

**(1932) 01 AHC CK 0045**  
**In the Allahabad High Court**

**In Re: A Reference Under Section 57(1)(b) of Stamp Act.**

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**Date of Decision :** 26-01-1932

**Acts Referred:**

Companies Act, 1913 — Section 104  
Companies Act, 1913 — Section 104  
Companies Act, 1913 — Section 104

**Citation :** 137 Ind. Cas. 337

**Hon'ble Judges :** Sulaiman, J;King, J;Benerji, J

**Bench :** Full Bench

**Final Decision :** Allowed

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**Judgement**

1. This is a reference from the Board of Revenue under the Stamp Act. The instrument in question is an agreement dated the 26th of January, 1921, between Messrs. Horsman who were the proprietors of a private firm carrying on business under the name of Swadeshi Cotton Mills called "the vendors" of the one part and the Swadeshi Cotton Mills Co. Ltd., called "the company" of the other p Article The vendors agreed to sell all their business under takings and assets as from the 1st of January, 1920, including good will, free-hold hereditaments, plants machinery etc, contracts, outstanding debts and other goods, with the exception of profits for a short period which had to be assessed on a certain basis and some furniture. The nominal capital of the company was Rs. 30,00,000, which was divided into 15,000 preference shares and 15,000 ordinary shares of Rs. 100 each. Part of the consideration consisted of the allotment of all the shares with the exception of 33 ordinary shares, the consideration for the costs of stores etc. was, to be their market value, and as for the residue of the consideration, the company was to pay all the outstanding debts.

2. The agreement stated:

Now it is agreed and declared...(that) the vendors shall sell and the company shall purchase with effect as on and from the 1st day of January, 1920 etc.

It again recited that

the purchase shall be completed on such date as may be mutually arranged between the parties hereto with effect as on and from the said 1st day of January, 1920, possession of the premises shall be given to the company on the completion of the purchase.

It was again repeated that "the possession of the said lands and premises shall be retained by the vendors up to completion and in the meantime the vendors shall carry on the business as heretofore and shall be deemed to be carrying it on for and on behalf of the company as from the 1st of January, 1920. The agreement further provided that all the necessary parties

shall at the expense and cost of the company execute and do or cause to be executed and done, all such leases, assurances and things for vesting the said premises in the company.

It also stated that the costs of

all documents and things required for the purpose of transferring the properties hereby agreed to be sold to the company shall be paid by the company.

3. After the execution of this document a sale-deed dated the 8th of November, 1922, was executed by the vendors in respect of the Immovable property but no subsequent deed of transfer was executed as regards the good will, or the moveable properties. It, however, appears that this very agreement was filed with the Registrar of the Joint Stock Companies u/s 104 of the Indian Companies Act (VII of 1913) after the allotment of shares had been made subsequent to the agreement.

4. The learned Government Advocate on behalf of the Board of Revenue contends that the agreement was in substance a deed of conveyance of moveable properties as defined in Section 2(10) of the Stamp Act and a contract of sale in respect of the shares within the meaning of Section 104 of the Companies Act, and should therefore, have been stamped as a deed of transfer. The instrument was stamped as a mere agreement and bore a stamp of eight annas only.

5. The language of the instrument as quoted above on the face of it shows that it was a mere contract entered into between the parties, which was to be subsequently completed although the parties intended that when completed it should take effect from the 1st January, 1920. So far as the Immovable properties were concerned there was a subsequent deed of transfer in pursuance of this agreement. So far as the moveable properties were concerned, their transfer could take place by mere delivery and there was no necessity to execute a fresh deed of transfer. The only difficulty was about the good will which could not be "delivered". It seems to us that if the parties chose to be satisfied with a mere contract for sale, without an actual deed of sale, stamp duty payable on a conveyance cannot be demanded. By entering into a mere contract short of an actual conveyance they run a certain amount of risk. If either party resiles from

the contract, the other party may have to institute a suit for specific performance of the contract. Trouble may also arise if the vendors subsequently convey the property to a bona fide transferee for value. But if in spite of this risk the parties refrain from getting an actual deed of conveyance prepared, they can successfully evade the payment of Higher duty. As observed by Lord Esher in the *Commissioners of Inland Revenue v. G. Angus & Co.* (1889) 23 Q.B.D. 579 .

But it is said that if the appeal be decided against the Commissioners purchasers will rest satisfied with an agreement of which specific performance would be decreed and will not go on to execute a conveyance, and so the Crown will lose the stamp duty and it is rather suggested that this would be cheating the Crown and committing a fraud. The Crown, however, must make out its right to the duty, and if there be a means of evading the stamp duty, so much the better for those who can evade it. It is no fraud upon the Crown, it is a thing which they are perfectly entitled to do." The Crown cannot have the stamp duty unless the parties to the sale chose to effectuate the transaction by an instrument which of itself conveys the property, and, if they chose to be satisfied with something less, the matter is not brought within Section 70 (of the Stamp Act of 1870).

It was also observed in the same case that even the good will of the business did not pass by the instrument, which was a mere contract to sell the business, premises and good will etc. The learned Government Advocate relies on the Civil Reference u/s 48 of the Indian Stamp Act (2). But in that case apart from the agreement to transfer the business, good will, assets etc., there was an actual grant of the premises valued at Rs. 1,50,000, which grant the other party confirmed. The learned Judges treated it as a conveyance of the premises for Rs. 1,50,000, and the stamp duty was charged on this sum only. The agreement to transfer the business, good will etc., was not treated as a deed of conveyance and duty on its value was not charged as on a conveyance. In this sense this case actually supports the company.

6. Having considered the agreement as a whole, we are of opinion that it cannot be regarded as a deed of conveyance, but is only an agreement for which the duty due under the Stamp Act has been fully paid.

7. It is not for us to consider whether the Registrar of the Joint Stock Companies was right or wrong in accepting this agreement as a contract of sale u/s 104 of the Indian Companies Act. The allotments of shares were to be made after this agreement was executed. The allotments were in fact made subsequently. We do not think that there is anything in the provisions of Section 104 of the Indian Companies Act which requires that a duty payable on a conveyance should be levied on an agreement for the allotment of shares by a company in future.

8. This is our answer to the reference.