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- Sale of minor's property by guardian if not set aside before the prescribed limitation period is voidable and not void ab initio.
- No presumption of alteration of a cheque if the same was presented by the payer to payee after signing of the cheque
- Mutation Entries On Revenue Records Do Not Confer Title
- External Commercial Borrowings (ECB) Policy – ECB facility for Resolution Applicants under Corporate Insolvency Resolution Process.

Sale of minor's property by guardian if not set aside before the prescribed limitation period is voidable and not void ab initio

-Vaidya, Associate.

In the case of Murugan & others (Appellants) vs. Kesava Gounder[1] (deceased) through his legal heirs and others Respondents, the Supreme Court upheld the judgment delivered by the Madras High Court stating that sale of a minor's property by the guardian without court's permission unless repudiated or avoided within the period of limitation as prescribed cannot be held as void since the inception of execution of the sale deed. The dispute of the Appellant was regarding the following:

(i) possession of immoveable property and declaration of title of suit property and

(ii) Whether the Appellant's claim for filing a suit would fall under Article 60 or Article 65 of the Limitation Act, 1963?

The Appellants contended that the setting aside of the deed was not required since the sale deed was void ab initio as the approval of the court was not obtained, prior to sale of minor's property by the guardian hence a period of 12 years as per Article 65 of the Limitation Act was applicable for filing the suit.

But the Apex court took a stance stating Article 65 would not be applicable as the 'guardian' in the present case did not have an adverse interest in the title of the property rather when executing the registered sale deed transferred both his rights as well as the minor's rights hence Article 65 would not be applicable in the present case. The Court further held that hence the sale is voidable as per section 8(3) of the Hindu Minority and Guardianship Act 1956 in the present case and the Appellants did not seek a prayer to set aside the order within the prescribed limitation period of 3 years as provided under Article 60 of the Limitation Act,

[1]https://www.sci.gov.in/supremecourt/2010/22220/22220_2010_Judgement_25-Feb-2019.pdf

therefore a prayer for declaration of title of the immoveable property cannot be decreed. The Supreme Court further clarified that a release deed to that effect would still not entail the repudiation of the sale deed as the same needs to be set – aside by way of court order within the prescribed limitation period hence the appeal preferred by the Appellants was dismissed.

No presumption of alteration of a cheque if the same was presented by the payer to payee after signing of the cheque

-Vaidya, Associate.

By an order dated February 6, 2019 the Supreme Court in Bir Singh (Appellant-Complainant) v. Mukesh Kumar (Respondent-Accused)[2] set – aside the order passed by the High court in reversing the conviction of the accused under section 138 of the Negotiable Instruments Act, 1881 for insufficiency of funds. The case of the Appellant is that the Respondent failed to repay loan amount of INR 15,00,000/- and the signed cheque of the Respondent was returned twice with the endorsement as "Insufficient Fund". The case which was initially tried by the trial court, Palwal ended in favour of the Complainant ordering Accused to serve one year in prison and to pay the amount of Rs. 15,00,000/-. However, up on appeal to High Court, which reversed the order of the trial court stating that the Complainant being an income tax practitioner and the accused being his client construed an existing fiduciary relationship and that section 139 of the Negotiable Instruments Act would not be applicable as the presumption of debt would vary in such cases. The High court was also of the fact finding that the loan amount was disbursed through cash to the Respondent and that such high amounts need to be disbursed either through cheque or demand draft or RTGS for obtaining receipt. It further held that the onus was upon the Appellant to prove that the cheque was in disbursal of the loan amount owed by the Accused. Thereafter, the High court reversed the order of the trial court and acquitted the Accused. In the case coming before the Supreme Court preferred by the Appellant, it was held that the High Court erred in reversing the conviction of the accused and stated that the existence of a fiduciary relationship would not warrant non-existence of a debt and that the subsequent filling in of an unfilled signed cheque is not an alteration and would, in the context of the subject case be towards the debt owed by the Respondent [accused] to the Appellant [complainant]. Therefore, it held that the presumption and balance of favour would be always be towards the holder of the cheque hence passed an order to pay an amount of 16,00,000/- within eight weeks from date of the order.

Mutation Entries On Revenue Records Do Not Confer Title

-Akshay Ramesh, Associate.

In practice, we notice that in a dispute over title of a land/property, it is seen that the parties assert their title by placing reliance upon their name being reflected in the revenue records. On this point, recently, the Supreme Court, with characteristic clarity in Smt. Bhimabai Mahadeo Kambekar (D) Th. LR Vs. Arthur Import and Export Company[3], once again clarified the law that the mutation entry in the revenue records does

2 https://www.sci.gov.in/supremecourt/2017/33240/33240_2017_ Judgement_28-Jan-2019.pdf

3 2019(2)SCALE336

not create or extinguish title over the land, nor such entry has any presumptive value on the title of such land. The Supreme Court reached the above conclusion, following a series of precedents laying down the above principle of law.

Facts and Issues: The dispute with regards to the title began between the parties before the Court of Superintendent of Land Records. Thereafter, it reached the Deputy Director of Land Records in appeal. Then to the State in revision and lastly to the High Court by way of a Writ Petition. Upon dismissal of the Writ by the High Court, the Petitioners approached the Supreme Court by an Special LP.

Taking note of the fact that the parties had also initiated civil suits in respect of the land in dispute and the civil suits were pending, the Supreme Court did not go into a detailed factual inquiry involved in the matter.

The Supreme Court discussed the issue regarding the legal value of the mutation entries in the revenue records of any land while deciding the rights of the parties.

Judgment and Analysis: Considering the issues involved in the matter, the Supreme Court held that the legal value of a mutation entry in deciding the rights of the parties is well settled on the basis of a series of precedents. The Supreme Court observed that it has been consistently held by it that the mutation entries of land in the revenue records does not create or extinguish the title over any land nor does such an entry have any presumptive value on the title of such land. Such an entry only enables the person in whose favour the mutation is ordered to pay the land revenue in question.

In reiterating the above settled position of law, the Supreme Court relied upon the following judgments:

- In *Sawarni (Smt.) Vs. Inder Kaur (1996) 6 SCC 223*, the Supreme Court held that the mutation of a property in the revenue record does not create or extinguish title nor does it have any presumptive value on the title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question.

- In *Balwant Singh & Anr. Vs. Daulat Singh (dead) by L.Rs. & Ors. (1997) 7 SCC 137*, similar observations were made by the Supreme Court, where it was held that a party is not divested of his title in the suit property as a result of mutation entry.

- In *Narasamma & Ors. Vs. State of Karnataka & Ors. (2009) 5 SCC 591*, the Supreme Court reiterated the above position by observing that it is true that the entries in the revenue record cannot create any title in respect of the land in dispute.

In view thereof, the position as regards the legal value of the mutation entries in the revenue records is a fairly well-settled position of law.

Conclusion: In view of the findings of the Supreme Court in the present case, and as per the law already laid down by the Supreme Court, it is an inevitable conclusion that mutation entries in respect of any land on the revenue records do not create or extinguish title. The mutation entries are only maintained for fiscal purposes, to ensure that the land revenue is paid by the person whose name is recorded thereon.

External Commercial Borrowings (ECB) Policy – ECB facility for Resolution Applicants under Corporate Insolvency Resolution Process

-Akshay Ramesh, Associate.

The Reserve Bank of India by its circular dated February 7, 2019 vide no. RBI/2018-19/121 A.P.

(DIR Series) Circular No. 18[4] drew attention of Authorized Dealer Category-I (AD Category-I) banks is invited to paragraph 1 of the Statement on Developmental and regulatory Policies of the Sixth Bi-monthly Monetary Policy Statement for 2018-19 dated February 07, 2019. In terms of paragraph 2.1.(viii) of the Annex to the A.P. (DIR Series) Circular No. 17, dated January 16, 2019 on "External Commercial Borrowings (ECB) Policy – New ECB Framework", ECB proceeds cannot be utilised for repayment of domestic Rupee loans, except when the ECB is availed from a Foreign Equity Holder as defined in the aforesaid framework.

On a review it has been decided, in consultation with the Government of India, to relax the end-use restrictions for resolution applicants under the Corporate Insolvency Resolution Process (CIRP) and allow them to raise ECBs from the recognised lenders, except the branches/ overseas subsidiaries of Indian banks, for repayment of Rupee term loans of the target company under the approval route. Accordingly the resolution applicants, who are otherwise eligible borrowers, can forward such proposals to raise ECBs, through their AD bank, to Foreign Exchange Department, Central Office, Mumbai of the Reserve Bank for approval.

All other provisions of the ECB policy remained unchanged. AD Category - I banks were mandated to bring the contents of this circular to the notice of their constituents and customers. The directions contained in this circular have been issued under section 10(4) and 11(2) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

[4]https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11472&Mode=0

- **No authority by the adjudicating authority under Prevention of Money Laundering Act 2002(PMLA), to attach properties of a corporate debtor, being under trial under the Insolvency and Bankruptcy Code 2016(IBC)**

-Dhivya U.T., Associate.

The Mumbai Bench of the National Company Law Tribunal, while deciding Miscellaneous Application of 1280 of 2018 in company petition of 405 of 2018 under 60 (5) held that: The Insolvency and Bankruptcy Code 2016("**IBC**") will prevail over the Prevention of Money Laundering Act 2002("**PMLA**") in the case of SREI Infrastructure Finance Limited vs. Sterling SEZ and Infrastructure Limited.[5] Further, it held that the adjudicating authority under Prevention of Money Laundering Act 2002(PMLA) has no jurisdiction to attach the properties of the Corporate Debtor undergoing CIRP (Corporate Insolvency Resolution Process). The Tribunal did not accept the suggestion of amicus curiae by Adv. Mayur S. Khandeparker which was in favour of the Resolution Professional. The Tribunal noted that both the statutes (IBC and PMLA) had the similar objectives - to protect the interests of creditors. However, the criminal proceedings under PMLA will take a longer time, whereas the process under IBC is time-bound and more effective in nature.

- **National Consumer Disputes Resolution Commission ("NCDRC") directed the builders to compensate the purchaser of**

[5]https://www.livelaw.in/news-updates/ibc-overrides-pmla-no-attachment-possible-under-pmla-during-insolvency-process-nclt-read-order-142930

the flat, failing delivery within stipulated time period[6]

-Sudhaman, Associate.

The complainant/purchaser i.e. Mr. Jaganath D. Hiray & Anr. booked a flat in the 60th floor of a building and registered an agreement to sell in 2012. Subsequently, in 2015, the builders i.e. M/s. Lodha Crown Buildmart Private Limited, informed that they obtained permission to construct only 55 floors. However, during this period, the builders insisted the complainant/purchaser to make the remaining payments even after knowing the fact, that the permission has been obtained only for 55 floors. Later, the allotment of the complainant/purchaser was cancelled.

Subsequently, the complainant/purchaser filed a complaint with the consumer court and the builders opposed the same stating that the complainant/purchaser was a flat trader, who booked the flat, for the purpose of reselling. Since they had availed the service for commercial purposes, they cannot be regarded as 'consumer' within the meaning of Consumer Protection Act 1986.

Further the builders offered a new flat to the complainant/purchaser on the 50th floor with same carpet area and without any additional costs to the complainant/purchaser. The complainant/purchaser turned down the offer.

However, it was later revealed by the builders that the builders did not get the sanction from the Airports Authority of India(AAI), to build beyond 45 floors due to height restrictions.

The NCDRC ordered the builders to refund INR 2,51,69,578/, which included stamp duty and registration expenses, to the complainants along with 9% interest per annum within 45 days from the order, to the complainant/purchaser.

[6]https://www.livelaw.in/news-updates/ncdrc-orders-builder-to-pay-rs252-crores-to-homebuyer-who-was-not-delivered-flat-as-promised-143268