(2000) 11 SC CK 0142

In the Supreme Court Of India

Case No : I.A. No. 4 in Arb.P. No. 18 of 2000

Malaysian Airlines Systems BHD APPELLANT

Vs

M/s. Stic Travels (P) Ltd. RESPONDENT

Date of Decision : 21-11-2000

Acts Referred:
Arbitration and Conciliation Act, 1996 — Section 11
Stamp Act, 1899 — Section 18, 3, 32, 33, 40(1)

Citation : (2000) 3 JT 257 Supp : (2000) 7 SCALE 670 : (2001) 2 UJ 1167

Hon'ble Judges : M. Jagannadha Rao, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

M. Jagannadha Rao, J.—This matter relates to a question of impounding a power of attorney executed outside India and presented in India for use in proceedings in the Supreme Court. The question turns upon interpretation of Sections 3(c), 11, 18 32 and 42 of the Stamp Act, 1899.

2. An order was passed on the last occasion on 3-11-2000, impounding the Power of Attorney dated 3-11-2000 and levying maximum penalty along with stamp duty and directing deposit of a sum of Rs. 110/- in the treasury. Directions were also issued to the treasury to give the receipted chalan on the same day. That order reads as follows:

This application has been filed by the petitioner u/s 11 of the Indian Arbitration and Conciliation Act, 1996. At the time of hearing of this application learned Counsel for the respondent has raised an objection that the general power of attorney dated 15-12-1997 issued by the petitioner company of Malaysia in favour of Mr. Noor Amiruddin Bin Mohd. Nordin, Senior Vice President/ General Manager, South Asian Region executed at Kualalumpur has not been properly stamped according to the Indian Stamp Act, 1899 and that, therefore, it is not admissible in India. The present petition u/s 11 is signed by the said power of attorney holder.

Learned Counsel appearing for the petitioner has stated that, assuming the said plea is tenable, the petitioner has no objection to make good the required stamp duty and penalty.

Under Section 3(c) of the Indian Stamp Act, 1899, stamp duty is payable on every instrument (other than a bill of exchange or promissory note) mentioned in the Schedule, which, not having been previously executed by any person, is executed out of India on or after that day, relates to any property or to any matter or thing done or to be done in India and is received in India. As the document, though executed outside India, is sought to be used in India, for filing the application u/s 11 of the Arbitration and Conciliation Act, 1996, the power of attorney is liable to stamp duty under the Indian Stamp Act.

Under Article 48 of Schedule I of the Stamp Act. omitting Clause (d) or (e) of Article 48 which refer to more than one person being authorised under the power of attorney and also omitting Clause (f) which deals with power to sell immovable property, the maximum fee otherwise payable for a power of attorney is Rs. 10/-, according to counsel on both sides.

I, therefore, impound the document u/s 33 of the Act, direct the petitioner to deposit stamp duty worth Rs. 10/- plus the maximum penalty of ten times as provided in Section 40(1)(b). The total stamp duty & penalty liable to be deposited will be Rs. 10/- x 11 - Rs. 110/-. The Registrar (Judicial) is directed to put his stamp on the chalan to be produced by the petitioner's counsel. Thereafter, the petitioner will deposit Rs. 110/- in the Treasury and produce the receipted challan back with the seal or endorsement of the treasury. Thereafter the Registrar (Judicial) will make an endorsement that the document was impounded by the Court and that the stamp duty and penalty has been paid. Then the document will be placed before Court.

For the above purpose, the original power of attorney shall be produced before the Registrar (Judicial) for completing the above formalities.

The Treasury Officer is directed to give the receipted challan on the same date on which it is presented, without raising any further objection.

Call the matter on 17-11-2000 in Chambers at 1.30 P.M. If the stamp duty is paid aforesaid, then this Court will be able to make an endorsement as per Section 42(1) of the Stamp Act admitting the instrument in evidence.

3. The penalty and stamp duty have since been paid and the Original document dated 15-12-1997 is produced in this Court and also contains the endorsement of the Registrar of this Court to the following effect.

This document was impounded by this Hon. Court u/s 33 of the Indian Stamp Act, 1899. As per the order of this Hon. Court dated 3rd November, 2000, the petitioner has paid stamp duty of Rs. 10/- and penalty of Rs. 100/-, total sum of Rs. 110/- with the treasury vide chalan No. 46 dated 10th November, 2000.

4. In the meantime, I.A. No. 4/2000 was filed by the respondent to recall the order dated 3-11-2000, contending that the Power of Attorney dated 15-12-1997 was produced beyond 3 months from the date of execution outside India and that therefore u/s 18 of the Indian Stamp Act, read with Clause (b) of Section 32 of the Indian Stamp Act, it is not permissible to follow the course adopted by this Court in its earlier order above mentioned, inasmuch as more than 3 months have elapsed from the date of execution of the document.

5. In my view, the point raised in the I.A. is not tenable. In a case where the unstamped document (other than bill of exchange) is produced as evidence, within three months of execution, the stamp duty can be collected without impounding and without penalty. If the document is sought to be used as evidence beyond three months, the above said bar or three months shall not apply, and the document can be impounded u/s 33 and stamp duty and penalty are levied, even after expiry of three months.

6. According to the decision of the Full Bench of the High Court of Mohammad Amir Ahmad Khan Vs. Deputy Commissioner and Others, , as affirmed by this Court in Government of Raja Mohammad Amir Ahmad Khan Vs. Municipal Board of Sitapur and Another, and also according to the decision of the Delhi High Court in J.S. Bhalla Vs. G.J. Bhawnani, , the procedure permitting submission of a document within 3 months of its execution as in Section 18 is for collection of the stamp duty payable on the document. If it is produced as evidence within three months of execution, the stamp duty can be collected u/s 18, read with Section 32, without impounding the document u/s 33. But in case where 3 months have already expired form the date of execution of the document and later on the document is produced before the Court as evidence, it is permissible for the Court to impound document and collect the stamp duty and penalty and in such a situation, the time limit of 3 months provided in Section 18 and the Clause (b) of Section 32 are not attracted. Therefore, the point raised by the respondent in the above said I.A. cannot be accepted.

7. Now that the Stamp duty and penalty have been paid, as directed by this Court on 3-11-2000, an endorsement to the above effect under Sub-clause (1) of Section 42 is to be made u/s 42(1). Such an endorsement has been made by the Registrar of this Court already on 10-11-2000, I certify that the said endorsement falls within Sub-clause (1) of Section 42 of the Indian Stamp Act.

8. Inasmuch as the Original Power of Attorney is required by the petitioners, for day today(sic) use in their business, a request has been made by the learned Counsel for the petitioner for return of the same. A duly certified copy of the same is already on record.

9. The Registry is directed to return the Original Power of Attorney to the petitioner. Whenever the said document is required for any other purpose, in any further proceedings, it will be necessary for the petitioner to produce the same.

10. With above observations, the I.A. is disposed of.