
(1992) 12 MAD CK 0002
In the Madras High Court
Case No : Appeal No. 450 of 1983

Union Batik of India

APPELLANT

Vs

The Eastern Electric Co. and 4 others

RESPONDENT

Date of Decision : 02-12-1992

Acts Referred:

Stamp Act, 1899 — Section 12, 12(1)(a), 12(3)

Citation : (1992) 12 MAD CK 0002

Hon'ble Judges : Maruthamuthu, J; K.M. Natarajan, J

Bench : Division Bench

Advocate : C.V.G. Iyer, for the Appellant; V.S. Subramaniam for Respondents 4 and 5, for the Respondent

Judgement

K.M. Natarajan, J.—The plaintiff is the appellant. The appellant-plaintiff filed the suit against defendants 1 to 5 who are respondents for

recovery of money. The case of the appellant is that the 1st defendant firm approached the plaintiff requesting for granting certain credit facilities

like cash credit facility, hypothecation facility and bills discounting facility. Defendants 2 and 3 are partners of the first defendant-firm. The 4th

defendant, who is the husband of the second defendant, is the power of attorney agent of defendants 2 and 3. The following documents were

executed in favour of the plaintiff to secure the credit facilities:-

1. Pledge agreement dated 12.2.1976.
2. Promissory note for Rs.15,000/- dt. 21.7.1976.
2. Letter of continuity for overdraft account dt. 21.1.1976.
3. Letter of continuity for Rs.15,000/- dt. 27.7.1976 (Cash Credit account).
4. Promissory note dt. 27.7.1976 for Rs.15,000/-.

On 740.1977, the plaintiff wrote to the 1st defendant firm informing them about the two types of credit facilities granted, to the 1st defendant-firm, the quantum of facilities granted the interest chargeable, the security for the loan and other conditions. One important condition on which the loan was granted was that the advances have to be guaranteed by the 5th defendant M. Sundaram and the fourth defendant M. Ramachandran. Since defendants 1 to 3 did not repay the amount as demanded, the plaintiff threatened legal action. At that stage, the 4th and 5th defendants requested the plaintiff to bear with defendants 1 to 3 and not to take legal action. Defendants 4 and 5 executed a letter of guarantee in favour of the plaintiff; The first defendant-firm went on availing credit facilities from the plaintiff. The account of the first defendant-firm with the plaintiff was always overdrawn. The plaintiff wrote a registered letter on 9.4.1980 to the 9th defendant informing him about the outstanding dues from the 1st defendant-firm, Copy of the said letter was sent to the 1st defendant also. As the defendants failed and neglected to pay the amount, the interest went on accumulating. The pledge account was remaining inoperative for a long time. The letters written to the defendants did not evoke any response. The plaintiff issued a registered letter dated 9.9.1980 to the first defendant-firm reminding the firm of its promise to remit at least Rs.10,000/- in a fortnight's time demanding payment of the outstandings. Copy of the said letter was also sent to the 5th defendant as guarantor. Though the 1st defendant-firm wrote to the plaintiff a letter dated 30.9.1980 promising to remit Rs.1,000/- per month from October onwards, they did not keep up the promise. There was also subsequent confirmation letter given by the 1st defendant wherein also the 1st defendant assured that the entire accounts will be settled. Since it was not kept up after issuing a registered notice of the first defendant-firm, the suit has been laid. It is stated that the 1st defendant firm and its partners, namely, defendants 2 and 3 are jointly and severally liable to the plaintiff for the suit claim and defendants 3 and 5 are liable as guarantors.

Defendants 1 and 2 in their written statement, while denying the allegations in the plaint, inter alia, contended that it is true that the plaintiff advanced credit facilities on various counts, but the amount advanced and the amount now claimed is at variance and, in fact, abnormally inflated. The plaintiff

is put to strict proof. It is further contended that the principal amount and the rate of interest have not been indicated. The figures show that the plaintiff has charged interest on interest and abnormally inflated the suit claim which are not maintainable in law. The suit is barred by limitation. The plaintiff holds goods under pledge belonging to the defendants and there is practically no mention about them in the plaint. The goods under lock and key are worth far more than the amounts claimed in the suit. In any event, the claim for interest is exorbitant and usurious. Hence, the suit has to be dismissed

2. The third defendant remained expert. Defendants 4 and 5 in their written statement, while denying the allegations in the plaint, inter alia, contended that they were merely guarantors in or about 1975 when originally the facilities were granted to the first defendant-firm and they do not know about the dealings between the plaintiff and the first defendant and its partners. The first defendant-firm was constituted on 31.5.1973 and to the knowledge of the plaintiff, the first defendant-firm was dissolved on 1.4.1976. The guarantee was given by the firm while it was a partnership and in any view the matter, after the guarantee that had been given at the time of the facilities were granted originally, is hopelessly barred by limitation against these defendants. So far as these defendants are concerned, the important condition on which the loan was granted was that the advances have to be guaranteed by the 5th defendant and the 4th defendant. The firm itself had been dissolved on 1.4.1976 and thereafter, these defendants had nothing to do with reference to the first defendant or the plaintiff or the guarantee. Hence, there is no cause of action as against these defendants at the time when the suit was filed. It is further stated that the plaintiff had obtained the signatures on a blank instrument fraudulently and evidently filled up the said paper as if it was executed on 4.1.1979. These defendants reserve their right to file additional written statement and as and when they are able to get copies of the alleged document since they had not been given copy of the alleged deed dt. 4.1.1979. These defendants had not executed any guarantee on 4.1.1979. Hence, they prayed for dismissal of the suit.

3. On the pleadings, the trial court framed as many as four issues:-

1. Whether the interest claimed by the plaintiff is usurious?

2. Whether the suit claims is barred by limitation?

3. Whether the defendants 4 and 5 did not execute the guarantee on 4.1.1979?

4. To what relief, if any, the plaintiff is entitled?

4. On the side of the plaintiff, two witnesses were examined and Exs. A1 to A43 were marked, on the aid of the defendants, the 5th defendant

was examined himself as D.W.I and the 4th defendant as D.W.1 No documents were filed.

5. The learned trial Judge after taking into consideration the oral and documentary evidence and for the reasons assigned in his judgment, rendered

a finding under issue No.1 in favour of the plaintiff to the effect that the interest claimed is not usurious or excessive. Under issue No.2 it was held

that the claim is not barred by limitation. Under issue No.3, it was held that defendants 4 and 5 have executed the guarantee letter on 4.1.1979,

but it is not valid. Under issue No.4, the trial court granted a simple money decree for a sum of Rs.58,138-88 against defendants 1 and 2 with

future interest and costs and dismissed the suit as against defendants 3 to 5. Aggrieved by the same, the plaintiff has preferred this appeal.

6. Learned counsel for the appellant took us through the pleadings as well as the evidence and the judgment of the trial court. He submitted that the

3rd defendant who was a partner at the time when credit facilities were extended and the fact that subsequently she was relieved from the

partnership and the 3rd defendant become the sole proprietary, could not absolve her of her liability, since in her capacity as erstwhile partner, she

is also liable and the Court below is not justified in negating the claim as against the third defendant. He would also further submit that the claim

against defendants 4 and 5 was negative only on the sole ground that it was not cancelled according to the rules. The plaintiff has put the seal over

the rubber stamp and that alone is sufficient compliance for cancellation and as such, the finding rendered by the Court below is not sustainable and

the Court below ought to have passed a decree against defendants 3 to 5 also.

7. The point that arises for consideration in this appeal is:-

Whether the cancellation of the guarantee is effected in accordance with the provisions of the Stamp Act and whether defendants 3 to 5 are also

liable for the suit claim?

8. The only question to be considered is whether the cancellation of the guarantee letter Ex. A16 by affixing the seal of the bank is in accordance

with the provisions of S.12(3) of the Stamp Act. For proper appreciation, it is worthwhile to quote the relevant provisions of the Stamp Act under

S.12(1)(a) and 12(3), which reads as under:

12.(1)(a): Whoever affixes any adhesive stamps to any instrument chargeable with duty which has been executed by any person shall, when affixing

such stamp, cancel the same so that it cannot be used again;

12(3) The person required by sub-S.(1) to cancel an adhesive stamp may cancel it by writing on or may cancel it by writing on or across the stamp

his name or initials or the name or initials of his firm with the true date of his so writing, or in any other effectual manner.

9. In the instant case, in support of his contention, the learned counsel for the appellant relied on the various decisions and submitted that the

signature of the person to cancel is not necessary but it is sufficient if it is established that the stamp was effectually cancelled so that it cannot be

used again. Learned counsel for the appellant contended that the seal of the bank has been put and it is clearly visible and in view of the same, this

stamp cannot be used again. In this connection, she relied on the following decisions;

In *R.S. Nalwa v. The Allied Metal & Engineering Works*, AIR 1980 N.O.C.160 Del it was held:

One of the methods of cancelling adhesive stamp affixed to document is for the person cancelling it by writing on, or, across the stamp his name or

initials or the name or initials of his firm with the true date of his so writing. But that is not exhaustive of the modes of cancellation. The test provided

by law simply is whether the stamp can be used again if lifted from the document.

In AIR 1938 505 (Lahore) it was held:

The Legislature has not attempted any exhaustive list of the modes in which cancellation may be done in sub-S.(8) of S.12. The object of the

cancellation obviously is to make the stamp unfit for further use in the ordinary course of business, and whether this has been done in any particular

case is a question to be determined on an examination of the instrument in question. The section does not lay down that the cancellation must be

such that it would be impossible for a criminally inclined person to use the stamp again.. Thus, where the executant of a promissory note clearly

initials his signature on the adhesive stamps on it, the mere fact that the date on which the execution initialed does not appear On any of them, does

not make it not effectually cancelled

In K.A. Lona etc. Vs. Dada Haji Ibrahim Hilari and Co. and Others, it was held:

The learned counsel for the second respondent strenuously contended that drawing two lines across the stamps is not sufficient cancellation

according to law, S.12 of the Stamp Act deals with cancellation. S.12(3) reads:

The person required by sub-S.(1) to cancel an adhesive stamp may cancel it by writing on or across the stamp his name or initials or the name or

initials of his firm with the true date of his so writing or in any other effectual manner"

Even according to this provision cancellation by writing the signature or initials is not the only way of cancelling the stamp. Car Nation must be

done in an effectual manner. Writing the name or initials is one such effectual manner, indicated in S.12(3) of the Act. There could be other

effectual ways in which stamps could be cancelled. The purpose of cancellation is to see that the stamps are not used again as is mentioned in

S.12Clause (1)(a) and (b) of the Stamp Act, where it is stated, ""cancel the same so that it cannot be used again"". Learned counsel for the second

respondent pointed out that where one or two parallel lines are drawn across the stamps, it is still possible for somebody to put his signature above

the line to make it appear that the stamp was being cancelled for the first time and in such case it cannot be said to be an effectual cancellation and

therefore, drawing a line or two in that fashion cannot be said to be effective cancellation. We are unable to agree with his submission. The

expression "so that it cannot be used again only means that it cannot be used again in the normal course without realising that the stamp has already

been cancelled. The expression does not imply that the cancellation must be made in such a way as to make it impossible for any dishonest person

to use the same once again fraudulently. The test to see if a stamp has been effectually cancelled is to see whether an ordinary, honest, law-abiding

citizen would, on seeing the stamp, believe that it is already cancelled and therefore refrain from to use it once again. We are fortified in this view

by the authorities collected at pages 196 to 197 of the Indian Stamp Act by K. Krishnamurthy and R. Mathrubutham 1980, Edn. The learned

authors refer to various decisions in the following manner:-

On the other hand, it has been held that the words ""so that it cannot be used again"" do not imply such a degree of cancellation as would make it

impossible for any dishonest person to make thereafter a fraudulent use of stamp. The criterion for determining whether a stamp has been

effectually cancelled is whether the ordinary conscientious man would, on seeing the stamp come to the conclusion that it has been already used.

The question is one that depends on the facts of each case. Thus cancellation of the stamp by drawing diagonal lines across it, their ends extending

to the paper, would be sufficient. Drawing lines across an adhesive stamp is a good cancellation provided an intention to cancel is clear from what

has been done. So also the drawing of two lines crossing each other across the face of the stamp. Also the drawing of two parallel lines on the

three stamps affixed to a promissory note whether a perusal of the note showed that the intention to cancel was clear....

Ultimately it was held that the lines have been drawn in such a way that it cannot be used again and cancellation, therefore, was effective and

lawful.

In Mrs. K. Sudersanam Vs. S. Venkatarao, it was held:

The question whether a stamp has been sufficiently cancelled must always be a question of fact. Where a perusal of the promissory not, in question

would go to show that the intention to cancel was clear from the drawing of the two parallel lines on the three stamps it must be held that the three

stamps have been duly cancelled as required by the provisions of S.12 of the Stamp Act and that the drawing of the two parallel lines on the three

stamps constitute sufficient cancellation, A. Narayana Reddy Vs. Dr. J. Sarojini Devi and Another, dissented from....It was observed in the

decision of Virabhadrapa v. Bhimaji, ILR 28 Bom.432 that the mere drawing of two parallel lines without more over a receipt stamp affixed to an

instrument did not have effect of cancelling it as required by the stamp Act. Learned Judge Narasimhan, J. pointed out that in a later decision of

Bombay High Court in Tata Iron & Steel Co. Ltd. AIR 1928 Bombay 80 another Division Bench of the same High Court expressly dissented

from the earlier decision ILR 28 Bombay 432 referred to decision of the Allahabad High Court in Mahadeo Kori Vs. Sheoraj Ram Teli, as

concluded that it was a matter of opinion to be decided on the facts of each case. Learned judge also distinguished the earlier decision of the

Rangoon High Court in U. Kyaw v. Hari Dutt AIR V 1934 Rang.364 on the ground that the observations therein were incidental and did not

appear to have really been formulated for the decision of that case and even so a contrary view was expressed by the same High Court in AIR

1937 Rang.408.

10. The ratio laid down in the above cases clearly establish that each case has to be decided on the facts of that case and we have to see whether

the stamp has been effectually cancelled as contemplated under S.12(3) of the Stamp Act, so that it cannot be used again.

11. As learned counsel for the respondent would submit that it is the evidence of P.W.2 that it is usual for the bank to initial on the stamp and

agreed that it is a mistake in this case. Since the usual practice has not been followed, on that account alone, it has to be held that it has not been

effectually cancelled. Learned Counsel also submitted that the proper officer to cancel is only the Manager as per the rule and as per the provisions

of the Stamp Act. We will deal with this question later. Now as regards the question of cancellation, we have gone through the documents and we

find that a seal of the bank has been put over the stamp and we are of the view that from the way in which the stamp of the bank was affixed, it

cannot be used again and as laid down in the above quoted decisions, in our view, the stamp has been effectually cancelled as contemplated under

S.12(3) of the Act and we do not agree with the view expressed by the learned trial Judge in this regard, we are also in entire agreement with view

expressed in the above quoted decision with regard to cancelling the stamp.

12. On an appraisal of the document Ex.A16 and the Stamp Act, we came to the conclusion that by affixing bank's seal over the stamp, the stamp

cannot be used again and it is an effectual cancellation as required under S.12(3) of the Act, Hence we hold this point in favour of the appellant.

13. Now, as regards the second contention put forward by the learned counsel for the petitioner, even though this point was not raised before the

lower court as it is a question of law, we find some force in the contention of the

learned counsel for the respondent. As per R.9 of the Act, the officers specified in Appendix I and any officer appointed in this behalf by the Government are empowered to affix and impress or perforate labels and each of them shall be deemed to be "the proper officer" for the purposes of the Act and of these rules. As per Appendix I, the proper officers are Managers and Agents of the Nationalised Banks, so far as banks are concerned introduced by G.O.Ms.No.778, Commercial Taxes and Religious Endowments Department dated 17th June 1976.

14. In the present case, though P.Ws. 1 and 2 were examined and P.W.2 had spoken about the cancellation of the agreement Ex.A16, he has not stated as to who cancelled the stamp and he does not say as to who affixed the adhesive stamp in Ex.A16. When we asked learned counsel for the appellant, whether there is any evidence available on the side of the plaintiff to show as to who has actually affixed the stamp or cancelled the adhesive stamp, the learned counsel is unable to show anything from the evidence, either documentary or oral but can only say that the stamp was affixed by the bank, as stated by P.W. 1. But as per R.9, it has to be done by a specified officer namely Manager or Agents of Nationalised Banks. Further bank itself is not person who is competent to cancel the adhesive stamp.

15. With regard to the validity of Ex.A16, we are constrained to confirm the finding of the trial Court on the ground that it has not been duly established that it was done by proper officer. Once it is held that the cancellation has not been done according to law, certainly, no decree can be passed against D-4 and D-5 on the basis they were proceeded by the appellant. Hence we hold that the dismissal of the suit as regard D-4 and D-5 is perfectly correct and no interference is called for.

16. As regards D3 is concerned though D-3 was ex parte, it is admitted case that D-3 was one of the partners at the time of A1, subsequently, at the time of Ex.A15, the appellant has not obtained renewal of the earlier loan on the ground that D2 is the sole proprietary of the D-1 firm. The appellant petitioner itself is acquiesced about the fact and there cannot be novation of contract as rightly pointed out by the trial court. Hence no decree can be passed against D3. The appellant cannot plead ignorance of the change of partnership and once the petitioner itself accepted the

fact that D3 was relieved and it has been converted to proprietary concern, it is not open to the appellant petitioner to proceed against D-3. In that view we have to confirm the dismissal of the suit against D3 also.

17. Though the Court has granted only a money decree as no decree for redemption of the pledged goods has been granted, by virtue of the orders passed by this court, they were already sold and the sale proceeds accounted to the credit of the suit. We have to observe that the amount deposited out of the sale proceeds of the pledged goods has to be given credit towards the decree amount. In the result, the judgment and decree passed by the Court below are confirmed and this appeal fails and is dismissed. However, in view of the circumstances, we direct the parties to bear their own costs.