
(1902) 12 BOM CK 0013
In the Bombay High Court

Nandubai Ayal Mangaldas Bhanji

APPELLANT

Vs

Gau Bin Halia Bagal

RESPONDENT

Date of Decision : 04-12-1902

Acts Referred:

Stamp Act, 1899 — Article 24(I), 24

Citation : (1904) ILR (Bom) 97

Hon'ble Judges : Chandavarkar, J;Batty, J;Aston, J

Bench : Full Bench

Judgement

Chandavarkar, J.—My answer to the first question is that the paper containing the havala is a conveyance and must be stamped as such under the Indian Stamp Act (II of 1899.)

2. "An order for payment of money, though expressed to be payable out of a definite debt or fund, must be properly stamped as a bill of exchange, and if not stamped at the time of issue, cannot be stamped afterwards. But an order for payment out of a debt accruing due under a contract, as for goods sold, or for work and labour, or the like, is an assignment of a debt which must be stamped" as a transfer of property" Leake on Contracts, 3rd Edition, page 1005, citing Buck v. Robson (1878) 3 Q.B.D. 686 and Ex parte Shellard (1873) L.R. 17 Eq. 109. In Ex parte Shellard a letter from a creditor to his debtor for payment of money to a creditor of the former was held liable to be stamped as a bill of exchange. But in Buck v. Robson, Cook-burn, C.J., and Mellor, J., differed from that view and held such a letter to be an assignment of a debt for the purposes QI stamp duty. Cookburn., C.J., said (page 691): "In our acceptation of the term, an order for the payment of money presupposes moneys of the drawer in the hands of the party to whom the order is addressed, held on the terms of applying such moneys as directed by the order of the party entitled to them. No such obligation arises out of the ordinary contract of sale. If a purchaser buys goods of a manufacturer or a tradesman, he undertakes to pay the price to the seller, not to a third party, who is a stranger to the contract, nor will the mere order or

direction of the seller to pay to a third party impose any such obligation upon him; it is only when and because the right of the seller to the price has been transferred to the third party by an effectual assignment that the assignee becomes entitled as of right to the payment.... Being ourselves decidedly of opinion that an order from a creditor to his debtor under an ordinary contract for the price of goods, or for work and labour, or the like, to pay to a third party can confer a right on the latter only so far as it operates as an assignment of the debt, we feel ourselves warranted, on the authority of *Brice v. Bannister* (1878) 3 Q.B.D. 569 in acting on that view notwithstanding the decision in *Ex parte Shellard* (1873) L.E. 17 109" In *Ex parte Hall*, In *re Whiting* (1878) 10 Ch. D. 615 the principle of the decision in *Brice v. Bannister*, on which *Buck v. Bobson* (1878) 3 Q.B.D. 686 proceeded, was approved.

3. In the reference before us now the letter containing the *havala* was addressed by Gau Halia to the Panjrapol authorities because Rs. 22 were due to him from the latter for grass sold. That amount was therefore due to him under an ordinary contract for the price of his goods. He directed the Panjrapol authorities to pay that price to his creditor, so that the letter operated as an assignment of the debt to the latter. It was a transfer of property by Gau Halia to his creditor in consideration of a debt due to the latter (see Section 24 of the Stamp Act, II of 1899). The letter falls, therefore, within the definition of "conveyance" in that Act and must be stamped as such. The amount or value of the consideration for the assignment is not set forth in the letter. Article 23 of schedule I to the Stamp Act does not, therefore, apply, but u/s 24 of the Act, "where any property is transferred to any person in consideration, wholly or in part, of any debt due to him," such debt is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with *ad valorem* duty. The amount or value of the consideration for the *havala* would be the amount or value of the debt, wholly or in part, as the case may be, due from Gau Halia to his creditor to whom he assigned the debt due from the Panjrapol authorities.

4. As to the second question, the reference is made to us not only under the Stamp Act but also under the Court Fees Act. There is no provision of law empowering the Subordinate Judge to make a reference to this Court or giving us jurisdiction to answer it under the Court Fees Act. I would, therefore, decline to answer the second question so far as it relates to that Act. So far as it is a reference under the Stamp Act, the decision in *Kastur v. Fakiria* (1902) 26 Bom. 522 is clear. It was held there that "copies furnished u/s 141A do not come within Article 24 of schedule I of the Stamp Act, 1899.

Batty, J.

5. I entirely concur.

Aston, J.

6. I concur.