

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 2113 of 2012

CANARA BANK ASHRAM ROAD

....Petitioner(s)

Versus

COLLECTOR OF STAMPS & 3

....Respondent(s)

Appearance: MR KI SHAH, ADVOCATE for the Petitioner(s) No. 1

MR KAMAL TRIVEDI, ADVOCATE GENERAL for the Respondent(s) No. 1 - 3

MR AS ASTHAVADI, ADVOCATE for the Respondent(s) No. 4

Date : 03/07/2013

(PER : HONOURABLE MR.JUSTICE J.B.PARDIWALA)

1. By this Application under Article 226 of the Constitution of India, the petitioner, a nationalized bank, seeks to challenge a Circular dated 30th April 2011 passed by the respondent no.3, the Superintendent of Stamps, Gandhinagar, and the order dated 21st November 2011 passed by the Collector of Stamps, Mehsana, by which the Collector ordered recovery of the deficit stamp duty from the petitioner bank to the tune of Rs.7,46,620/- and a penalty of Rs.5,000/- in exercise of powers under Section 39, Clause (1), Sub-clause (b) of the Gujarat Stamp Act, 1958.

2. The facts giving rise to the filing of the present Application may be summarized as under:

2.1 The petitioner is a nationalized bank. A company named M/s.Dairyden Limited had availed of financial facilities from the petitioner bank to the tune of Rs.11.55 Crore some time in the year 2003. At the time of availing of the financial facilities M/s.Dairyden Limited created a mortgage in favour of the petitioner bank by deposit of title deeds in respect of the land bearing N.A. Plot No.18-25 situated in Lucky Industrial Estate, Mouje-Kadi, Taluka-Kadi, District-Mehsana, being part of the

Survey No.418 and another piece of land forming part of the N.A. land bearing Survey No.435 admeasuring 17925.99 sq.mtrs. with superstructure thereon. It appears from the materials on record that M/s.Dairyden Limited defaulted in repayment of the credit facility availed of and accordingly the account of M/s.Dairyden Limited was classified as a Non Performing Asset in light of the guidelines issued by the Reserve Bank of India.

2.2 After the account was classified as NPA, the petitioner bank thought fit to proceed against M/s.Dairyden Limited under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. It appears that a notice under Section 13, Clause (2) of the SARFAESI Act was served upon M/s.Dairyden Limited and pursuant to the same the symbolic possession of the secured asset was taken over by the petitioner bank under Section 13, Clause (4) of the Act in the year 2007.

2.3 It appears that, thereafter, the petitioner bank filed an application with the District Magistrate, Mehsana, under Section 14 of the SARFAESI Act praying that police protection may be granted for the purpose of taking over the actual possession of the secured asset from M/s.Dairyden Limited. The said application was registered as MSC/Case-10/2009 and the District Magistrate, Mehsana, vide order dated 17th August 2009 directed the Mamlátdar and the Executive Magistrate, Kadi, to take over the actual possession of the secured asset and hand over the same to the petitioner bank within a period of 30 days.

2.4 Pursuant to the order passed by the District Magistrate, Mehsana, referred to above, the physical possession of the secured asset was taken over by the petitioner bank on 18th December 2009. It appears from the materials on record that the possession was taken over in presence of the panchas by drawing a panchnama.

2.5 The petitioner bank thereafter placed the property in question for auction. In the auction proceedings conducted by the bank, the respondent no.4, M/s. Palco Recycle Industries Limited was declared as the highest bidder and accordingly a 'Sale Certificate' was issued by the petitioner bank in favour of the respondent no.4. This was followed by the execution of a Sale Deed, which was duly registered on

