
(1960) 05 CAL CK 0021
In the Calcutta High Court
Case No : A.F.O.D. No. 144 of 1958

National Security Assurance Co.

APPELLANT

Vs

R. Ratilal and Co.

RESPONDENT

Date of Decision : 24-05-1960

Acts Referred:

Stamp Act, 1899 — Article 47, 3

Citation : AIR 1961 Cal 48 : (1962) 32 CompCas 246 : 64 CWN 1032 : (1961) 1 ILR (Cal) 731

Hon'ble Judges : P.B. Mukharji, J;H.K. Bose, J

Bench : Division Bench

Final Decision : Allowed

Judgement

P.B. Mukharji, J.—This is an appeal from the judgment of J. P. Mitter, J. decreeing the plaintiff's suit with costs and interest for the sum of Rs. 93,628-8-0. The plaintiff claimed a decree for Rs. 1,43,628-8-0. The learned trial Judge recorded the fact that a sum of Rs. 50,000 had already been paid and therefore he decreed the suit for the balance of the sum of Rs. 93,628-8-0.

2. The main point for decision in this appeal is the effect of an unstamped Protection Note under the law of insurance. The present suit was filed by the plaintiff on such an unstamped Protection Note which is also known as a Cover Note in respect of insurance against fire regarding plaintiff's stock of bidi leaves and tobacco. The decision depends on the construction of the provision for "General Exemption" in Article 47 of Schedule 1 of the Indian Stamp Act.

3. Schedule 1 of the Indian Stamp Act is introduced by Section 3 of the Statute providing for instruments chargeable with duty. The opening words of Section 3 are :

"Subject to the provisions of this Act and the exemptions contained in Schedule 1, the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefore, respectively" etc.

Article 47 of Schedule 1 deals with "policy of Insurance". Various types of insurance are there mentioned, for instance, sea insurance, fire insurance, accident insurance, indemnity insurance, life insurance and Re-insurance. This Article 47 at the end concludes with the title "General Exemption" providing as follows :

"Letter of cover or engagement to issue a policy of insurance :

Provided that unless such letter or engagement bears the stamp prescribed by the Act for such policy, nothing shall be claimable thereunder, nor shall it be available for any purpose except to compel the delivery of the policy therein mentioned."

4. The question in this case is whether the Protection Note in this suit comes within the General Exemption, The terms of the Protection Note are relevant for the purposes of this appeal and propose to set out the protection note in extenso. It reads as follows :

Interim Protection Note No. C. B. D. 6404. Policy No. The National Security Assurance Co. Ltd. (Incorporated in India) Managing Director 22, Brabourne Road, H. D, Vasudeva. Calcutta-1, Dated 5th November, 1951. Messrs. M/s. R. Ratilal and Co., 4, Rupchand Ray Street, Calcutta.

Proposing to effect Insurance against Fire on the usual Terms and Conditions of Companies Policies and having agreed to pay the sum of Rs. Tariff Premium therein, the property is hereby held insured to the extent of Rs. 1,00,000 in the manner, specified below viz :

Rupees one lac only.

On stock of Biri leaves, Biri Tobacco and Spices and/or other hazardous and non hazardous goods whilst stored and/or lying in godown of first class construction owned by Mohammed Shaffi, Mohammed Ahmed at 12, Harinbari 2nd Lane, Calcutta.

Risks to be covered as per Policy No, 26625. For 12 months from 5th November 1951 to 5th November 1952.

N.B. -- This protection is in force for thirty days (or for a shorter period if so mentioned herein) from the date hereof or until the Company's Policy is prepared unless the Insurance is declined, in which case proportionate premium will be charged according to the time the company has been on the risk. If the protection note is cancelled for non-payment of premium, the company shall be entitled to recover from the Insured premium at the current tariff short period rate for time on risk.

For the National Security Assurance Rate Tariff Co. Ltd. Premium. Rs. Tariff. The New India Asses. Less Mofussil discount. Co., Ltd., Net Premium. Sd. Principal Agent.

This Protection Note described as "interim" bore no stamp. Its legal effect depends on the meaning and import of the "General Exemption" in Article 47 of the 1st Schedule of the Stamp Act.

5. This will be an appropriate stage to state briefly the facts of the case. By a policy of insurance No. 26625 dated the 15th March, 1951 the defendant Insurance Company agreed to pay or make good to the plaintiff the value of the plaintiffs property in Bidi leaves and tobacco etc. stored in the godown at No. 12 Harinbari 2nd Lane. Calcutta, to the extent of Rs. 50,000 in case the same or part thereof was destroyed or damaged by fire between the 28th November 1950 and the 28th November, 1951. While the policy was current this Protection Note came into existence on the 5th November, 1951 increasing the value of the insurance from Rs. 50,000 to Rs. 1,00,000. The goods were destroyed by fire at the godown on the night of the 5th/6th "November, 1951, before any policy could issue under or in pursuance of the said Protection Note, The plaintiff claimed damages to the extent of Rs. 1,43,628-8-0. In the plaint the plaintiff proceeds also to claim an enquiry into damages. The insurance company in its defence disputed the quantum of loss and also disputed its liability to pay Rs. 1,43,628-8-0. In paragraph 3 of its written statement the insurance company took this specific defence that the Protection Note was invalid and in- -operative in law and that the defendant company could in no way be made liable in respect of the said Protection Note. There were other defences which are no longer material for the purpose of this Appeal.

6. No evidence was taken in this case. The only documentary evidence put in was the Protection Note which is marked as Ex. 1. There was a brief of documents and correspondence, but the same was not marked as an exhibit or as evidence in the suit. On the 22nd March, 1954 J. P. Mitter, J., after recording payment of Rs. 50,000 by the plaintiff gave a judgment for the plaintiff for the balance of the sum of Rs. 93,628-8-0 holding that the Protection Note in suit is itself a policy of insurance and is, therefore, chargeable with duty. The learned trial Judge directed that the Protection Note must accordingly be admitted in evidence upon the plaintiff paying the prescribed duty together with the penalty to atone for the absence of stamp on the Protection Note. He further records the fact in his judgment that the plaintiff offered to pay such duty and penalty and he, therefore, directed the plaintiff to pay the appropriate duty and the penalty with a direction on the Registrar, Original Side of this Court to accept the same.

7. The plaintiff (sic) appealed from that judgment. The Court of Appeal of S.R. Das Gupta, J. and Bachawat J., set aside the decree passed by J. P. Mitter, J. and remanded the matter to the trial Court for following the correct procedure with regard to stamping of documents as provided in sections 35 and 42 of the Indian Stamp Act. The Court of Appeal expressly reserved the rights of the parties by saying

"all the contentions of the appellant and of the respondent which were urged before us would be available to them in the event there is a further appeal

against the judgment of the learned Judge after the case is sent back to him."

When the matter came back to J. P. Mitter, J., on remand he followed the procedure for imposing duty and penalty as directed by the Appeal Court and gave a short judgment on the 6th May, 1958, whose material portion reads as follows :

"The necessary procedure having been followed, I admit the document in evidence and for the reasons given in my judgment dated March 22, 1954 I pass a decree in identical terms as before.

There will be no order as to costs of the present hearing."

8. It is against this judgment that the present Appeal is made by the plaintiff (sic).

9. That gives a short account of the facts and the history of this Appeal.

10. The judgment under Appeal proceeds on the basis that this interim Protection Note is itself a policy of insurance within the definition of Section 2(19) of the Indian Stamp Act. It is on that ground alone that the learned trial Judge came to the conclusion that it could not come under the General Exemption and came to the conclusion that the Protection Note was neither a "letter of cover" nor an "engagement to issue a policy of insurance", within the exemption. He emphasised the fact that the terms and conditions which are to be found in a policy of insurance are all to be found in this Protection Note and also the words "the property is hereby held insured".

11. In our opinion this basic approach to the question is wrong and erroneous. Indeed Article 47 of Schedule 1 of the Stamp Act when dealing with and prescribing duty for policy of insurance including fire insurance policy made exemption. The General Exemption must be regarded as exempting documents which have the character or substance of an insurance policy, but at the same time are not quite the same as an insurance policy itself. In other words but for the General Exemption the documents mentioned therein would have been liable to stamp duty as an insurance policy and therefore the documents covered by the General Exemption would have some of the basic character and feature of a regular policy of insurance. To take any other view would render the exemption meaningless. For instance, the "General Exemption" begins with the words, "letter of cover or engagement to issue a policy of insurance". The words "letter of cover", themselves would show that it is some kind of a cover and, naturally, being a cover, it will acquire and must have the features of an insurance policy or else it will not be a cover at all. If it is to cover, it must mean that the property is to be held insured or covered and some reference of the property covered and the terms of the premium are inevitable. It is, I therefore, no answer, in our view, to say that because a letter of cover has very nearly the features of a policy of insurance, it becomes an instrument chargeable with duty u/s 3 of the Stamp Act.

12. The point is a point entirely of construction of the Indian Statute and the language in which the exemption is couched. A good deal of learning has been devoted at the Bar to explain or to throw light on the Indian Statute and its exemption by reference to the English Statute, the English Stamp Act of 1891, and the English cases. It appears to us that it will be undesirable and, in fact, wrong to base our decision on the Indian Act and its exemption merely on the words of the English Statute and on the English cases. It will be so, not only because a question of construction of a Statute must depend on the language of that particular statute which is being construed but also because in this case, the English Act and the English case law are significantly different from the provisions of the law in India. Without attempting to detail all the differences between Indian and English statutes, which will be unnecessary, it will be more than enough to say in the first place that the English Stamp Act of 1891 has no provision for general exemption such as the one provided in the Indian statute, and secondly that the Indian Stamp Act does not recognise the same principle of stamping of a document after execution as section 15 of the English Stamp Act of 1891 as distinguished from provisions relating to impounding and penalty. There are other differences, for instance, section 91 of the English Stamp Act which uses the words, "agreed to be made", an expression significantly absent in the definition of "policy of insurance" in section 2(19) of the Indian Act. It will not be necessary to multiply those basic differences. They will be enough to show the danger, which must be avoided, of either applying the principles of the English statute or of the English cases decided on the basis thereof to the Indian Stamp Act and its express statutory provisions for general exemption. Therefore the observation of Wilson J., in *Ramen Chetty v. Mahomed Ghouse* ILR 16 Cal 432 at p. 435 that "the present Stamp Act (1879) in India ought to be construed according to the same principles of construction as the Stamp Act in England" must be understood and limited to the sense of general principles of construction and must not be allowed to override and ignore distinctive characteristics of the Indian Stamp Act.

13. Pursuing the point of construction of the provisions made under "general exemption" in Article 47, Schedule 1 of the Indian Stamp Act, it is essential to emphasise the language of the proviso. The proviso makes it clear that on such an exempted "letter of cover" or "engagement to issue a policy of insurance", nothing shall be claimable and such a document shall not be available for any purpose except to compel delivery of the policy therein mentioned. The only purpose, therefore, of an unstamped letter of cover is to found a claim for delivery of policy and nothing else. This limitation, however, can be overcome if, to use the language of the proviso, "such letter or engagement bears the stamp prescribed by the Act for such policy". It is significant that the words used are not that such letter is chargeable with duty. The words used are "bears the stamp prescribed by the Act for such policy". On a proper interpretation, this means that such letter of cover is not chargeable with duty as such under the Act but if it bears the stamp prescribed by the Act for a policy of insurance, then it

will shed its inability and will become a competent document on which a claim for loss could be made.

14. The structure of this statutory provision granting the general exemption, clearly indicates this conclusion. In the first paragraph of the "general exemption", the exempted instruments are mentioned, namely, the letter of cover or engagement to issue a policy of insurance. Then there is a proviso upon that general exemption. The proviso means this that this exemption which the letter of cover gets by not having to pay a stamp is bought at a certain price, namely, that when no stamp is used on such a letter of cover, it is not a document on which any claim could be made except the claim to compel the delivery of the policy. That is the general effect of the broad proviso. But there is a proviso upon the proviso which is brought about by the use of the expression "unless such letter or engagement bears the stamp prescribed by the Act for such policy". In other words, the incompetence of an unstamped letter of cover is cured if it bears a stamp. Now, as no stamp is fixed for such a letter of cover being not a document chargeable with duty, the statute uses the significant words of "bearing the stamp" and indicates the rate by saying that the stamp must be the same for such a letter of cover which is prescribed for a policy of insurance under the Act, which policy is an instrument chargeable with duty under the statute.

15. This principle of construing the proviso is consistent with the general principles on which elaborate arguments have been addressed to us from the Bar. In the 5th Edition of Craies on Statute Law, edited by Sir Charles Odgers, at pages 201-202, the following observations are made:

"The effect of an excepting or qualifying proviso, according to the ordinary rules of construction, is to except out of the preceding portion of the enactment, or to qualify something enacted therein, which but for the proviso would be within it; and such a proviso cannot be construed as enlarging the scope of an enactment when it can be fairly and properly construed without attributing to it that effect"

These principles are well-known and are well-settled as for instance in *Duncan v. Dixon* (1890) 44 Ch D 211 and *Toronto Corporation v. Attorney-General of Canada* (1946) AC 32, as per observations of Lord Macmillan at page 37. One of the fundamental principles of construing a proviso is what was laid down by Moulton L. J. in *R v. Dibdin*. (1910) P 57 at p. 125:

"The fallacy of the proposed method of interpretation is not far to seek. It sins against the fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a proviso. It treats it as if it were an independent enactment clause instead of being dependent on the main enactment."

16. On an analysis of the structure of the exemption in the language in which it is couched and by applying these well-known principles of construction of provisos, we can come to only one conclusion and that is that the said clause

about general exemption first exempts a letter of cover from any stamp. Secondly, by the proviso, it takes away from such an unstamped letter of cover the capacity, which it otherwise by its very terms have, to make any claim except a claim to compel delivery of policy and thirdly it provides that if such letter of cover, although not chargeable with duty yet bears the stamp prescribed for a regular policy under the Act, then it will have all the competence of a regular policy of insurance.

17. This, in our view, is the only consistent way in which all the relevant provisions of the general exemption in Article 47 of schedule 1 of the Indian Stamp Act can be harmoniously construed to give effect to every part of it.

18. The same conclusion is enforced by reference to the language of the opening words of Section 3 of the Stamp Act which is the charging section under the statute. In providing for instruments chargeable with duty, the very principle of the liability of instruments to duty begins with the words, "subject to exemptions contained in schedule 1." Therefore, a letter of cover initially is an exempted instrument and is not chargeable with duty at all. The fact that it may be made to bear a stamp of the same rate or value as prescribed by the Act for a policy of insurance is only to make it competent to be sued upon which otherwise it was not except for the limited purpose of claiming delivery of a policy.

19. The Indian Stamp Act recognises a fundamental classification by specifying instruments chargeable with duty by its charging section 3. The notion of an instrument chargeable with duty is an important and a basic notion under the Indian Stamp Act. Section 2(6) of the Indian Stamp Act defines "chargeable" to mean

"as applied to an instrument executed or first executed after the commencement of this Act, chargeable under this Act, and, as applied to any other instrument, chargeable under the law in force in India except Part B States when such instrument was executed or, where several persons executed the instrument at different times, first executed."

According to this definition, "chargeable" means liability to duty at the time of execution. The significant provision is contained in section 17 of the Indian Stamp Act which provides :

"All instruments chargeable with duty and executed by any person in India except Part B States, shall be stamped before or at the time of execution."

The crucial time, therefore, is before or at the time of execution. That is the only time, and, in no Other time, that the statute recognises when instalments chargeable with duty can and shall; be stamped.

20. Coming now to section 35 of the Indian Stamp Act, it is clear that the whole procedure there laid down applies only to an "instrument chargeable with duty", because the opening words of section 35 of the Act says :

"No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties, authority to receive evidence or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped ;

Provided etc. etc."

21. As we are of the view that a letter of cover is not an instrument at all chargeable with duty under the Indian Stamp Act, the conclusion must follow that such a document could not be subsequently impounded and stamped after its execution or penalty realised in the manner that has been attempted to be done in this case.

22. The next question is whether this particular interim "Protection Note" in the suit is a letter of cover within the meaning of the general exemption. Mr. Niren De has made two points on this branch of his argument. His first contention is that it is not a letter of cover. His second contention is that it is, in any event, not a document upon which the plaintiff could compel the insurance company to issue a policy. Neither of these contentions is in our view, tenable.

23. Taking up his first contention that the Interim Protection Note in this case is not a letter of cover, it is necessary to observe that it has all the features of a letter. It is addressed to the plaintiff by name. It is signed by the Insurance Company. It is true that the words, "Dear Sir", or "Yours faithfully", are not there but they are not such requisites of a letter if the substance and the spirit of a letter are there. This was only an argument on the word "letter". At this stage, it will be appropriate to mention that these expressions have sometimes been very loosely used, such as "cover notes", "interim cover", "interim receipt", "slips" or "letter of cover.". The leading case on the point is the decision of the Judicial Committee of the Privy Council in the *Citizens Insurance Co., of Canada V. Parsons* (1882) 7 AC 96. There Sir Montague Smith discusses these interim covers and protection notes. The following observations at pages 124 and 125 are relevant :

"This note is not a policy of insurance in the common understanding of that word, and was certainly not understood to be so by the parties to it. It is expressly a contract with a view to a policy, making interim provision until a policy is prepared and delivered. It contains a proposal for insurance, which, if accepted by the company, would result in a policy to be based on the terms of the proposal, and issued by the company to the respondent; the company having an option to decline the proposal, in which case no policy would be delivered. The proposal thus offered for acceptance is "to effect an insurance subject to all the usual terms and conditions of this company", and pending the acceptance or refusal of the company, and until the policy is delivered or notice given that the insurance is declined, the property is "held assured under these conditions". No doubt this last stipulation forms a contract of insurance during this interval; but the whole agreement is preliminary only, and, in substance, the note contains a

proposal for a policy to be carried into effect, if accepted, by the delivery of a policy; as subsidiary thereto, and for the convenience of the person proposing to insure, immediate protection is granted to him. The practice of issuing interim notes must have been well-known, and apt words might have been found by the legislature to describe them if they had been intended to be included in the Act. It may have been thought that it would be a clog upon the business of insurance, and would place difficulties in the way of obtaining these interim protection notes, if companies were obliged to prepare them with all the fullness and formalities which the Act requires in the case of policies."

24. Sir Montague Smith later on at page 125 of that Report goes on to discuss the analogy between "interim protection notes" and "slips" and the learned Judge says :

"These interim protection notes, given by fire insurance companies, bear analogy to the "slips" and commonly used in cases of marine insurance, preliminary to the issuing of policies."

25. Later on in the judgment at the same page Sir Montague Smith quotes Blackburn, J. at the same page 125 of that Report:

"As the slip is clearly a contract for marine insurance, and as clearly is not a policy, it is, by virtue of these enactments, not valid, that is, not enforceable at law or in equity; but it may be given in evidence wherever it is, though not valid, material.

It will in our opinion be dangerous to embark on the subtleties of English Law on this point. Difference in English law has been made between Lloyd's slips on the one hand and cover notes and protection notes on the other, and also with what is known as the interim receipt. The English subtleties of form and procedure may be found discussed in Simond's edition of Vol. 22, of Halsbury's Laws of, England, pages 206, 208-09 and also in MacGillivray on Insurance Jaw, 4th Edition, Arts. 652-55 and 659-60. In fact Vol. 1 of Arnould's Law of Marine Insurance, 14th Edition at pages 34 to 38 the learned editor draws pointed attention to the vexed and difficult questions raised by the Stamp Act in England on the legal effect of a "slip" as distinguished from other kinds of protection and cover notes. Those distinctions and differences need not in our view trouble us in our interpretation of the Indian Stamp Act and the construction and interpretation of the language of Article 47 of Schedule 1 thereof with particular reference to the general exemption as provided therein.

26. In this view of the matter it is not necessary to discuss in detail whether the decision of the Bombay High Court in *Tricamji Damji and Co. v. Virji Kanji*, reported in 24 Bom LR 820: (AIR 1923 Bom 142), was rightly or wrongly decided. The learned trial Judge adopted the comments of Sir Dinshaw Mulla at page 62 of the 5th Edition of the Indian Stamp Act to hold that that decision ignored the requirement of Section 7(1) of the Stamp Act. That was a decision on a sea policy for which different provisions are applicable. We are really not

concerned with this point at all in this appeal. We cannot help however alluding to the fact that the Judicial Committee in *Surajmull Nagoremull v. Triton Insurance Co. Ltd.* 52 IA 126 : (AIR 11925 PC 83), did not refer to this Bombay case and to the fact that in Donogh's Indian Stamp Law, 9th Edition at page 215, a work of very high authority in Stamp Law in India the learned author disagrees with the comments of Sir Dinshaw Mulla on the Bombay Case. These authorities, however, serve to show that the words "letter of cover" and "protection notes" are sometimes indiscriminately used in India as more or less equivalent expressions without observing the technical differences that have crept in the English Law.

27. To the same effect reference may be made to Welford and Otter-Barry on fire Insurance, 4th Edition, page 77. It is there stated :

"No formal document is, however, necessary to bind the insurers. Cover may be given informally, as for instance, by letter from the head office. Even a verbal cover is sufficient and the verbal cover may be given by the agent submitting the proposal if his authority extends thus far."

See also Simond's edition. Vol. 22, Halsbury pages 207-08, Article 391 where it is said :

"It has become well established commercial practice to issue interim insurance cover, either pending completion of a detailed proposal, or pending consideration of a proposal which has been completed and submitted, or a form of acceptance may be in use which itself defines the scope of interim insurance pending the issue of a formal policy. The issue of such interim insurance falls within the authority of an insurance agent unless he is excluded, expressly or impliedly, by the terms of his authority, from committing his principals in that way. There must of course be a contract for the grant of such an interim insurance, however informally or even colloquially it may be made."

28. The next argument of Mr. De was that the terms of this particular protection note did not permit any action on the same to compel the insurance company to deliver a policy. For this purpose he relied on the portions of that protection note appearing under "N. B." which has been quoted above. The main point of his submission on this branch is that the insurance company had the option to decline the policy. There are two answers to this argument of Mr. De. The first answer is that for the period covered by the protection note the plaintiff could insist on a policy being issued, though it is not the policy which was to follow as the more permanent contract of insurance. The second answer is that even assuming that a policy could not be compelled, the language of the General Exemption does not make the least difference on this point. If this particular Interim protection note cannot be used by its very terms to compel the insurance company to issue a policy, that does not mean that by stamping it the note will be able to compel delivery of a policy, for the simple reason stamps do not create and alter the terms of a document. Nor can this argument, mean that such a

protection note cannot come under the General Exemption. The proviso only says this that an unstamped letter of cover cannot be used for any purpose except to compel delivery of the policy. If the letter of cover is otherwise incompetent to compel delivery of the policy, then the fact that even by stamping it, that will not secure that result does not exclude such an instrument and such letters of cover from the operation of the General Exemption.

29. This disposes of the main point urged before us in the appeal. This court therefore holds that this unstamped "Interim Protection Note" cannot be used by the plaintiff to make a claim for the loss under Article 47, Schedule 1, General Exemption of the Indian Stamp Act, and the suit must therefore fail. It follows that the judgment and decree of the learned trial Judge are set aside and the appeal is allowed.

30. We need only make a bare reference to another point which was urged on behalf of the appellant before us. That point is that the judgment of the learned trial Judge was in any event erroneous On the ground that he gave a decree without any proof of the loss or the damage. The quantum of damage was disputed on the pleadings and no formal admission is recorded in the Court Minutes. No proof was adduced on the question of quantum.

31. In the result the appeal is allowed and the suit is dismissed with costs, both here and below and certified for two counsel.

Bose, J.

32. I agree.