

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**NOTICE OF MOTION (L) NO. 1918 OF 2018**  
**IN**  
**COURT RECEIVER'S REPORT NO. 125 OF 2018**  
**IN**  
**SUIT NO. 3394 OF 2008**

Lajawanti G Godhwani & Anr ...Plaintiffs  
*Versus*  
Shyam R Godhwani & Ors ...Defendants  
*And*  
Vijay Jindal ...Applicant

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**Mr Karl Tamboly, i/b Wadia Ghandy & Co., for the Applicant.**  
**Mr Ajay Panicker, with Amit Kakri, i/b Ajay Law Associates, for the Plaintiffs.**  
**Ms Pooja Khandeparkar, i/b Kanga & Co., for Defendants Nos. 2 and 3.**  
**Ms Gulnar Mistry, with Munaf Virjee & Mr Raghav Ginodia, , i/b ABH Law LLP, for the Respondent-Society.**  
**Mr Himanshu Takke, AGP present.**  
**Mrs Kavita Ambekar, Ist Assistant to the Court Receiver, is present.**  
**Mrs Mangala V Vike, Jr Clerk, Office of the Joint Sub Registrar, Mumbai City, present.**

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**CORAM: G.S. PATEL, J**  
**DATED: 13th December 2018**

**PC:-**

1. As regards the question of stamp duty on antecedent documents there is no clear or well considered response from that office. Neither the officer present nor Mr Takke is able to state

under what provision of law old documents prior to the amendments to the Stamp Act could be legitimately or lawfully said to be “unstamped” or even insufficiently stamped if, according to the law as it stood at that historical point in time, the document itself was not liable to stamp in the first place. Mr Takke agrees that any such assessment would have to be on the basis of the law as it stood at that time of the older transactions not at today’s rates. The apparent reliance on a circular of 2012 is of no avail. Clause 2.2 of that circular relates to deemed conveyances under Section 11 of the MOFA. It has a restricted application. In any case, the entire approach seems *prima facie* to be entirely incorrect. A simple example should suffice. Let us assume that a flat in a cooperative housing society is held by *A*. Let us assume that he was the original allottee of the flat. In 1970, he sold the flat to *B*. It is not shown that the 1970 sale attracted stamp. *B* held the flat until 2018, when he sold it to *C*. Now when *C* submits *his* transfer instrument of 2018 (from *B* to *C*) for adjudication, is it even open to the authority to contend that the parent 1970 transfer from *A* to *B* is bad or invalid or inoperative for want of stamp since, had it been done today, it would have attracted stamp, notwithstanding that it did not at the date of that transfer in 1970? I think not; and the authority should remember that what is submitted to it is the instrument of 2018, not the instrument of 1970; the latter is only an accompaniment to trace a history of the title of the property, not to effectuate a transfer. Stamp is attracted by the instrument, not the underlying transaction, and not by any historical narrative in the instrument. If the authority’s view is to be accepted, then it has no answer to the inevitable consequences, for its view necessarily means no title ever passed to *B*, and *A* would have to be held to continue to be the

owner of the flat, which is a resultant absurdity and is nobody's case. It is unclear too just how far into the past the authority imagines it can travel by front-loading a current taxing regime on historically concluded transactions; and that too transactions that are in every sense complete and not yet being effectuated.

2. Having regard to this state of affairs, there is no question of either the auction purchaser Mr Vijay Jindal or the Plaintiff or Defendants Nos. 2 and 3 being liable to pay stamp duty on the older documents, copies of which were tendered along with Mr Jindal's instrument of transfer.

3. In any case now that Mr Jindal's instrument of transfer has been stamped, no question can arise of reopening an issue of sufficiency of stamps on the antecedent documents. That claim must be deemed to have been given up by the authority by its act of accepting the stamp duty paid on Mr Jindal's transfer.

4. It is clarified that the reference to the Petit Family Trust in the order of 6th December 2018 is to be read as a reference to Malabar Industries Private Ltd or such other entity as would convey title to the four societies in question or federation of those societies.

5. It is clarified that interest accrued on investments and the balance amount is to be distributed in the manner indicated in the order of 6th December 2018.

6. Lastly the last sentence of paragraph 12 of that order is to be deleted.
7. Liberties to the parties to apply in case of difficulties.
8. One final direction is necessary but this is for the office of the Court Receiver. The Receiver's costs, charges and expenses as per the Rules works out to a figure of Rs.40,96,528/-. Having regard to the cash flow problems in that office and in particular to the fact that office requires sufficient funds to meet routine office expenses and administrative expenses including in consumables such as printer cartridges, stationery etc from the amount of Rs.40,96,528/-, an amount of Rs.20 lakhs is to be retained ad hoc and on account by the Court Receiver. This will be separately accounted and an account maintained the balance will be remitted to the treasury. There will be no questioning of this by the government in any department. At the end of the year when accounts are drawn, the disbursement required or requested by the Court Receiver from the government will be adjusted against this retention. Utilization of the funds retained will be strictly in accordance with all expenditure and accounting norms.
9. List the matter on 14th December 2018 on the supplementary board at the instance of the Court Receiver.

**(G. S. PATEL, J)**