BEFORE THE DISTRICT COURT OF THE NILGIRIS AT UDHAGAMANDALAM

Present : Thiru. A. Abdul Kadhar, B.A., B.L.,
District Judge, Udhagamandalam.

Tuesday, the 11th day of June, 2024

I.A. No.01 of 2023

in

C.O.S. No.01 of 2023

S.Sivalingam ... Petitioner/Defendant

Vs

R.Subramaniyan … Respondent/Plaintiff

This petition was coming before me on 10.06.2024 for hearing in the presence of Thiru. K.Jaichandran, Counsel for the Petitioner/Defendant and Thiru.R.Ravikumar, Counsel for the Respondent/Plaintiff and upon hearing the arguments of both sides and on perusing the records this court delivers the following:

O R D E R

This petition is filed under Order 13 Rule 3, 8 and Section 151 of CPC r/w Section 33, 35 of Indian Stamp Act by the petitioner/defendant praying to decide the admissibility of alleged under taking agreement and to impound the alleged under taking agreement for insufficient stamp duty and penalty as per Article 15 of Schedule I, section 33 and 35 of the Indian Stamp Act, before proceeding with the trial in the above suit.

2. The Brief facts from the petition averments are as follows:-

The respondent/plaintiff herein has filed the above suit for recovery of Rs.92,72,912/- on the basis of an alleged under taking agreement dated 09.05.2022. The petitioner/defendant filed detail written statement in the above case denying the entitlement of the said relief by the respondent/ plaintiff and in order to avoid repetition, the petitioner/defendant crave leave of the court that the written statement filed by the petitioner/defendant may be treated as part and parcel of this affidavit also.

3. The alleged undertaking agreement dated 09.05.2022 is not properly stamped as contemplated in Article 15 of Schedule-I of the Indian Stamp Act. According to the Provision of Indian Stamp Act the alleged undertaking agreement dated 09.05.2022 would legally amount to a simple money bond as per section 2(5)(b) of Indian Stamp Act, Since it is an instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another. Further the alleged undertaking agreement does not carry the required stamp duty as per Schedule – I Article 15 of the Indian Stamp Act it cannot be entertained before this court until the payment of the necessary stamp duty and penalty amounting to about Rs.13,92,000/-. Since the alleged undertaking agreement is prepared only on a stamp paper of Rs.20/-, which is against the provision of law mentioned supra. The alleged undertaking agreement ought to have been valued and stamped at the rate of Rupees Twelve for every Five hundred for the value of Rs.58,00,000/- as per the Provision of Indian Stampt Act. As per Section 33 and 35 of Indian Stamp Act, any document not duly stamped is inadmissible in evidence and as such, the petition mentioned alleged undertaking agreement is liable to be impounded for want of stamp duty and penalty before proceeding with the trial in the above suit. Hence the petition.

4. The brief averments of the counter statement filed by the respondent are as follows:

The petition is not maintainable either in law on the facts of case and the petition is highly specious. The petition is filed belatedly to protract the proceedings and to delay in honouring the promised and admitted dues. In fact the petitioner/defendant after submitting to the Preliminary Decree basing on the written undertaking which is marked as Exhibit A-1 had complied with the Preliminary Decree is now is ESTOPPED now from making untenable claim under the Indian Stamp Act. It is an instrument of promise to pay to the bearer which is reduced into writing hence the Exhibit A-1 is purely an implied Promissory Note and it is not an agreement for a immovable property. Even an agreement for immovable property which is unregistered are being filed in suit for Specific Performance only paying the court fee and are not valued and stamped. The supply of goods are supported by invoices and the same is revealed in G.S.T. payments produced before this court and moreover the Exhibit A-1 written undertaking is not an agreement but a settlement. The allegation in para 5 of the affidavit is highly ridiculous as the Exhibit A-1 is already admitted without any objection and a question of inadmissibility will never arise. The respondent/plaintiff had paid huge G.S.T, huge court fee and had also paid the necessary fee in the mediation prior to the filing to the suit has no intention to cheat the state exchequer. The petitioner/defendant had misconceived the provisions which he had filed and miserably trying to misinterpret the provision of law and hence, the petition is liable to be dismissed in LIMINEE.

5. No oral and documentary evidence on either side.

6. The point for determination is whether this petition is to be allowed or not?

7. **Point:**

The petitioner/defendant seeks to impound the document produced in the style of Agreement of payment Rs.58,00,000/- be impounded on the premise that the respondent/plaintiff has filed the suit for recovery money of Rs.92,72,912/- on the basis of undertaking agreement dated 09.05.2022. Though undertaking agreement dated 09.05.2022 was not stamped as per Article 15 of the Schedule I of Indian Stamp Act as it is configuring itself within Section 2 (5) (b) of the Stamp Act as it is attested by witnesses and not payable by order to another and it cannot stated as agreement and the respondent/plaintiff shall be directed to pay penalty of Rs.13,92,000/- and as it was written only in Rs.20/- stamp paper and hence the document has to be impounded.

8. The respondent/plaintiff resisted the application by saying the said under taking agreement cannot be confined within the circumspection of bond as it is only an agreement to pay the existing liability regarding the supply of materials and hence the application has to dismissed.

9. Heard both sides. The learned counsel for the petitioner/defendant would vehemently contend that by relying upon the Section 2 (5) (b) of the Stamp Act, when any instrument attested by witness and not payable on demand or order then it shall be confined within the said section. For ready reference let me extract Section 2 (5) of the Stamp Act hereunder,

"Section 2(5) in The Indian Stamp Act, 1899

(5)Bond.Bond includes [but does not include a debenture;] [Added by Finance Act, 2019 (Act No. 7 of 2019) dated 21.2.2019.]

(a)any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;

(b)any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and

(c)any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another;"

10. By relying upon the above Clause (b) above said provision the learned counsel for the petitioner/defendant that it is only a simple bond and stamp duty ought to have been paid in term of Article 15 of the Schedule I of Indian Stamp Act. Now the issue is lies in a narrow campus whether the said undertaking styled as agreement can be confined within the definition of bond under the Stamp Act.

11. The learned counsel for the petitioner would rely upon the judgment of the Hon'ble Supreme Court in **State Of Kerala vs Mcdowell & Co. Ltd 1995 AIR 1445** in Para 20 of the said judgment explaining Section 2 (a) (1) of Kerala Stamp Act and the relevant portion extracted is hereunder.

“*20. In our view, the definition of bond in sub-clause (1) of clause (a) of Section 2 of the Kerala Stamp Act is clear and unambiguous. It must be read as it stands, nothing may be read in or implied. The word 'whereby' must be read as meaning what it ordinarily does namely, 'by which'. An instrument, therefore, by which a person puts himself under an obligation to pay a sum of money to another on condition that the obligation shall be void if some specific act is, or is not, performed is a bond. The only question to pose is : Has the executant of the instrument put himself under an obligation, or bound himself, to pay a sum of money to another, the obligation to be void under specified circumstances? If the executant can be sued for that sum of money only upon the strength of the instrument, the instrument is a bond.* ”

The above judgment is palpably clear as to only in case that that obligation to pay a sum of money to another on condition that obligation shall be void if some specific Act is or not performed can be defined as a bond. The definition contained under Section 2 (5) (b) of the Stamp Act has no relevance to the said provision the entire judgment will not be any avail to the learned counsel for the petitioner. Further the petitioner has relied upon another judgment of Full Bench of our Hon’ble High Court in **In The Matter Of Validation Of A Document ... vs Unknown AIR 1955 Mad 652** in deciding the difference between the promissory note defined under Section 2 (22) and the bond under Section 2 (5) (b) of the Stamp Act. That the Hon’ble Full Bench has answered the issue as when there was no unconditional undertaking it cannot be held as promissory note and it can be confined only as bond. In the present case that the respondent is not claiming the suit within the configuration of promissory note and it is only an agreement of settlement between the both parties of the existing liability and hence the said judgment also will not assist the petitioner in any manner.

12. The learned counsel for the petitioner relied upon yet another judgment of Hon'ble High Court of Madras in **Ezumalai & Ors vs Venkatesa Gounder 2019 (1) CTC 8** and the relevant portion of the said judgment in Para 10 reads as follows,

"*10. The above provision makes it clear that any receipt or acknowledgment in respect of payment of consideration relating to creation of declaration or assignment or limitation or extinction of any such right, title or even interest, such instrument, registration is not mandatory only in optional. Ex.A.1 is merely a receipt showing the payment consideration for giving up his right in the property. Therefore, this Court is of the view that the above instrument evidencing the consideration does not require any registration. Since the above document is not created right in presenti. Whereas Ex.A.1 is only a receipt. It is to be noted that the Plaintiff has not claimed his possession only based on the Ex.A.1. Ex.A.1 has been filed to show the circumstance under which he came into the possession of the suit property and thereafter he was enjoying the property continuously. Therefore, the contention of the learned counsel for the Appellant that Ex.A.1 is inadmissible and hit by Section 17(1) of the Indian*

Registration Act cannot be countenanced. Accordingly the First substantial Question of law is answered against the Appellant. "

13. The said ratio is relating to Section 17 of the Registration Act dealing with specific immovable property. Here is the case we are dealing with the agreement for payment of money which is no way concerned with the right relating to immovable property and hence the reliance of the said judgment is totally misconceived. Now deciding the issue regarding the fact whether the agreement dated 09.05.2022 can be confined as agreement to pay the money on the existing liability or to be confined under Section 2 (5) (b) of the Stamp Act as a bond is concerned that the Hon'ble High of Madras in ***Mariasusai vs A. Francis And Margaret* (2007) 1 MLJ 715** have settled the issue at rest as follows,

"7. The learned Counsel also drew the attention of this Court to the decision of the Supreme Court reported in 1994 Supp (2) SCC 605 [State of Kerala and Ors. v. Mcdowell & Co. Ltd.] wherein elaborate discussion has been made by the Supreme Court with reference to as to what constitute the 'Bond'. The ratio of the majority view of the aforesaid decision is found in paragraphs 19 and 20, which are extracted below:

> *Para 19: The Division Bench of the Calcutta High Court, in Hira Lal Sircar v. Queen Empress considered the case of moneylenders who were convicted under the Stamp Act. They lent money and the transactions were entered in their account books. The entries were*

singed by the debtors and were attested. The Division Bench held that these entries were not bonds but acknowledgements. Emphasis was placed upon the word obliges in the definition of a bond and it was said that no document can be a bond...unless it is one which itself creates an obligation to pay money.... Documents acknowledging promises to repay advances or to pay for goods, which the law always implied when money was borrowed and goods were purchased, were not bonds. In Mai Dhan Gupta v. Board of Revenue, U.P. the instrument was executed to ensure payment of the State Governments dues. A learned Single Judge of the Allahabad High Court held that the words in the definition of a bond obliges himself to pay money made it clear that the obligation was not a pre-existing one. Where the obligation was a pre-existing one an instrument executed subsequently setting out the nature of the obligation was a mere agreement. In the case before the learned Single Judge, while the instrument did not create any fresh liability or obligation, it imposed a personal liability upon a person who was not otherwise liable and it was held that it was a bond. In Hindustan Sugar Mills Ltd. v. State of U.P., the facts were that the company was assessed to sales tax. It appealed and asked for stay of recovery thereof. The tax court granted a stay on condition that the appellant furnished security to the satisfaction of the Sales Tax Officer. In order to comply with that condition one Adukiya executed an instrument for and on behalf of the company. The question which a Special Bench of the Allahabad High Court considered was this instrument a bond. The Special Bench noted that the Stamp Act described a bond as an instrument which by a person obliged himself to deliver money. These words, in its view, indicated that the obligation to pay money should arise under the terms of the *instrument itself. In other words, the obligation should be created by the instrument. In the case before the Special Bench, the liability to pay sales tax existed under the provisions of the Sales Tax Act itself and the mere recital in the document that Adukiya would discharge the liability did not create a new liability under and by the instrument. The instrument was, therefore, held not to be a bond. In Patel Stone Trading Co., Nagpur v. Ramsing, a learned Single Judge of the Bombay High Court considered an instrument in which the defendant acknowledged liability in a stated amount and expressly promised to repay the same. The learned Judge held that the document was executed for the purposes of creating an obligation whereby the defendant agreed to pay to the plaintiff the stated amount and interest thereon. This being the dominant purpose and intention of the instrument, it was a bond. On passant the learned Judge said, and upon this sentence much emphasis was laid. In the present case, either in the statute or common law there was no pre-existing right or liability between the parties.*

Page 20: In our view, the definition of bond in Sub-clause (1) of Clause (a) of Section 2 of the Kerala Stamp Act is clear and unambiguous. It must be read as it stands, nothing may be read in or implied. The word whereby must be read as meaning what it ordinarily does namely, by which. An instrument, therefore, by which a person puts himself under an obligation to pay a sum of money to another on condition that the obligation shall be void if some specific act is, or is not, performed is a bond. The only question to pose is : Has the executant of the instrument put himself under an obligation, or bound himself, to pay a sum of money to another, the obligation to *be void under specified circumstances? If the executant can be sued for that sum of money only upon the strength of the instrument, the instrument is a bond.*

8. A perusal of the agreement dated 11.6.2000 filed in the typed set shows that there is no obligation created under the said document and it arises out of the quantum of work done by the parties and the balance amount should be paid by the signatory to the document. It is wrong on the part of the trial Court to reject the plaint even before the trial solely on the ground that the document has not been stamped in accordance with the provisions of the Indian Stamp Act. If for some reason, it had come to the conclusion that it is a bond, then it should either refuse to rely upon it or impound the same for the purpose of paying the necessary Stamp Duty and ought not to have rejected the suit at the threshold. Therefore, the order of the trial Court is completely erroneous and the trial Court has not adverted to the authoritative pronouncements of the higher Courts in this regard.

9. In the light of the above, the Civil Revision Petition shall stand allowed and the docket order passed by the trial Court dated 21.11.2005 is hereby set aside and the trial Court is directed to deal with the suit in O.S. No. 70 of 2004 on merits and in accordance with law. However, there will be no order as to costs. The trial Court is directed to proceed to treat the document dated 11.4.2004 as only an agreement between the parties and not as a bond as held by the trial Court. Since it is a suit of the year 2004, the trial Court is directed to dispose of the suit within a period of three months from the date of receipt of a copy of this order. Both the parties are directed to co-operate in completing the trial without putting any obstruction.”

14. The ratio of the above judgment is very clear as to the fact that when obligation is created arising of quantum of work done by the parties then it cannot be confined as an agreement and here that it is only a reiteration of the pre-existing liability and the said recital placing as an undertaking to met in the instrument will not make it a bond. Further that there was no contingency imposed in the agreement and hence confining itself within the definition of bond is highly doubtful. Further the Hon'ble High Court of Allahabad in an akin situation have decided the issue in ***Hindustan Sugar Mills Ltd. vs State Of U.P. And Ors.*** **AIR 1972 ALL 8** have decided the similar issue as follows,

"17. In the case of Radha Swami Satsang Sabha v. Raj Narain, AIR 1943 All 218, one Raj Narain was indebted to Radha Swami Satsang Sabha and he executed four pro notes in favour of the Sabha. All these pro notes bore a certain rate of interest. Subsequently, an agreement was entered into between the Sabha and Raj Narain for the payment of the dues on the basis of the four pro notes in a certain manner. It was provided that if the conditions laid down in the agreement were carried out then certain amount of interest would be remitted and the rate of interest would also be reduced. A question that arose for consideration before this Court was whether the subsequent agreement entered into between the Sabha and Raj Narain could be considered to be a bond within the meaning of Section 2(5) of Schedule I of the Stamp Act. While dealing with this question a Division Bench made the following observation:--

"In support of the Crown our attention has been drawn to the case in ILR (1939) All 229 = (AIR 1939 All 205). One of us was a party to the said decision and therein the Bench held that the document in question in that case was a bond within the meaning of Section 2(5)(b), Stamp Act, because it was attested by witnesses, was not payable to order or bearer and the first party had obliged himself under it to pay money to the second party. The learned Standing Counsel contends that the same requisites are to be found in the present case and therefore the document in question ought to be treated as a bond. In the authority to which reference has been made by us there was no pre-existing loan and if there was any pre-existing liability that was wiped out by the document executed by the debtor in favour of the creditor. There was either a fresh contract without any antecedent contract at all or there was a novation of the contract and the old contract was extinguished. In the case before us, the four promissory notes remained outstanding and we know that, as a matter of fact, three suits were filed on the basis of the four promissory notes and the other two suits were upon the basis of the other two promissory notes. In every case one has to look at the intention of the parties and we find that in the present case the intention of the parties was not to extinguish the old promissory notes but to keep them alive and the document only provided for the method of payment and for reduction of interest under certain contingencies. In this view of the matter, we think that the view taken by the learned Small Cause Court Judge at Agra was correct."

These observations clearly show that the learned Judges constituting the Bench were of opinion that in a case where the liability is not created under the *instrument itself but is a pre-existing liability, it cannot be said that the recital of the same and an undertaking to meet it in the instrument will make it a bond. Similar view was expressed by Mr. Justice D. S. Mathur in the case of Mai Dhan Gupta v. Board of Revenue U. P., 1969 All LJ 333.*

18. When can an instrument be said to be a bond was aptly stated in a decision of the Calcutta High Court in the case of Hira Lal Sircar v. Queen Empress. (1895) ILR 22 Cal 757 in the following words:--

> *"The important word in this definition is the word 'obliges', and no document can be a bond within it unless it is one which creates an obligation to pay money, as is the case with those documents which are known as bonds according to the common use of the word, but, is not the case with acknowledgment of advances or of the purchase and receipt of goods, the obligation to pay for which is not created by the instrument, but arises from the promises to repay advances and to pay for goods which the law always implies when money is borrowed or goods are purchased,"*

19. We find ourselves in agreement with the observations made by the learned Judges in these cases.

20. In view of this discussion, the recitals as contained in paragraph 3 of the instrument, according to which the executant undertakes to pay the sales tax dues under the provisions of the Sales Tax Act do not make the document a bond within the meaning of Section 2(5) of the Stamp Act. "

15. That the above persuasive precedent dealing with exact situation and the conditional precedent of our Hon'ble High Court of Madras in the earlier judgment citied gives no room for any further interpretation and the instrument is not creating any new liability and it is only dealing with pre-existing liability and the undertaking is only to meet out the said liability which cannot be encompassed as a bond and hence I am unable to hold that the said agreement can be confined under Section 2 (5) (b) of the Stamp Act so as to direct for payment of stamp duty under Article 15 of the Schedule I of Indian Stamp Act and hence the prayer sought for in the application cannot be sustained and liable to be dismissed and accordingly it is dismissed. No cost.

16. In fine, this petition stands dismissed. No cost.

Dictated to the Steno typist directly, computerized by him, corrected and pronounced by me in open court this the 11th day of June, 2024.

A ABDUL KADHAR

Digitally signed by A ABDUL KADHAR
Date: 2024.06.11 17:04:16 +0530

DISTRICT JUDGE
UDHAGAMANDALAM

District Court,
Udhagamandalam
Copy of Order
I.A. No. 01 of 2023 in
C.O.S. No. 01 of 2023
Dated: 11.06.2024