

(1985) 09 BOM CK 0045

In the Bombay High Court

Case No : Summons for judgment No. 115 of 1985 in Summary Suit No. 2780 of 1984

Dena Bank

APPELLANT

Vs

Gladstone Lyall and Co. Ltd.

RESPONDENT

Date of Decision : 27-09-1985

Acts Referred:

BOMBAY STAMP ACT, 1958 — Section 13, 14, 15

Citation : (1985) 87 BOMLR 477

Hon'ble Judges : S.C. Pratap, J

Bench : Single Bench

Judgement

S.C. Pratap, J.—This is a bank suit-----the tribe whereof is ever increasing ----- for recovery of amount due under bills of exchange accepted by the defendants and more than once assured and promised to be paid in reply to demand accordingly before the suit.

2. Relevant facts, abbreviated to the minimum, are as follows:

One Havana Products-----a partnership firm-----entered into a sales agreement with the defendants for marketing the firm's products. By their letter of February 7, 1983 the firm requested the plaintiffs to grant them bill discounting facility qua hundies they would be drawing on the defendants The defendants themselves also wrote letter dated February 28. 1983 to the plaintiffs that they would be buying the firm's products on 90 days bills of exchange which will be accepted by the defendants and will be signed for them by one P. N. Kanth whose duly attested signature was affixed on the said letter itself. The plaintiffs granted bill discounting facility accordingly. Pursuant thereto, the said firm drew 16 hundies upon the defendants as drawees payable 90 days from the respective dates. All these hundies were accepted by the defendants and the plaintiffs accordingly made available to the firm the amounts in connection therewith. However, on maturity, from time to time, all the said hundies were, on presentation, dishonoured by the defendants by non-payment. Subsequent

correspondence and demands were to no avail. Hence this suit and the summons for judgment.

3. Counsel for the defendants contends that they are entitled to unconditional leave for the reason that these hundies are inadmissible in evidence because the same were not duly stamped. In support, reliance is placed upon two judgments -

(a) Judgment dated June 26, 1984 by a learned Single Judge in Central Bank of India v. Indian Light Gauge Metal Products Pvt. Ltd. (1984) Judgment dated June 26, 1984 by S.P. Bharucha J. in Summary Suit No. 301 of 1978 (Unrep.) (hereinafter the Bank case); and

(b) Judgment dated November 13, 1984 by a Division Bench in Har Kishore Jain & Sons Pvt. Ltd. v. Bank of Baroda (1984) Judgment dated November 13, 1984 by S.K. Desai & Aggarwal JJ. in Appeal No. 873 of 1984 in Summons for judgment No. 147 of 1984 in Summary Suit No. 159 of 1984 (Unrep.) (hereinafter the Jain case).

Before proceeding further, reference may be made to sections 13 and 15 of the Stamp Act and Rule 7 of the Rules thereunder:

Section 13:

Every 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 for or applied to any other instrument.

Section 15:

Every instrument written in contravention of section 13 or section 14 shall be deemed to be unstamped.

Rule 7{1) :

Where two or more sheets of paper on which stamps are engraved or embossed are used to make up the amount of duty chargeable in respect of any instrument, a portion of such instrument shall be written on each sheet so used.

4. Coming to the ruling in Bank case, one finds that the 16 hundi papers subsequent to the first sheet of the bill were altogether blank at the time the bill was made. One further finds that it was only some days later when the bill was actually entered in the plaintiffs' register that these 16 succeeding hundi papers were stamped with the rubber stamp of the plaintiffs branch with the words "L.B.D. 2/22" within it. In Jain's case, the defence pertained to "inadequate and improperly attached stamps on the documents" giving rise to an issue whether there was "proper or improper stamping". In the context of such facts and circumstances, it would follow that the bill not duly stamped would, by virtue of Section 15 of the Stamp Act "be deemed to be unstamped" and, therefore, under 8. 35 of the said Act, inadmissible in evidence.

5. Reverting in this context to the present case, there is no question of the bills

here being improperly or inadequately stamped. Nor is this a case of the annexures to the first sheet thereof (bills) being altogether blank when the respective bill was made. Again, each of the original bills (with the annexures thereto) shown to the Court constitute one integral whole. It is also not the case of the defendants that the total stamp value is insufficient or inadequate. It may in addition be noted that over and above the bank's stamp, each and every annexure or the additional hundi paper attached and subjoined to the first sheet also contains further particulars such as the drawer's name; the number, date and amount of the hundi; the due date; and the total stamp value. Possibility of the stamp on the instrument in the above two rulings being used for or applied to any other instrument (see Section 13) could not be ruled out while such possibility is safely, nay totally ruled out in the present case. Again, whereas Bank's case was one of unstamped bill of exchange and Jain's case of doubt whether the instrument was properly or improperly stamped, the present is neither of these. The instruments here are properly and adequately stamped and each annexure or additional sheet thereof has been duly written upon. [See Rule 7(1)]. The two rulings *supra* are thus distinguishable from the instant case. It is, therefore, not open to transplant the ratio thereof here. For applying the ratio of one case to another, the two need to be part *materia* on relevant facts and aspects. Differences thereon can in turn make a vital difference to the resultant conclusion in each case. Besides, on the question of admissibility or inadmissibility of document, each case would, by and large, turn on its own document and facts pertaining thereto - the rule of precedent applying only if the document and the related facts are identical or at least similar in material particulars. Such is not the case here.

6. Learned Counsel for the plaintiffs referred to a ruling of the Supreme Court in *Hindustan Steel Ltd. v. Dilip Construction Co.* AIR [1969] S.C. 1238):

The Stamp Act is a fiscal measure enacted to secure revenue for the State on certain classes of instruments. It is not enacted to arm a litigant with a weapon of technicality to meet the case of his opponents. The stringent provisions of the Act are conceived in the interests of the revenue. Once that object is secured according to law, the party staking his claim on the instrument will not be defeated on the ground of the initial defect in the instrument.

7. There is in this case no such or, likewise, any other initial defect at all. To even so permit the defendants to exploit a weapon of technicality to defeat the unassailable claim of the plaintiffs and - as will presently be seen - unequivocally admitted by the defendants would result in manifest injustice. Technicality - the language of the weak - can well distort truth and, if permitted to triumph, may as well render justice a goal of glorious uncertainty. The technical defence thus fails and is rejected.

8. There is no other relevant defence worth the name. The bills have been unconditionally accepted. Any inter se agreement or disagreement between the defendants and the firm cannot in the least detract from the defendants' liability

to the plaintiffs. This liability is absolute. And, what is more, even by their subsequent letters the defendants have, in no uncertain terms, promised to honour the same. By their letter dated August 1, 1983 to the plaintiffs, the defendants confirmed their earlier telegram to the effect that the pending hundies ...will be honoured through our Bankers, The Chartered Bank, Clive Row Branch, Calcutta-700 001, by August 31, 1983.

9. In their yet another letter dated September 14, 1983 the defendants expressed regret and reiterated their commitment to the plaintiffs inter alia stating:

... in view of unforeseen tight cash-flow position we regret that we could not make payments by August 31, ...we shall be most grateful indeed if you will kindly agree to an extension of 45 days additional credit against these hundies as a very special case. On this basis, we would request you to present these hundies once again to our Banker's for payment. We shall pay the additional interest charges involved.

10. These letters are self-evident and speak for themselves. However, all the above assurances later sank into oblivion. No payment came forth thus compelling the aggrieved plaintiff-bank to ultimately file the instant suit. One more addition to the mounting backlog of bank suits. Effecting volte face, the repelling the aggrieved plaintiff-bank to ultimately file the instant suit. One more addition to the mounting backlog of bank suits. Effecting volte face, the resiling defendants, rather than even now honour their commitment, have instead chosen, to confront the plaintiffs and the Court with untenable pleas with the all too obvious object of delaying; the admitted liability and prolonging the inevitable decree.

11. It is precisely to discourage such litigants and such litigation that Parliament stepped in and under the 1976 Amendment Act enacted inter alia two provisos to Sub-rule (5) of Rule 3 of Order XXXVII of the Code of Civil Procedure. Under the first proviso, appropriately considered, if the facts do not indicate "a substantial defence" or indicate that the defence intended to be put up is "frivolous or vexatious", leave to defend may be refused. And under the second proviso:

Where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit shall not be granted unless the amount so admitted to be due is deposited by the defendant in Court.

[Emphasis added] [here indicated in italics-Ed.]

12. The legislative mandate is thus clear. And it binds us all. Here the suit claim has been unequivocally admitted by the defendants as long back as in August 1983. More than two years have since elapsed with the pleasant prospect (in the event of unconditional leave) for the defendants of many more years to go before the day of judgment - the time to pay - arrives. Admitted claims are expected to be honestly paid up by all concerned and all the more so by public limited

companies qua nationalised banks. If that is not done voluntarily, the Court has then its own responsibility of enforcing the legislative mandate.

Hence order:

(a) Leave to defend on condition that the defendants deposit in this Court within four weeks from today an amount of Rs. 9,00,000/- (nine lakhs). There will be no further extension of this time.

(b) In the event of deposit being so made, suit transferred to the list of commercial causes with written statement within six weeks from the date of deposit and affidavit of documents within four weeks of filing of the written statement and inspection forthwith thereafter.

(c) In the event of deposit not being so made, plaintiffs may apply for judgment.