

(1954) 02 BOM CK 0016
In the Bombay High Court
Case No : Civil Reference No. 11 of 1953
In Re: Jagdish Mills Ltd.

Date of Decision : 08-02-1954

Acts Referred:

Companies Act, 1956 — Section 34(3)
Stamp Act, 1899 — Section 29

Citation : AIR 1955 Bom 79 : (1954) 56 BOMLR 525 : (1954) 24 CompCas 241

Hon'ble Judges : Chagla, C.J.;P.V. Dixit, J;J.C. Shah, J

Bench : Full Bench

Judgement

Chagla, C.J.—A rather interesting question arises as to the liability of a company to pay stamp duty in respect of a transfer of shares not duly stamped, and the question arises in the following way. The Jagdish Mills Ltd. is a public limited company which was incorporated in Baroda under the Baroda State Companies Act of Samvat year 1975. It appears that between 1942 and April 1, 1949, various transfer deeds were sent to the company duly executed from outside the Baroda State, and inasmuch as the transferor or the transferee did not have the necessary Baroda stamps they used to send moneys to the company and the practice was that the company used to buy the requisite Baroda stamps, affix them to the transfer deeds and get them registered. It was found subsequently that two employees of the company had misappropriated these moneys and had not stamped the transfer deeds as required by law. The company coming to know of this, very honestly and properly drew the attention of the revenue authorities on May 3, 1950, to the position then obtaining and pointed out that a large number of transfer deeds had not been duly stamped. The revenue authorities took the view that in respect of these transfer deeds the company was not only liable to pay the Baroda stamp duty plus the penalty, but also the Indian stamp duty plus the penalty. The company was prepared to pay the Baroda stamp duty and the penalty, but objected to paying the Indian stamp duty and penalty, and the question that arises on this reference is whether the company is liable to pay the Indian stamp duty in respect of these transfer deeds.

2. Now, one sample transfer deed has been selected for the purpose of the

question under reference and that sample transfer deed was executed on August 15, 1945. The transferor is the Ambica Mills Ltd. in Ahmedabad and the transferee is the Industrial and Prudential Assurance Co. Ltd., a company having its head office in Bombay. Therefore, both the seller and the purchaser were in British India. The contention of the revenue authorities is that inasmuch as this transfer deed was executed in British India, as it then was, there is a liability to pay stamp duty under article 61(a). When the transfer deed was executed Baroda was an independent State, and the contention put forward by the company was that the only liability was to pay the stamp duty of the Baroda State inasmuch as the company was registered in Baroda, and the question that has been raised is, what is the effect of the merger which took place in 1949 upon the liability of the company ? The revenue authorities took the view that inasmuch as the question of fixing the liability with regard to stamp duty as well. In our opinion, however interesting the question may be, it does not strictly arise on the facts of the case and it is possible to dispose of this reference on a much narrower ground.

3. Now, before we decide whether there is a liability to pay Indian stamp duty, we must decide whether there is any liability at all upon the company to pay any duty. For that purpose the first provision of the law to which attention might be drawn is Section 34(3) of the Indian Companies Act. That sub-section provides :

"It shall not be lawful for the company to register a transfer of shares in or debentures of the company unless the proper instrument of transfer duly stamped and executed by the transferor and the transferee has been delivered to the company along with the scrip."

4. Therefore, assuming that the company does register an instrument of transfer which is not duly stamped, it would be doing something which is not lawful. But there is no provision in the Indian Companies Act or, as we shall presently point out, in the Stamp Act, which would make the company liable for payment of the proper stamp duty. The liability to pay stamp duty in respect of instruments of transfer is to be found in Section 29 of the Indian Stamp Act, and that section provides : "In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne" and the relevant provision is article 62(a) (transfer of shares in an incorporated company or other body corporate) "by the person drawing, making, or executing such instrument." Therefore, the liability to pay stamp duty with regard to this instrument of transfer we are considering was upon the executant. The Stamp Act deals with the consequences of not paying the stamp duty which is payable. In the first place, a document which is not properly stamped is liable to be impounded, and that is u/s 33. Then u/s 40, after the Collector has impounded a document, he may call upon under clause (b) to require the payment of the proper duty, but it is clear that the Collector can call upon only the person liable to pay the duty to make the necessary payment. What the Collector is doing in this case is, having impounded the documents which were produced to him by the company, he is

calling upon the company to pay the necessary duty. But before he can do so he must satisfy us that the company is liable under the provisions of the Stamp Act. Then we have Section 48 which provides :

"All duties, penalties and other sums required to be paid under this Chapter may be recovered by the Collector by distress and sale of the movable property of the person from whom the same are due, or by any other process for the time being in force for the recovery of arrears of land revenue." Therefore, it is open to the revenue authorities to proceed against the executant of this instrument of transfer and recover the duty by any of the processes mentioned in Section 48. It is rather significant to note that u/s 62(2) :

"If a share-warrant is issued without being duly stamped, the company issuing the same, and also every person who, at the time when it is issued, is the managing director or secretary or other principal officer of the company, shall be punishable with fine which may extend to five hundred rupees."

5. But there is no corresponding provision with regard to a company registering an instrument of transfer which is not duly stamped. Therefore, considering these sections, it is clear that the only liability to pay stamp duty in the case of an instrument of transfer is upon the executant. If he fails to do so the revenue authorities can proceed against him. If the document is brought before the revenue authorities, the revenue authorities will impound it, but having impounded it the only right given to them to proceed for the recovery of the duty is against the person who was liable to pay the duty. Therefore, while the revenue authorities are perfectly within their rights in impounding a document, they are not right when they call upon the company to pay stamp duty.

6. Therefore, in the view that we have taken as to the liability of the company, it is unnecessary to answer the first question raised for our decision, and the answer to the second question is in the negative. The revenue authorities to pay the costs.

7. Reference answered accordingly.