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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**SUIT NO. 2256 OF 1998**

Harinarayan G. Bajaj & Ors. ...Plaintiffs  
*Versus*  
Vijay Agarwal & Ors. ...Defendants

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**Ms. Sonal**, *a/w Mr. N. Merchant, i/b Mr. Vivek Sharma for the Plaintiffs.*

**Mr. Rajiv Kumar**, *Senior Advocate, a/w Mr. Rajesh Shah, i/b Mr. Girish B. Kedia, for Defendant No. 2.*

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**CORAM: G.S. PATEL, J**  
**DATED: July 22, 2014**

**PC:-**

1. Ms. Sonal, learned Advocate for the Plaintiffs, submits that the document marked Exhibit D1/3 and the documents marked Exhibits D1/7, D1/8 and D1/9 are all insufficiently stamped and should not be read in evidence absent an undertaking on behalf of the 1st Defendant to have the deficiency cured.

2. The problem with this submission is that it is for the objector, the plaintiff, to first establish that there is, in fact, an insufficiency of stamp. This is not done. It is not enough to merely say that the document is insufficiently stamped. That argument,

stated in generalities, will not require a court to impound a document and have it submitted for adjudication, or even require a party to do so.

3. Secondly, this is an objection that can be be validly raised when a party is seeking to introduce such a document as one of the documents on which he relies. In other words, where a party produces a document and seeks to have it marked in evidence as part of, or through, his direct examination (examination-in-chief), it then that the other side can raise this objection. Order XIII Rule 3 of the Code of Civil Procedure, 1908 (“**the CPC**”) exempts from the prior disclosure contemplated in Rule 1 (production of documents at or before the settlement of issues). Therefore, a document proposed to be used to confront a witness can be held back at this stage.

4. This provision must be read with Order VII Rule 14 of the CPC, one that requires the production of documents on which a plaintiff relies at the time of filing of the suit. A later production or disclosure is not permitted without leave of the Court. Again, there is an exception made for documents produced for cross-examination of a plaintiff’s witness. Now this is a provision that, though not specifically excluded under Order XLIX of the CPC, is yet not part of the practice on the Original Side of the High Court. Disclosure and production always happens at a much later stage, after the written statement is filed. Yet, the savings in respect of documents for cross-examination must continue to apply even to such disclosures.

5. Section 34 of the Bombay Stamp Act, 1958 contains an omnibus prohibition, subject only to narrowly defined exceptions, on the admission in evidence of documents that are unstamped or insufficiently stamped, though required by statute to be stamped. In relation to a document inter-partes, insufficiency of stamp is always curable. A different consideration may well apply where a document is not inter-partes; where a document is produced only to confront a witness; where no claim is founded on the document itself. Yet, the prohibition contained in Section 34 is absolute.

6. I am unable to find any direct authority on this point. We have here a situation where the Plaintiff did not seek to introduce the documents into evidence in support of his claim. Had that been done, the Defendants would have been entitled to raise the objection of insufficiency of stamp. It is only being used to confront the witness, one who is not an 'executant' (in the sense of not being one of the contracting parties to the document). It is unclear whether, in such circumstances, the objection as to inadmissibility on account of insufficiency of stamp ought to be permitted. As this is a question of law, I will place it for further arguments and submissions on a convenient date.

7. What is not in doubt, however, that Exhibit D1/3 was marked on 14th July 2014 . Exhibits D1/7, D1/8 and D1/9 were marked on 18th July 2014. At that time, no such objection was taken. In *Javer Chand v Pukhraj Surana*,<sup>1</sup> the Supreme Court, in relation to the Section 36 of the Marwar Stamp Act, 1947 said:

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<sup>1</sup> AIR 1961 SC 1655

“7. That section is categorical in its terms that when a document has once been admitted in evidence, such admission cannot be called in question at any stage of the suit or the proceeding on the ground that the instrument had not been duly stamped. The only exception recognised by the section is the class of cases contemplated by s. 61, which is not material to the present controversy. Section 36 does not admit of other exceptions. Where a question as to the admissibility of a document is raised on the ground that it has not been stamped, or has not been properly stamped, it has to be decided then and there when the document is tendered in evidence. Once the Court, rightly or wrongly, decides to admit the document in evidence, so far as the parties are concerned, the matter is closed. Section 35 is in the nature of a penal provision and has far-reaching effects. Parties to a litigation, where such a controversy is raised, have to be circumspect and the party challenging the admissibility of the document has to be alert to see that the document is not admitted in evidence by the Court. The Court has to judicially determine the matter as soon as the document is tendered in evidence and before it is marked as an exhibit in the case.”

8. The section before the Supreme Court (Section 36) was *in pari materia* with Section 35 of the Bombay Stamp Act, 1958:<sup>2</sup>

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<sup>2</sup> Section 61 of the Marwar Act corresponds to Section 58 of the Bombay Act.

**35. Admission of instrument where not to be questioned.** Where an instrument has been admitted in evidence, such admission shall not, except as provided in section 58, be called in question at any stage of the same suit or proceeding. on the ground that the instrument has not been duly stamped.

9. In view of this binding decision, I do not see how I can possibly entertain Ms. Sonal's objection at this stage. Although I had earlier indicated that I would leave her contentions open to the final hearing of the suit, in view of this decision and, too, the decisions of this Court's Full Bench in *Hemendra Raskilal Ghia v Subodh Mody*,<sup>3</sup> of a learned single Judge in *Geeta Marine Services v State*,<sup>4</sup> and of a Division Bench in *Ayushakti Ayurved Pvt Ltd v Hindustan Unilever Ltd*<sup>5</sup> that issue cannot possibly be kept open.

10. List the matter for directions on 28th August 2014 for hearing on the issue of law set out in paragraph 6 of this order.

(G. S. PATEL, J.)

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<sup>3</sup> 2008 (6) Mah LJ 886

<sup>4</sup> 2009 (2) Mah LJ 410, per A.S. Oka, J.

<sup>5</sup> 2013 (1) BCR 599