

(2013) 04 KAR CK 0043

In the Karnataka High Court

Case No : Writ Petition Nos. 8667 and 16882/2013 (GM-CPC)

Sri. Sharif Ahmed

APPELLANT

Vs

Bank of Baroda

RESPONDENT

Date of Decision : 24-04-2013

Acts Referred:

Citation : (2013) 04 KAR CK 0043

Hon'ble Judges : A.N. Venugopal Gowda, J

Bench : Single Bench

Judgement

A.N. Venugopala Gowda, J.—The respondent has filed O.S. No. 80/2009 against the petitioner in the Court of Principal Senior Civil Judge and C.J.M. at Davanagere to pass a decree in its favour and against the defendant for realization of Rs. 5,76,039/- with Court costs, current and future interest and for grant of consequential reliefs. The petitioner/defendant filed written statement and sought dismissal of the suit. He has made a counter claim to pass a decree against the plaintiff for realization of Rs. 2,81,906/- with interest. Issues having been raised, trial has commenced. For the plaintiff a witness deposed as PW. 1, through whom, Ex. P. 1 - Promissory Note was marked. The petitioner/defendant filed on 07.11.2012, I.A. 7/2012, to direct the plaintiff to pay the duty and penalty of Rs. 3,57,500/- on the instrument marked as Ex. P1. He filed I.A. 8/2012 on the same date to recall the order dated 24.01.2012, on which date, the alleged insufficiently stamped document - Promissory Note was marked as Ex. P1. For the plaintiff, objections having been filed, the learned Trial Judge having heard the learned counsels of the parties, finding that the document does not amount to a Bond as contended by the defendant and the defendant having not been objected to the marking of the document at the time of trial and I.As. 7 and 8 having been filed at the belated stage, passed an order of rejection on 14.12.2012. Assailing the said order, these writ petitions have been filed. Sri. M. Rama Mohan, learned advocate appearing for the petitioner contended that Ex. P. 1 does not have characteristics of a promissory note and hence, it is required to be considered as Bond and the document having been drawn on insufficiently

stamped paper is liable for impounding and payment of duty and penalty by the plaintiff. Learned counsel further contended that I.As. 7 and 8 having not received proper consideration and the impugned order being irrational, interference in the matter is warranted.

2. Perused the writ record.

3. For the plaintiff, PW. 1 has deposed, through whom Ex. P1 was marked. The said document has been admitted in the evidence without there being objection at the time of admitting the instrument in the evidence. Hence, the admission of the said document shall not, except as provided under S. 58 of the Karnataka Stamp Act be called in question at any stage of the same suit or the proceeding on the ground that the instrument has not been duly stamped. S. 58 of the Act deals with the power of the Appellate Court to review the finding recorded by the original Court under S. 34 of the Act either suo-motu or on the application of the Deputy Commissioner.

4. In the case of *Javer Chand and Others Vs. Pukhraj Surana*, , the Apex Court has held that "once a document has been marked as an exhibit in the case and the trial has proceeded all along on the footing that the document was an exhibit in the case, S. 36 of the Stamp Act comes into operation." It has been further held as follows:-

Once a document has been admitted in evidence, as aforesaid, it is not open either to the Trial Court itself or to a Court of Appeal or revision to go behind that order. Such an order is not one of those judicial orders which are liable to be reviewed or revise by the same Court or a Court of superior jurisdiction

Since no objection was raised by the petitioner when the document was admitted in the evidence as Ex. P1, I.As. 7 and 8 filed in the suit are untenable. However, in view of section 58 of the Act, the Appellate Court can review the finding recorded by the original Court under S. 34 of the Act, either suo-motu or on the application filed by the Deputy Commissioner. It is open to the petitioner, in case an appeal were to be filed in the matter, to raise the matter before the Appellate Court for passing of appropriate order, in exercise of power of the Appellate Court under S. 58 of the Act.

Subject to the above, writ petitions being devoid of merit, stand rejected.