(1946) 01 BOM CK 0002

In the Bombay High Court

Case No : Civil Reference No. 5 of 1043

The Superintendent of Stamps	APPELLANT
Vs	
Ramkrishnalal Dahyabhai	RESPONDENT

Date of Decision : 08-01-1946

Acts Referred:
Stamp Act, 1899 — Article 43, 57

Citation : AIR 1947 Bom 343 : (1947) 49 BOMLR 277

Hon'ble Judges : Macklin, J;Lokur, J;Leonard Stone, J

Bench : Full Bench

Judgement

Leonard Stone, Kt., C.J.—This is a reference u/s 57 of the Indian Stamp Act, 1899. The question which is referred to this full bench is whether all or any of the notes (there are five memoranda in all) are chargeable with duty under Article 43(a) of the first schedule to the Act or whether the said notes or any of them are exempt from stamp duty under Exemption (a) to Article 5 of the Indian Stamp Act.

2. The matter originally came before this Court consisting of my learned brothers Divatia and Macklin and myself, and we adjourned the reference and sent it back, because we were not satisfied that the statements contained in the case were sufficient to enable us to determine the question referred to us, and we called for certain rules and regulations, if any, mentioned in each contract note with regard to the commodity mentioned therein. We directed that if there were no rules and regulations in respect of any commodity, then the necessary affidavit was to be filed to that effect.

3. It will be convenient in the first place to refer to the five memoranda, all of which are in the same terms, though they deal with different commodities. They are on printed forms in which details of the particular transaction are entered in pencil. The material part of the memoranda which is printed is as follows :-

Please note that on the abovementioned date the following transaction (on condition) of giving and taking delivery of the goods has been effected on ''paki adat'' (terms) by your order. You shall have to pay margin against the transaction whenever we may demand the same and if you will make delay in remitting the same, we shall deal with the transaction at your risk according as we like. No objection of yours in that behalf shall hold good. The risk as regards the other party (to the contract) is on us. The said transaction is effected on the understanding that the rules and regulations of the association of the market concerned, which may be prevailing at the time and which may come in force hereafter, are binding.

It was because of the last sentence that it was necessary to send the reference back in order to ascertain whether there were any rules and regulations which applied to any of the memoranda.

4. Unfortunately the respondents have no desire to cooperate further, and Mr. Chhatrapati who appeared for them on the last occasion has on instructions asked leave to withdraw his appearance, which leave we were constrained to grant. But Mr. Chhatrapati has been good enough to intimate that he is prepared to assist the Court as amicus curiae, should it become necessary.

5. Now, the matter is obviously one of considerable importance, because these pakka adat contracts, which are a feature of this city, are greatly in use in the commercial community, and it would appear that the persons who are concerned with these dealings have never considered that the relevant memoranda are subject to stamp duty. The material articles under the Indian Stamp Act are as follows. By Section 3 of the Act it is provided that subject to the provisionis of this Act and the exemptions contained in the first schedule, the following instruments shall be chargeable with duty of the amount indicated in that schedule as the proper duty therefore respectively, that is to say (a) every instrument mentioned in that schedule which, not having been previously executed by any person, is executed in British India on or after the first day of July, 1899. Turning to the schedule, Article 43 is in these terms:-

Note or Memorandum sent by a Broker or Agent to his principal intimating the purchase or sale on account of such principal (a) of any goods exceeding in value twenty rupees; Stamp duty two annas.

6. In the question referred to us Article 5 is mentioned. This provides, under the heading "Agreement or Memorandum of an Agreement", for a general exception which under Sub-clause (a) is an agreement or memorandum of agreement for or relating to the sale of goods or merchandise exclusively, not being a note or memorandum chargeable u/s 43. So that the position is that if any of these notes is chargeable under Article 43, then we do not get as far as looking; at the exception. It appears from the affidavit which has now been put in by the Superintendent of Stamps that none of the notes or memoranda in this case, although they refer to the rules and regulations of the association of the market concerned, are in any way relevant, and no rules and regulations have been

produced. So that we must proceed to consider the case as if the last sentence of the notes was of no effect.

7. The point therefore is whether the contracts or any of them are notes or memoranda sent by a broker or agent intimating the purchase or sale on account of his principal of any goods exceeding in value twenty rupees. Now it is to be observed, and Mr. Joshi on behalf of the Crown has pointed out, that in the form of memorandum the expression "your order" is used, and that there is a provision for payment of margin. In some of the reported decisions it has been noticed that the relationship between the pakka adatia, and his constituent contains some of the elements of agency. The whole subject has been exhaustively dealt with in an article under the nom-de-plums of "Inner Temple" contained in 33 Bom. L.K. (Journal Section) at p. 57 and which is written by the late Sir Norman Macleod, a former Chief Justice of this High Court, who had an unique knowledge of the commercial dealings of this city. The learned author having pointed out that the pakka adatia is the creation, as a legal entity, of the Bombay High Court says at p. 59:-

To meet the objection that the transactions were wagering, the pakka adatia sought to prove that he was only an agent, who brought about contracts between purchasers and sellers, but once it was established, as it was in Bkagwandas v. Kanji, that the constituent never came into contact with anyone except the pakka adatia, and had no concern whatever with any transactions which the pakka adatia entered into with third parties, then it should have been obvious that there was no question of agency in the business, that it was not correct to consider the communication of the constituent as an ''order'', that it was as a matter of fact an ''offer'' to buy or sell, which, if accepted, became a contract.

It was the failure to distinguish an ''offer'' from an ''order'', and to realise a proper legal effect of his perfectly correct decision on the evidence, which, with all due respect, clouded the judgment of Chandavarkar J. in Bhagwandas v. Kanji and surrounded the pakki adat system with a halo of mystery, from which it has never since been relieved.

The learned author goes on to point out that the true relationship between pakka adatia and constituent is that of principal and principal.

8. In the contracts before us we have the words, which in my judgment are of vital importance, "the risk as regards the other party to the contract is on us", that is to say on the pakka adatia, From this, in my opinion, it is clear that the true relationship between the pakka adatia and his constituent in these contracts is that of principal and principal. The contracts are for sale and purchase or purchase and sale and in each case are between the two of them and no one else. That being so, Article 43 of the Indian Stamp Act has nothing whatever to do with any of these notes since they are not notes or memoranda sent by a broker or agent to his principal.

9. In these circumstances, in my opinion, the reference should be answered by saying that none of the notes are chargeable with duty under Article 43 (a) of the first schedule to the Indian Stamp Act.

Macklin, J.

10. I agree. Quite apart from the authorities which the learned Chief Justice has referred to, all of which show that at the time of the issue of these notes the pakka adatia must be regarded as a principal, it seems to me that whatever might ordinarily be the incidents of pakki adat contracts, and even if (contrary to the authorities) it would, ordinarily be proper to regard a pukka adatia as a broker or agent, still as regards these particular contracts it would be impossible to do so, because the pakka adatia himself here accepts all risks as regards the other party to the contract. In my judgment it is impossible to regard a person who accepts a risk of this sort as a mere agent. He must be regarded as a principal; and the contracts therefore fall outside the scope of Article 43 (a) of the Indian Stamp Act.

Lokur, J.

11. I agree. The question referred to us u/s 59 of the Indian Stamp Act is whether contract notes issued by a pakka adatia to his constituents are chargeable with stamp duty under Article 43 (a) of the First Schedule to the Act, or are exempt from stamp duty under Exemption (a) to Article 5. Article 43 (a) is applicable to a note or memorandum sent by a broker or agent to his principal intimating the purchase or sale on account of such principal of any goods exceeding in value twenty rupees. The notes in question do contain an intimation of the purchase or sale of goods exceeding in value twenty rupees, and were sent by a pakka adatia to his constituent. The article will, therefore, apply to them if the pakka adatia was the broker or agent of his constituent. It is recited in the notes that the transactions were effected on pakki adat terms, and that the adatia undertook the risk as regards the other party, that is to say, the Bombay merchant from whom he had purchased, or to whom he had sold goods as per instructions of his constituent. Thus no contractual privity was established between the constituent and the Bombay merchant. The nature of the relation between the pakka adatia and his constituent is now well settled. In Bhagwandas v. Kanji, 7 Bom. L.R. 611 Sir Lawrence Jenkins, Chief Justice, observed (p. 213) :-

It is clear that the contract between the Plaintiffs and the Defendant was on pakki adat terms; then again it is amply proved that, where that is so, there is no privity between the up-country constituent and the Bombay merchant.

He further observed (p. 216) :

I think the contract between the parties was one of employment for reward, and the incidents proved appear to me to converge to the conclusion that the contract of a pakka adatia in circumstances like the present is one whereby he undertakes, or to use the word in its non-technical sense as businessmen on occasion do use it, guarantees that delivery should, on due date, be given or taken at the price at which the order was accepted, or differences paid: in effect he undertakes or guarantees to find goods for cash or cash for goods or to pay the difference. I do not say that there is no relation of principal and agent between the parties at any stage; there may be up to a point, and that this is legally possible is shown by Melish, L.J., in Ex parte White, (1870-71) L.R. 6 Ch. 397 where he speaks of a ''person who is an agent up to a certain point''. So here there may have been that relationship in its common meaning for the purpose of ascertaining the price at which the order was to be completed, and to this point of the transaction all the obligations of that relation perhaps apply. But when that stage is passed, I think the relation is not that of principal and agent, but of the nature I have indicated.

12. This passage was cited with approval by Macleod C.J. in Manilal Raghu with v. Radhakisson Ramjiwan, 22 Bom. L.R. 1018 and by Abdul Rashid J. in Gopal Das v. Mul Raj A.I.R.[1937] Lah. 389 .

13. Thus a pakka adatia is an agent of Ms constituent only up to a certain point only for the purposes of ascertaining and giving a correct quotation of the price. But thereafter when the transaction takes place, he ceases to be an agent and assumes towards his constituent the character of a principal, and the transaction must be regarded as a contract between principal and principal. In fact the constituent and the Bombay merchant having never come into contractual relationship, both of them look to the pakka adatia as the principal.

14. This being clear, we have to determine whether the adatia was an agent when he wrote out and sent the notes of intimation to his constituent, as that is the stage when the instrument becomes chargeable with stamp duty u/s 3 of the Indian Stamp Act. At that time the transactions were already completed and therefore the pakka adatia had ceased to be the agent of his ?constituent and had assumed the role of a principal. Hence the notes cannot be said to have been sent by a broker or agent to his principal and do not fall under Article 43 (a). If the notes be regarded as memoranda of agreements falling within Article 5 (c), then they are exempted from duty by Exemption (a) in that article, since they relate to the sale of goods exclusively and are not chargeable under Article 43. They must, therefore, be held not chargeable with stamp duty, and I agree that the reference should be answered as proposed by my Lord the Chief Justice.