



CIVIL

JC Flowers Case: Kerala High Court Upholds State Stamp Duty on ARC Assignments under SARFAESI

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In a judgment poised to influence the regulatory and transactional landscape for Asset Reconstruction Companies (ARCs), the Kerala High Court in *J.C. Flowers Asset Reconstruction Pvt. Ltd. v. State of Kerala* has clarified the nuanced interplay between state-level stamp duty statutes and central exemptions under the SARFAESI regime.

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Case Summary

The petitioners, J.C. Flowers ARC, a company registered under Section 3 of the SARFAESI Act, 2002, acting as trustee for two distinct securitisation trusts, had acquired non-performing assets from Karnataka Bank and Federal Bank through duly executed assignment agreements under Section 5(1)(b) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). These agreements, backed by substantial consideration, were presented for registration in Kerala at a stamp duty of Rs. 1 lakh and a registration fee of Rs. 25,000 in compliance with a 2010 Government Order capping duties for such transfers.

The registration authorities refused to register the documents, arguing that they attracted ad valorem stamp duty of 8% of the transaction amount under Article 21 of the Kerala Stamp Act, 1959, classifying them as “conveyance” instruments.

Core Legal Conflict

1. Whether agreements under Section 5(1)(b) of the SARFAESI Act are exempt from stamp duty in light of Section 5(1A) of SARFAESI and Section 8F of the Indian Stamp Act, 1899.
2. Whether the Government Order G.O.(Ms.) No. 9/2010/TD and previous decisions entitled the petitioner to register the assignment agreements by paying only ₹1 lakh in stamp duty and ₹25,000 as registration fee.

Court's Analysis and Holding

- **No Omnibus Exemption:** Section 5(1A) of SARFAESI, introduced in 2016, and Section 8F of the Indian Stamp Act provide a targeted exemption from stamp duty, but only “under this Act” i.e., the Indian Stamp Act. It does **not override state-specific laws** like the Kerala Stamp Act. The non-obstante clause in Section 8F was found to apply only to the Indian Stamp Act and “any other law for the time being in force,” only insofar as they conflict with the Indian Stamp Act itself. The Kerala Stamp Act was held to operate within a separate constitutional field, based on Entry 63 of List II of the Seventh Schedule.
- **State Competence Upheld:** The Court affirmed Kerala's legislative authority under Entry 63 of the State List and Entry 44 of the Concurrent List to impose stamp duty on instruments other than those listed in Entry 91 of the Union List. This preserved the distinct operation of the Kerala Stamp Act.
- **Relief Based on Precedents:** Although a blanket exemption was denied, the Court noted that previous High Court judgments (W.P.(C) Nos. 19371/2017, 22357/2015, and 22551/2016) had allowed similar registration on payment of capped fees as per Government Order (Ms) No. 9/2010/TD. Applying the principle of parity, the same relief was extended to the petitioners.
- **Pending Policy Clarification:** The Court acknowledged that the 2010 G.O. was explicitly limited to ARCIL, and that broader applicability requires policy-level reconsideration. However, until the State challenges or revises the earlier rulings, benefit could not be denied to similarly situated parties.

Conclusion

The Court allowed the writ petitions **in part**, directing the registering authorities to register the assignment agreements in question by applying the stamp duty and registration fee caps mentioned in the 2010 Government Order, **within one month** of receipt of the judgment. However, it clarified that this relief would be subject to any future amendments to the Kerala Stamp Act or decisions by the State Government on the applicability of such concessions.

The *JC Flowers* ruling is a key precedent in the stamp duty treatment of securitisation and asset reconstruction transactions. It affirms the continuing validity of state legislative powers in a federally structured tax regime while urging clarity in central-state coordination in financial regulation. Legal practitioners and ARCs should take note of this balance while structuring cross-jurisdictional asset acquisitions.

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