ltd.

Karimjee House Branch,

Sir P.M.Road, Bombay - 1.

Dear Sirs

RE : DEFERRED PAYMENT GUARANTEE FOR RS.65 LAKHS IN FAVOUR OF M/S SPEICHIM OF PARIS

With reference to the above facility which your bank has agreed to give to our Company, we beg to record that at the meeting of the Board of Directors held on Friday the 23rd October, 1964, our Board has approved of and agreed to the terms and conditions on which the captioned Guarantee is to be issued by your Bank to the Company and for the sake of good order we beg to hereby record that your Bank at our request has agreed to initially issue the said guarantee to us on the terms and conditions set out in the letter dated 16th October, 1974 bearing ref. No. Loans/24241 addressed by the Banks Head Office to the Manager, B.O. Karimjee house, Bombay and a copy of which is, hereto attached for case of reference.

We hereby confirm that our Company and our Director will do all act matters and things necessary to carry out and implement the terms and conditions to be observed and performed as envisaged in the said letter dated the 16th October, 1964.

As desired by you we have passed the necessary resolutions at the meeting of our Board of Directors held on the 23rd October, 1964. A true and complete copy of the relevant portion of the minutes of the said meeting is annexed as Ex.A to the Joint Declaration of (i) K.J. Somaiya and (ii) Sri S.K. Somaiya which is sent herewith. We also record that pursuant to the authority given to our Director Shri

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K.J. Somaiya in that behalf, we have through Shri K.J. Somaiya deposited with you all the title deeds if our immoveable properties at Captainganj with intent to create security thereon by way of equitable mortgage, the intention of the parties being that your Bank may look to the said security and thereout reimburse realise and recover all monies that the Bank may have to pay or disburse by reason or as a result of or in connection with the issue of the above captioned guarantee, and also all costs, charges and expenses which the Bank may incur (and in case of legal costs the attorney and client costs.)

We also send herewith the Counter indemnity duly executed by us and our two Directors Shri K.J. Somaiya and Shri S.K. Somaiya.

Yours faithfully,

FOR THE GODAVARI SUGAR MILLS LTD.

For K.J. SOMAIYA & SONS PRIVATE LTD.

Sd/-

Director, Managing Agents."

(under lining by us)

On the basis of the above letter the title deeds in respect of the property now sold had been handed over to the Bank creating an equitable mortgage up to Rs.65,00,000. It is true that the Bank had not actually paid any amount under the Deferred Payment Guarantee to M/s Speichim even by April 29, 1969 as can be seen by the letter of that date written by the Bank which read thus :

"THE PUNJAB NATIONAL BANK LTD.

PNB HOUSE
SIR P.M.ROAD
BOMBAY
29.4.1969

REF: LA/B/3404/69

M/s The Godavari Sugar Mills Ltd.
Fazalbhoy Building,
Mahatma Gandhi Road,
BOMBAY - 1.

Dear Sir,

REF: EQUITABLE MORTGAGE FOR CAPTAINGANJ DISTILLERY
We thank you for your letter No. E 334/45/2754 dt.

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26.4.1969 and have to inform you that you had created equitable mortgage in favour of the Bank on 14.12.1964 in respect of your immoveable property known as "Captainganj Distillery" as security for Deferred Payment Guarantee issued by us on 15.12.1964 on your behalf in favour of M/s Speichim Paris. Subsequently on 6.11.1968 the name of M/s Somaiya Organics (India) Ltd., was substituted for the name of your company in the said Deferred Payment Guarantee to the intent that the said guarantee be treated as having been issued by us for and on behalf of the said M/s Somaiya Organics (India) Ltd.

We hereby confirm that we have not so far made any payment whatsoever either on behalf of your company or on behalf of M/s Somaiya Organics (India) Ltd. in respect of the above guarantee either to M/s Speichim Paris or to any other party.

Thanking you,

Yours faithfully,
Sd/-
Manager"

But it is however clear that the mortgage which had been created on December 14, 1964 was alive on the date of the transaction and it was in force even on April 29, 1969 though the mortgagors had been substituted by the purchaser of the property i.e. Somaiya Organics. The Deferred Payment Guarantee being in force even on April 29, 1969 the contingent liability under the equitable mortgage was also very much in existence on the date of sale i.e. May 20, 1968 even though no payment had been made by the Bank to M/s Speichim, Paris. If on any future date the Bank was compelled to pay any amount under the guarantee given by it, such amount upto the limit of Rs.65,00,000 could be realised by the Bank by enforcing the mortgage against the property in question. If that was not the position, there would have been no necessity to execute the two deeds of declaration stating that the properties are being sold subject to the mortgage.

Lord Canning v. Raper 118 English Reports 400, is a case in point. That case concerned the stamp duty payable on an assignment by a debtor by way of mortgage in favour of one who had stood surety for the debtor. The question was

whether the assignment was a security for the payment of money to be thereafter lent, advanced or paid within the meaning of Part I of

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the Schedule to the Stamp Act, 1815 which was in force in England. It was held that a security for contingent future payment was as much within the words and meaning of the statute as a security for certain future payments. In *Mortinore v. Inland Revenue Commissioners* (1864) 2 H & C 838, which was decided about 12 years later the vendor had sold a property subject to a mortgage debt which was expressed to become payable if but only if, the vendor's predecessor died without male issue. The point was whether the said contingent debt had to be taken into account under the wording of section 10 of the English Stamp Act, 1853, the relevant part of which read thus:

Where any Lands or other Property shall be sold and conveyed subject to any Mortgage...or other Debt, or to any gross or entire Sum of Money or Debt shall be deemed the Purchase or Consideration Money, or Part of the Purchase or Consideration Money....."

Martin B, delivering the judgment of the court, said :

"...we think that the words of the enactment any mortgage or other debt, include contingent debts as well as absolute ones....."

In the case before us we need not read 'contingent debts' into the statutory provision in section 24 of the Act because it expressly refers to any debt which may become contingently payable which should be deemed to be part of the consideration.

In *Independent Television Authority v. Inland Revenue Commissioners* (1960) 2 All E.R. 481, the appellant who was liable to pay stamp duty objected that the total stamp duty payable could not be determined at the date when the document was tendered for stamping owing to the clause for increase or decrease qualifying a liability contracted earlier. This argument was rejected on the broad principle that such words as 'money payable' when used in the English Stamp Act, 1891 intended money payable either on a contingency or as a certainty. Lord Radcliffe, with whom Lord Tucker and Lord Morris agreed observed thus :

"I take it, therefore, to be a well-settled principle that the money payable is ascertained for the purposes of charge without regard to the fact that the agreement in question may itself contain provisions

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which will, in certain circumstances, prevent it being payable at all. If that is so, there is at least no better reason for adopting a different principle when there are found clauses which merely vary the amount to be paid according to specified contingencies. Nor does it matter for this purpose whether the effect of such clause is to make it possible for the sum to be increased or to be diminished. In *Country of Durham Electrical Power Distribution Co. v. Inland Revenue comrs.* (1909) 2 KB 604 any variation would have been downwards; in the *Underground Electric Rys. Co.* case (1906) AC 21 (that is, the first case) the variation might have been upwards or downwards. What is necessary is that it should be possible to ascertain from the agreement that there is some

specified sum agreed on as the subject of payment which may perhaps fairly be called the prima facie or basic payment. Even that minimum condition may have to be restated in relation to certain kinds of securities, such for example as guarantees, in which the ad valorem charge is calculated according to the maximum sum contingently payable, or, to put it in another way, the amount of the guarantee; see *Underground Electric Rys. Co. of London, Ltd. & Glyn. Mills, Currie & Co. v. Inland Revenue Comrs.* [1916] 1 KB 306)"

In *Coventry City Council v. Inland Revenue Commissioners*, [1978] 1 All E.R. 1107, the Chancery Division has followed the above principle after reviewing all the cases referred to therein.

It was, however, argued by the learned counsel for the appellants that the liability of the document for the stamp duty was dependent upon what was written in it and the Court should not look at anything else to decide the reference made under section 57 of the Act. It is not necessary to consider the correctness of this proposition in this case, since it is the case of the appellants themselves that what was a sale free from all incumbrances originally was treated as a sale subject to the equitable mortgage from the very beginning when the deeds of declaration were written, Had the document of May 20, 1968 been the only document then questions would have arisen whether the recital therein that the consideration for the properties which were considered sufficient by the Bank to secure Rs. 65,00,000 could truly be Rs. 7,76,000 and whether the said recital amounted

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to a fraud on the stamp law or not. We are relieved of the duty to decide the said questions in view of the deeds of declaration which treated the sale as one subject to the mortgage the maximum liability under which at a future time could be Rs. 65,00,000. If the sale had been free from mortgage then any such contingent future liability would have fallen on the vender Godavari Sugar Mills. But the parties to the sale took adequate precaution to prevent any such liability being there against the Godavari Sugar Mills by making it very clear that the said liability to the Bank would be on the properties sold in the hands of the purchaser, Somaiya Organics and by stating that under the tripartite agreement which was to be executed, the Bank would treat Somaiya Organics as the company responsible for that debt in the place of Godavari Sugar Mills. The Bank had in fact written to the Godavari Sugar Mills on April 29, 1969 that on November 6, 1968 the name of Somaiya Organics had been substituted for the name of the Godavari Sugar Mills in the Deferred Payment Guarantee 'to the intent that the said guarantee be treated as having been issued by us for and on behalf of the said M/s. Somaiya Organics (India) Ltd.'.

The object of section 24 of the Act is very clear. That section means that when a purchaser purchases a property for a certain amount subject to the payment of another debt, actual or contingent, he is virtually purchasing the property for the said amount plus the amount of the debt and the aggregate of the two amounts ought to be treated as the true amount for which the property is being sold. Otherwise there is bound to be a difference between the true consideration and the consideration which is made liable to stamp duty. To illustrate, take the present case itself. The properties which had been treated as sufficient security by the Bank for the liability of Rs.65,00,000 must be

ordinarily much more valuable than Rs.65,00,000 but on the date of conveyance stamp duty would have become payable only on Rs.7,76,000 but for the above rule in section 24 of the Act. In this case the amount of Rs.7,76,000 must have been fixed by the parties taking into consideration the liability to the Bank under the mortgage which might arise in future. The two decisions on which reliance was placed by the appellants are of no assistance to them. The first one was Sidhnath Mehrotra v. Board of Revenue, A.I.R. 1959 All 655. In that case the High Court of Allahabad held that where an immoveable property which was encumbered by a charge or mortgage was sold but not subject to the incumbrance, then the amount of money constituting the charge or mortgage need not be added to the consideration mentioned in the conveyance as the value of the property sold. The next

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decision is the decision of this Court which was rendered on appeal against the above decision of the Allahabad High Court. The said decision is Board of Revenue, Uttar Pradesh v. Raj Sabah Sidhnath Mehrotra, [1965] 2 S.C.R. 269. This Court affirmed the decision of the Allahabad High Court and dismissed the appeal of the Revenue. In the transaction involved in these two decisions the sale was free from all incumbrances or any mortgage. In such case even if there was some mortgage money which had remained unpaid the Explanation to section 24 of the Act could not be relied on by the Revenue to insist upon payment of stamp duty on such unpaid mortgage money. But the facts of the case before us are different. Here the sale was in fact subject to the equitable mortgage in favour of the Bank. Hence these decisions are of no avail to the appellants.

We are of the view that the High Court in its well-considered judgment has rightly taken the view that the amount of Rs.65,00,000 should also be deemed as part of the consideration for the sale and that stamp duty was leviable on Rs. 72,76,000 under section 24 of the Act.

The appeals, therefore, fail and they are dismissed with costs.

A.P.J.

Appeals dismissed.

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