(1987) 09 BOM CK 0082

In the Bombay High Court

Case No : Summons for Judgment No. 223 of 1987 in Summary Suit No. 3349 of 1986

Alen Co-operative Bank Ltd. APPELLANT

Vs

R.H. Windsor (I) Ltd. and Others RESPONDENT

Date of Decision : 07-09-1987

Acts Referred:
Bombay Stamp Rules, 1939 — Rule 7
Stamp Act, 1899 — Section 13, 14, 15, 2, 2(14)

Citation : AIR 1988 Bom 352 : (1988) 3 BomCR 143 : (1988) MhLj 238

Hon'ble Judges : Guttal, J

Bench : Single Bench

Advocate : Farida Sikander, for the Appellant; Virendra V. Tulazapurkar and B.B. Parekh, for the Respondent

Judgement

1. The plaintiff, a Co-operative Bank, sues to recover Rs. 59042/- and interest due on a Hundi drawn by defendant 2 and accepted by defendant 1. At the request of defendant 2, of which defendants 3 and 4 are partners, the plaintiffs agreed to discount bills issued by defendant 2 in respect of certain steel plates supplied by the latter to defendant 1. The Hundi drawn by defendant 2 was accepted by defendant 1. When presented, on 24th Aug. 1984, the Hundi was dishonoured.

2. The defendants have urged that the Hundi should be held to have been unstamped and, therefore, inadmissible in evidence. The Hundi is written on the first sheet. Annexed to this sheet, there are two additional blank hundi papers, each of which bears the signature of defendant 2. No portion of the Hundi is written on these sheets. The three hundi papers together make up the requisite stamp duty. The bill is written only on the first sheet. On these facts, the question is whether the Hundi is duly stamped as required by law.

3. By definition in Section 2(ii) of the Stamp Act, an instrument is duly stamped, if it bears adhesive or impressed stamp of not less than the proper amount and

that such stamp has been affixed or used in accordance with the law for the time being in force. Then Section 13 requires that an instrument written upon paper stamped with an impressed stamp shall be written in such manner that "the stamp may appear on the face of the instrument and cannot be used or applied to any, other instrument."

Rule 7 of the Rules made under the Act lays down the manner in which an instrument; executed on more than one sheet, should be used. Where two or more sheets with engraved or embossed stamps are used to make the requisite stamp duty, it is necessary that "a portion of such instrument, shall be written on each sheet so used"

Section 14 of the Act prohibits writing of second instrument chargeable with duty up on the piece of stamped paper upon which an instrument chargeable with duty has already been written.

The effect of contravention of Sections 13 and 14 read with Rule 7 is that every instrument written on more than one sheet of paper, but not written in accordance with Section 13 and Rule 7, shall be deemed to be unstamped. Finally, in view of Section 35, an instrument chargeable with duty, shall not be admissible in evidence unless it is duly stamped.

4. The signature of the defendant 2 appears on the second and third sheets of the blank Hundi Papers. Rule 7 requires that "portion of the instrument" shall appear on each of such sheets. "Instrument" has been defined in Section 2(14) of the Stamp Act to include every document by which "any right or liability is or purports to be created, transferred, limited, extended, extinguished or recorded." It follows that a portion of the writing, which creates, transfers, limits, extends, extinguishes, or records a right or liability, must occur on each sheet. In other words, the writings on all the three sheets taken together must make the complete instrument. In this case, the instrument is completely written on the first sheet. The signatures on the blank sheets are not a part of the instrument. Therefore, the existence of mere signature on the second and third sheets does not mean that the instrument is written on the three sheets.

5. In the present case the instrument has been so written that the second and the third sheets can be used or applied for another: instrument for the simple reason that no, portion of the instrument is written on these sheets. This is a clear contravention of Section 13 of the Stamp Act, the substance of which has been set out in the previous para. If the plaintiffs seek to use all the sheets to make up there quisite stamp duty, it is obligatory upon them to use the second and third sheets also by writing a portion of the instrument on each of them. If this is not done, the second and third sheets are capable of being used for another instrument. There is, therefore, clear breach of Section 13 of the Stamp Act and Rule 7 made thereunder.

6. Thus, the instrument in this case, which is written on more than one sheet of paper, is not in accordance with Section 13 of the Act and Rule 7 made

thereunder. Consequently, having regard to Section 15 of the Act, the Hundi in question is deemed to be unstamped. If it is deemed to be unstamped, -- as it indeed is in this case -- it cannot be received in evidence. This is a substantial defence to the suit. This view of mine finds support from the Judgment of Bharucha J. in Summary Suit No. 301 of 1978 dt. 26th June 1984 (reported in (1987) 61 Comp Cas 312, with which I agree.

7. Learned Counsel for the plaintiffs relied upon the decision of this Court in Dena Bank Vs. Gladstone Lyall and Co. Ltd., , where on construing the Hundi written on sixteen sheets, it was held that the Hundi was duly stamped. The Judgment at page 479, makes it clear that "each and every annexure or the additional Hundi paper attached and subjoined to the first sheet also contained further particulars such as the drawer''s name, the number, date and amount of the hundi, the due date and the total stamp value." Having regard to the writing of the drawer''s name, number, date and the due date, I am of the opinion that these writings removed the possibility of the instrument being "used for or applied to" any other instrument. This fact entered the decision in Dena Bank v. Gladstone Lyall & Co. Ltd. That is why Pratap J. concluded :

......"Possibility of the stamp on the instrument in the above two rulings being used for or applied to any other instrument could not be ruled out, while such possibility is safely nay, totally rules out in the present case....."

In view of these distinguishing features, the ruling has no application to the facts of this case.

Another ruling relied upon by Counsel for the plaintiffs was Hindustan Steel Ltd v. Dilip Construction Co. AIR 1969 SC 1238. That was a case where an Award filed in Court by the Umpire was unstamped. The Supreme Court was dealing with an instrument which could be admitted into evidence u/s 42 of the Act after the duty and penalty are paid. The Hundi, which I am called upon to consider, is not an instrument which can be validated by resorting to Section 42 of the Act. The Judgment of the Supreme Court has no application to the facts of this case.

8. For all these reasons, I hold that the Hundi is unstamped. I grant unconditional leave to defend. The suit is transferred to the list of (illegible) Causes, Written Statement shall be filed within six weeks from today. Affidavit of documents shall be filed within two weeks after filing of the written statement. Parties shall complete inspection within two weeks after the affidavits are filed.

