Agreement of hypothecation executed after sanction of a credit facility, which merely evidences the creation of security and under which possession of the movable asset remains with the borrower, is neither chargeable as a “pledge” under Article 6 nor as a “mortgage deed” under Article 37 of the Kerala Stamp Act, 1959

The **Kerala High Court** in the case of **Kerala Gramin Bank vs Saifudheen M [OP(C) No. 2628 of 2023] dated April 08, 2026**, has held that an agreement of hypothecation executed after sanction of a credit facility, which merely evidences the creation of security and under which possession of the movable asset remains with the borrower, is neither chargeable as a “pledge” under Article 6 nor as a “mortgage deed” under Article 37 of the Kerala Stamp Act, 1959. Such an instrument is properly chargeable under Article 5(g) as an agreement not otherwise provided for.

The Court observed that deed of hypothecation was not the instrument on the basis of which the loan was granted; rather, it merely evidenced that a credit facility had already been sanctioned and that security was created in respect of the vehicle for repayment of the loan. The Court noted that the borrower had agreed under the deed of hypothecation that the vehicle stood hypothecated as security, but the deed itself was only evidentiary of sanction and security creation.

The Court further observed that the trial court failed to appreciate the basic difference between “pledge” and “hypothecation.” Though hypothecation is a species of pledge, the essential distinction is that in hypothecation possession remains with the loanee, whereas in the case of pledge possession is retained by the pledgee. Since the agreement in question clearly showed that possession of the vehicle remained with the borrower, the Court held that it could not qualify as an instrument of pledge for the purposes of Article 6 of the Kerala Stamp Act, 1959.

The Court also rejected the respondent’s contention under Article 37. It held that stamp duty under Article 37, being the charging provision for a mortgage deed, is attracted only where the loan is advanced and the terms and conditions of such advancement are found in the mortgage deed itself, meaning that the sanction of the loan should be by the mortgage deed. Where a credit facility is already sanctioned and an agreement of hypothecation is later executed merely to evidence creation of security, such instrument does not fall within Article 37.

Accordingly, the Court held that since the hypothecation deed bore an adhesive stamp of Rs. 100/-, it was properly stamped under Article 5(g) as it stood at the relevant time. Accordingly, the order impounding the document was set aside, and the Munsiff’s Court was directed to receive the agreement of hypothecation in evidence and proceed with trial in accordance with law.