



REAL ESTATE

No Shortcut on Stamp Duty – Supreme Court Says Security Bonds by Debtors Are Mortgage Deeds

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PUBLISHED 14 October 2025

Introduction

In a recent judgment, the Supreme Court of India in *M/s Godwin Construction Pvt. Ltd. v. Commissioner, Meerut Division & Anr.* [1] addressed an important issue concerning the correct classification of instruments for the purpose of stamp duty under the Indian Stamp Act, 1899. The Court examined whether a document titled “Security Bond cum Mortgage Deed” should be treated as a security bond or a mortgage deed for stamp duty assessment.

Emphasizing that the substance of a transaction prevails over its form or nomenclature, the Court clarified that when a party executes a deed to secure its own obligations, the instrument amounts to a mortgage deed chargeable under Article 40, and not a security bond under Article 57 of Schedule 1-B. This ruling provides crucial guidance to developers, financial institutions, and regulatory authorities dealing with complex security instruments in real estate and commercial transactions.

Background of the Case

The case originated when M/s Godwin Construction Pvt. Ltd., a real estate developer, entered into an agreement with the Meerut Development Authority (MDA) for the development of a residential project named “**Global City, Abdullahpur, Meerut.**” As part of the approval process, the developer was required to furnish security to ensure due performance of its obligations, including payment of external development charges and provision of civic amenities.

Accordingly, on 19 December 2006, the appellant executed a document titled “Security Bond cum Mortgage Deed” in favour of the MDA. The deed mortgaged certain plots of land measuring 2,934.45 square metres, valued at ₹1,00,44,000, to secure performance of the development obligations. The appellant paid a nominal stamp duty of ₹100 under Article 57 (Security Bond) of Schedule 1-B of the Indian Stamp Act, 1899.

Subsequently, the Deputy Commissioner (Stamps), Meerut issued a notice holding that the instrument was incorrectly stamped, as it was chargeable under Article 40 (Mortgage Deed), not Article 57. A demand of ₹4,61,760 was raised as deficit stamp duty, along with a penalty and interest.

The developer's objections were rejected by the authorities and later by the Commissioner, Meerut Division, in appeal. The Allahabad High Court, in Writ Petition No. 31966 of 2012, upheld these findings, ruling that the deed was executed solely between the appellant and the MDA, without any third-party surety, and therefore constituted a mortgage deed.

Aggrieved, M/s Godwin Construction Pvt. Ltd. approached the Supreme Court of India. A connected appeal involving similar facts pertaining to a “Security Bond or Mortgage Deed” executed in favour of the Allahabad Bank for a business loan was also heard together. In both cases, the core issue revolved around the correct classification of the instrument for the purpose of stamp duty under the Indian Stamp Act, 1899.

Core Issue

Whether the stamp duty on a “Security Bond cum Mortgage Deed” executed by a party to secure its own obligations should be levied under **Article 57 (Security Bond)** or **Article 40 (Mortgage Deed)** of Schedule 1-B of the Indian Stamp Act, 1899.

Court's Analysis and Findings

The Supreme Court, undertook a detailed examination of the impugned instruments to determine their true legal nature and the applicable stamp duty.

The Court reiterated that in fiscal and stamp matters, the substance of an instrument must prevail over its title or nomenclature. The decisive test is the nature of rights and obligations created by the document, not the name assigned to it by the parties.

Upon examining the operative clauses of the “Security Bond cum Mortgage Deed” executed by M/s Godwin Construction Pvt. Ltd., the Court found that:

- The appellant had transferred its interest in specified immovable properties in favour of the Meerut Development Authority to secure performance of its development obligations;
- The deed expressly empowered the MDA to sell the mortgaged properties in case of default to recover outstanding dues; and

- The deed bore all **essential characteristics of a mortgage deed** as defined under **Section 2(17)** of the Indian Stamp Act, 1899, which includes every instrument transferring an interest in property to secure performance of an obligation.

Interpretation of Articles 40 and 57

The Court compared the scope of **Article 40 (Mortgage Deed)** and **Article 57 (Security Bond)** under Schedule 1-B of the Indian Stamp Act. It held that:

- **Article 40** applies when an instrument transfers an interest in property to secure a debt or performance of an obligation by the executant;
- **Article 57** applies when a surety executes a deed to secure the obligation of another person.

To clarify the meaning of “surety,” the Court referred to Section 126 of the Indian Contract Act, 1872, which defines a contract of guarantee as a tripartite arrangement involving a surety, a principal debtor, and a creditor.

Absence of Surety Relationship

In the present case, the Court noted that M/s Godwin Construction Pvt. Ltd. executed the deed in its own capacity as the principal debtor to secure its own obligations towards the MDA. There was no distinct surety or third party involved. Therefore, the deed could not be classified as a “security bond” under Article 57.

Similarly, in the connected appeal concerning a “Security Bond or Mortgage Deed” executed in favour of the Allahabad Bank, the Court found that the instrument was executed by the borrowing company itself, and not by a third-party guarantor. Hence, it also qualified as a mortgage deed under Article 40.

Court’s Judgment

Delivering the judgment the Supreme Court upheld the decisions of the Allahabad High Court and the subordinate authorities, dismissing both civil appeals filed by the appellants.

The Court held that the instruments titled “Security Bond cum Mortgage Deed” and “Security Bond or Mortgage Deed” were, in substance, mortgage deeds, and therefore chargeable under Article 40 of Schedule 1-B of the Indian Stamp Act, 1899, and not under Article 57 as contended by the appellants.

The Bench reaffirmed that the nomenclature of an instrument cannot determine the nature of the transaction. Instead, the operative terms and recitals of the document must be examined to ascertain its true legal character. Where the executant of the document mortgages their own property to secure the performance of their obligations or repayment of a loan, the instrument constitutes a mortgage deed, irrespective of whether it is styled as a “security bond.”

Further, the Court clarified that Article 57 applies exclusively to instruments executed by a surety to secure the performance of another’s obligations, as per Section 126 of the Indian Contract Act, 1872. Since in both cases there was no third-party surety, but rather the principal debtor mortgaging its own property, Article 57 was inapplicable.

The Court observed that both deeds contained the essential elements of a mortgage, including:

- Transfer of an interest in immovable property;
- Purpose of securing performance of an obligation or repayment of debt; and
- Empowerment of the mortgagee (MDA or Bank) to sell the property in case of default.

Accordingly, the Supreme Court held that the stamp duty was rightly assessed under Article 40, upheld the findings of the High Court, and dismissed both appeals without costs.

Author’s View

The Supreme Court’s ruling in M/s Godwin Construction Pvt. Ltd. v. Commissioner, Meerut Division & Anr. offers much-needed clarity on a long-debated issue under the Indian Stamp Act, 1899 the distinction between a security bond and a mortgage deed.

From a legal standpoint, the judgment highlights the principle of substance over form, a cornerstone of fiscal interpretation. By holding that the actual nature of the transaction and not the title or drafting label determines the applicable stamp duty, the Court has reaffirmed consistency in document classification and revenue assessment.

For developers, lenders, and public authorities, this decision is a valuable precedent. It minimizes interpretative ambiguity when executing instruments that serve multiple purposes (for example, performance security coupled with mortgage obligations). The Court's clear articulation that Article 57 applies only to third-party sureties eliminates scope for misuse of concessional stamp duty provisions by parties attempting to categorize self-executed mortgages as "security bonds."

From a drafting and compliance perspective, the judgment reinforces the importance of precise legal language in security documents. Parties must ensure that the intent, structure, and obligations reflected in the deed align with the correct statutory category to avoid future disputes and financial liabilities.

The decision strengthens the jurisprudence surrounding stamp duty interpretation and enhances regulatory certainty in real estate and financing transactions. It also reflects the Court's broader commitment to fiscal transparency and uniform application of revenue laws across jurisdictions.

For more details, write to us at: contact@indialaw.in

[1] 2025 INSC 1207 (CIVIL APPEAL NO.7661 OF 2014) and CIVIL APPEAL NO.12552 OF 2025 (ARISING OUT OF S.L.P. (CIVIL) NO.36434 OF 2014)

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