

(1967) 07 AHC CK 0010

In the Allahabad High Court

Case No : Miscellaneous Reference No. 654 of 1963

United Bank of India Ltd.

APPELLANT

Vs

Ram Chandra Kapoor

RESPONDENT

Date of Decision : 28-07-1967

Acts Referred:

Stamp Act, 1899 — Article 5, 6(2), 61

Citation : (1968) 38 CompCas 620

Hon'ble Judges : R.S. Pathak, J; Jagdish Sahai, J

Bench : Division Bench

Advocate : K.N. Gupta, for the Appellant; S.D. Pandey and A.P. Pandey, for the Respondent

Judgement

Jagdish Sahai, J.—This reference by Sri R.C. Chaturvedi, Chief Inspector of Stamps (Collector under the Indian Stamp Act), has been made to this court u/s 61 of the Indian Stamp Act (hereinafter referred to as the Act). In suit No. 7 of 1961, United Bank of India v. Ram Chandra Kapur of the Court of the Second Additional Civil Judge, Varanasi, a large number of documents were filed by the United Bank of India Limited (hereinafter referred to as the bank). These documents included three deeds which were marked as papers Nos. 52C, 57C and 61C, at the trial. According to the Chief Inspector of Stamps, these three documents were liable to stamp duty as provided by Article 6(2) of Schedule I-B of the Act.

2. The case of the bank was that the only duty that was liable to be paid was the one provided by Article 5 of the Act. Suit No. 7 of 1961 was ultimately compromised. However, the Chief Inspector of Stamps has, by means of this reference, requested this court to declare that the following duty is payable in respect of each one of these documents :

Document

Duty Chargeable

Duty Paid

Deficiency

Penalty

Total due.

52C

Rs. 281.25

Rs. 2.00

Rs. 279.25

Rs. 2792.50

Rs. 3071.75

57C

Rs. 375.00

Rs. 2.00

Rs. 373.00

Rs. 3730.00

Rs. 4103.00

61C

Rs. 431.25

Rs. 2.00

Rs. 429.25

Rs. 4292.20

Rs. 4721.45

3. Mr. K.N. Gupta, who has appeared for the bank, has submitted that the instant reference should be rejected for the following reasons :

1. That the documents in question were never "admitted" with the result that no reference u/s 61 of the Act was to be made to this court.

2. Article 5 and not Article 6 of Schedule I-B of the Act applies to the present case and the duty already paid is sufficient.

3. That in the instant case the bank was entitled to remission of stamp duty as provided by Section 9 of the Act.

4. Learned counsel for the parties have addressed us on the three questions

mentioned above.

5. No other point has been raised before us.

6. Section 61 of the Act, so far as relevant for our purposes, reads :

"61 (1) When any court in the exercise of its civil or revenue jurisdiction or any criminal court in any proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (V of 1898), makes any order admitting any instrument in evidence as duly stamped or as not requiring a stamp, or upon payment of duty and a penalty u/s 35, the court to which appeals lie from, or references are made by, such first mentioned court may, of its own motion or on the application of the Collector, take such order into consideration....."

7. Mr. Gupta's argument is that inasmuch as the suit was compromised and because there is no order in writing admitting the three documents mentioned above in evidence, the provisions of Section 61 of the Act are not applicable. The question requiring consideration is as to what do the words " makes any order admitting any instrument in evidence as duly stamped " mean.

8. The expression " admitted in evidence " has not been defined in the Act. There cannot, however, be any doubt that the expression "admitted in evidence " stands in contradistinction to the expression "tendered in evidence " or " produced in evidence ". Before a document can be treated to be a piece of evidence in a case, two things are necessary : firstly, that one of the parties produces it or tenders it in court and secondly, the court makes that document a part of the judicial record. The expression "admitted in evidence ", in our opinion, means the making of that document a part of the judicial record. A party can only produce a document in court. It is the court alone which has the power to accept that document and, if satisfied, about its admissibility and relevancy to admit it for the purposes of deciding a case.

9. A clear distinction has been made between tendering or producing a document and the one admitting it. Section 167 of the Indian Evidence Act speaks of improper admission and rejection of evidence "whereas Sections 163 and 164 of that Act speak of a document being produced by a party. Again Section 92 of that Act provides that no evidence of any oral agreement or statement shall be admitted in connection with the terms of agreement which had been reduced in writing. The CPC also speaks of admission of documents in the same sense and as an act of the court and as distinguishing it from "producing" and "tendering" of documents which is the act of the parties. Order XIII, CPC deals with production, impounding and return of documents and is headed as such. Rule 1 (1) of that Order provides that the parties or their pleaders shall produce at the first hearing of the suit, all the documents. Sub-rule (2) of the same rule provides that the court shall receive the documents so produced. The word "receive " connotes the idea of accepting for consideration as to whether or not the document should be admitted in evidence. Rule 3 of the Order provides that "the court may at any stage of the suit reject any document, which it considers

irrelevant or otherwise inadmissible " and Rule 4 requires endorsements being made on a document which has been admitted in evidence,

10. It would be noticed that whether it is the Indian Evidence Act or the CPC or the Stamp Act when the question of a document being admitted arises, the words used are not merely " admitted" but " admitted in evidence". Rule 7 of Order XIII, Civil Procedure Code, provides that every document which has been admitted in evidence shall form part of the record of the suit. This rule implies that merely because a document is tendered or produced, it is not automatically admitted in evidence. There are several stages before the stage of admission in evidence is reached. The first stage is when a party produces it in court. The second stage is when the court receives it. The third stage is when the court considers whether the document is relevant or admissible and if it comes to the conclusion that it is not admissible or relevant, it rejects it. It is only after these stages have been crossed that the fourth stage comes, in which the court, after satisfying itself that the document is relevant as also admissible, admits it in evidence. It is clear that mere riling of a document or mere producing it in court or mere tendering it in evidence does not amount to the admission of document in evidence. It is not necessary and the law does not require it that before a document is admitted in evidence, it should bear an exhibit mark. The reason for exhibiting a document is to make it identifiable so that it can be conveniently referred to during the course of the trial and to intimate to the parties that it has been admitted in evidence. The marking of a document as an exhibit is, however, not a condition precedent to its being admitted in evidence.

11. In the present case, however, the order-sheet of the case dated July 13, 1961, shows that the documents had been admitted in evidence. The order-sheet reads:

" Paper Nos. 1 to 16 & 18 of list 6/C admitted subject to pleas by the defendant's counsel. Only signature on paper Nos. 17 and 19 admitted by him. The admission denial on the rest not made which should be made by the next date Nos. 1 to 16 and 18 are marked exhibits 1 to 17."

12. It is clear from this entry in the order-sheet that the three documents mentioned above were not only marked as exhibits in the case, but their execution had also been admitted by the counsel. We are, therefore, satisfied that the three documents mentioned above had been admitted in evidence within the meaning of Section 61 of the Act and we, therefore, overrule the first submission of the learned counsel.

13. Articles 5 and 6 of Schedule I-B of the Act read:

Description of Instrument

Proper Stamp Duty

5. Agreement or memorandum of an agreement-

(a) if relating to the sale of a bill of exchange ;

Fifty naye paise.

(b) if relating to the sale of a Government security or share in an incorporated company or other body corporate ;

Subject to a maximum of forty rupees:twenty-five naye paise for every Rs. 10,000 or part thereof of the value of the security or share.

(c) if not otherwise provided for.

Two rupees.

EXEMPTIONS

Agreement or memorandum of agreement ?

(a) for or relating to the sale of goods or merchandise exclusively, not being a Note or Memorandum chargeable under No. 43 ;

(b) made in the iron of tenders to the Central Government for, or relating to, any loan.

Agreement to Lease - See Lease (No. 35).

6, Agreement relating to deposit of title deeds, pawn or pledge, that is to say, any instrument evidencing an agreement relating to ?

(1) the deposit of title deeds or instruments constituting or being evidence of the title to any property whatever (other than a marketable security), or

(2) the pawn or pledge of movable property, where such deposit, pawn or pledge has been made by way of security for the repayment of money advanced or to be advanced by way of loan or an existing or future debt ?

(a) if such loan or debt is repayable on demand or more than three months, from the date of the instrument evidencing the agreement ;

14. We have carefully read the three documents in question. It is clear that they do not relate to the sale of a bill of exchange, or to the sale of a Government security or share in an incorporated company or other body corporate. The only question therefore is if these documents have not been provided for elsewhere in the Schedule. In our judgment they are clearly provided for in Article 6 of the Act.

15. We would like to point out that in all the three documents the following clauses exist:

" United Bank of India Ltd., having at the request of..... (hereinafter called " the borrower ") undertaken to open in the books of the bank at Banaras one or more cash credit account or accounts with the borrower upon the security of the pledge of goods, produce, and merchandise deposited and subject to the approval of the bank to be deposited with the bank as security for the payment

of the aggregate balance of such account or accounts as the case may be on demand by the bank at any time it is agreed as follows :

1st. That the goods, produce and merchandise mentioned in the Schedule hereto which have been already deposited and the goods, produce and merchandise which approved by the bank shall be hereafter deposited with the bank under this agreement shall be placed in the bank's possession and under its control in such a manner that such possession and control may be apparent and indisputable and the same respectively are and shall be hereby pledged to the bank as security for the payment to the bank of the aggregate balance of such account or accounts as aforesaid on demand by the bank at any time.....

3rd. That the bank shall not be required to make advances under this agreement upon such account or accounts as aforesaid to an amount at any one time exceeding in the aggregate with the interest thereon the sum of Rs....

12th, That this agreement is to operate as security for the ultimate balance or aggregate balances with interest thereon to become payable upon the said cash credit account or accounts to be opened as aforesaid and the said account or accounts is not and are not to be considered to be closed for the purposes of this security and the security is not to be considered exhausted merely by reason of the said account or accounts or either or any of them being brought to credit at any time or from time to time and if the whole of the bank's advances shall be repaid and the whole of the security be withdrawn the account or accounts or either or any of them may nevertheless at anytime before such account or accounts has or have been closed be continued under this agreement upon security as aforesaid being again furnished."

16. There cannot be any manner of doubt that the parties to these documents have treated them as security deeds. The documents clearly mention that certain articles have been pledged with the bank and more will be pledged in future as and when the borrower takes money from the bank. The idea was to open a cash credit with the bank and it was for that reason that the borrower executed the documents in question by way of security pledging the goods already deposited with the bank and those which were to be deposited in future.

17. It has been contended that actually at the time when the three documents were executed, no goods had been pledged. When the documents themselves speak of the goods having been pledged, it is difficult to accept the submission that what is contained therein is not correct. Besides, at the end of the document it has been clearly written :

" A schedule of the goods, produce and merchandise deposited and pledged at the time of execution this agreement must be given below or attached to this agreement (see paragraph 1). "

18. It appears from this endorsement that a separate document could be attached to the agreement in which the goods that were pledged were to be

mentioned.

19. Assuming that at the time of the execution of the deed no articles had actually been pledged, but inasmuch as by means of these documents arrangement had been made with the bank for advancing money, goods would be pledged and these deeds would be treated as security deeds, it is difficult to see how these documents can be treated to be other than agreements relating to pawn or pledge. It would be noticed that Article 6 does not speak of agreement evidencing a transaction of pawn or pledge. It only talks of an agreement relating to pawn or pledge. There is a difference between a document evidencing pledge or pawn and a document which relates to pledge or pawn. The words are comprehensive and they can be taken to mean that any agreement which has connection with a pawn or pledge transaction would be liable to stamp duty under Article 6. That the three documents mentioned above relate to pawn or pledge cannot be doubted. Mr. Gupta's argument at best can be that the documents do not evidence pawning or pledging. The law, however, does not require that. All that the law requires is that they must relate to pawning or pledging. The whole tenor of the three documents mentioned above shows that they are in fact security deeds and they do relate to pawn or pledge. It is also significant to note that there is nothing in Article 6 to suggest that it is applicable to deeds relating to pawning or pledging, already made. The language is wide enough also to include an agreement which may relate to pawning or pledging in future.

20. Mr. Gupta has placed reliance upon *Miran Baksh v. Emperor* AIR 1945 Lah. 69.. In our judgment this case is quite distinguishable on facts. The recitals in the document in that case were very different from those before us. Reliance was also placed upon *In the matter of Imperial Bank of India* AIR 1933 Rang. 31 (F.B.). That case is also clearly distinguishable on facts.

21. In our opinion Article 6(2) would cover a deed which is for a future debt if it provides for security for the future debt. The words are " the pawn or pledge of movable property, where such deposit, pawn or pledge has been made by way of security for the repayment of money advanced or to be advanced by way of loan or an existing or future debt. " In the present case the three documents in question have been executed with a view to provide, for security for future debts to be raised by the borrower from the bank. There is a clear recital in these documents that when the advances are made, the borrower would deliver to the bank some articles and the same would be treated as pawned or pledged to the bank. In our opinion, therefore, the case clearly falls under Article 6(2) of Schedule I-B of the Act.

22. We would also like to point out that originally, the words " future debts" did not exist in this article. The view that the application of Article 6 is confined to a contemporaneous instrument with the advance and the loan is not correct in view of the clear words " or an existing or future debt". We would like to point out that the Calcutta High Court in *Queen Empress v. Debendra Krishna Mitter*

(1900) ILR 27 Cal. 587. had taken the view that the document must be contemporaneous with the advance and with the loan while construing Article 29(b) which was the counter-part of Article 6 of Schedule I-B of the Act. But the Legislature stepped in and amended the law by Act XV of 1904 and the words "existing or future debt" were added. We, therefore, find no merits in the second submission of the learned counsel also.

23. Nothing has been shown to us to justify the conclusion that the State Government has exercised its power u/s 9 of the Act and has either reduced or remitted the stamp duty either on the three documents before us particularly or on the documents of the same class generally. Whether or not the State Government has done so is a question of fact and Mr. Gupta has not been able to point out to us any material on the basis of which we could record a finding that the duty has either been reduced or remitted. The third submission of the learned counsel also, therefore, fails.

24. The result is that we allow the reference and answer the question referred to us by saying that the documents (papers Nos. 52C, 57C and 61C) are agreements relating to pawn or pledge and have been made by way of security for the repayment of money advanced or to be advanced in future by the bank by way of loan to the borrower. We also answer the question referred to us by saying that the provisions of Article 6(2) of Schedule I-B of the Act apply to the documents in question and duty is chargeable under that provision in respect of these three documents. We direct that the bank shall pay the costs of the State Government in this case which we assess at Rs. 200.