
(2012) 10 AP CK 0093
In the Andhra Pradesh High Court
Case No : C.R.P. No. 6216 of 2009

V. Giridhar Kumar

APPELLANT

Vs

Miss Sellammal (died per LRs.)

RESPONDENT

Date of Decision : 31-10-2012

Acts Referred:

Constitution of India, 1950 — Article 254
Stamp Act, 1899 — Section 11, 37

Citation : AIR 2013 AP 31 : (2013) 2 ALD 295 : (2013) 1 ALT 82

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : J. Ugra Narasimha, for the Appellant;

Judgement

L. Narasimha Reddy

1. This revision presents an important question of law, pertaining to the admissibility of a promissory note, in the context of adequacy of stamp duty. The petitioner filed O.S. No. 145 of 2005 in the Court of Principal Senior Civil Judge, Tirupati, against the respondent for recovery of a sum of Rs. 9,49,175/-, on the strength of a promissory note dated 12-05-2002. The trial of the suit commenced, and the cross-examination of PW-1, i.e., the petitioner herein is in progress. When he sought to mark the promissory note, as an exhibit, objection was raised by the respondent, as to its admissibility.

2. The promissory note was written on an impressed stamp paper of Rs. 20/-, purchased in the State of Tamil Nadu. By executing that document, the respondent is said to have borrowed a sum of Rs. 7 lakhs on 12-05-2002. Placing reliance upon Rule 3(iii) of the Indian Stamp Rules, 1925, as they apply to the State of Andhra Pradesh, (for short "the Rules"), it was urged that the instrument cannot be treated as valid, since it was executed in the State of Andhra Pradesh, by using a stamp paper, purchased in the State of Tamil Nadu. The trial Court passed a detailed order dated 31-08-2009, sustaining the objection, on the strength of Rule 3(iii) of the Rules. Hence, this revision.

3. Sri J. Ugra Narasimha, learned counsel for the petitioner submits that though Rule 3(iii) of the Rules insists that the stamp papers purchased in the State of Andhra Pradesh shall be used for writing the documents in the State of Andhra Pradesh, the provision by itself, does not bring about any invalidation of the document, if stamp papers purchased in other States are utilized. He contends that the Indian Stamp Act, 1899 (for short "the Act"), being a Central legislation, and the levy of stamp duty on promissory notes, being governed by Entry 91, List-I of VII Schedule to the Constitution of India, the validity of the promissory note cannot be tested on the touch stone of Rule 3(iii) of the Rules. He has placed reliance upon the judgment of the Supreme Court in V.V.S. Rama Sharma and Others Vs. State of U.P. and Others, Learned counsel further submits that even if the use of stamp papers purchased from other State has resulted in any defect, it is curable u/s 37 of the Act, read with Rule 18 of the Rules.

4. Though notice was served upon the respondent, she has not entered appearance.

5. The suit is filed on the basis of a promissory note dated 12-05-2002, under which, the respondent is said to have borrowed a sum of Rs. 7 lakhs from the petitioner. It is not in dispute that the promissory note was written on an impressed stamp paper of Rs. 20/-, purchased in the State of Tamil Nadu, on 11-04-2002. In the course of the trial of the suit, an objection was raised as to the admissibility of the document. The objection is based on Rule 3(iii) of the Rules. It reads,

Rule-3. Description of Stamps:-Except as otherwise provided by the Act or by these rules,-

(i) all duties with which any instrument is chargeable shall be paid and such payment shall be indicated on such instrument by means of stamps issued by Government for the purposes of the Act;

(ii) a stamp which by any word or words on the face of it is appropriated to any particular kind of instrument, shall not be used for as instrument of any other kind.

(iii) Stamps purchased in Andhra Pradesh State alone shall be used for instruments chargeable with duty under the Act as in force in that State. (G.O. Ms. No. 2454, Revenue (u), dated 30th December 1957):

Provided that stamps purchased in the State of Andhra Pradesh may also be used for instruments chargeable with duty under the Act as in force in the transferred territories.

(Rest of the portion is omitted, since it is not necessary for this case)

6. From a perusal of Rule, it is evident that the rule making authority insisted upon use of the stamps, purchased in the State of Andhra Pradesh for instruments chargeable with duty under the Act as in force in that State. The trial

Court has undertaken extensive discussion and arrived at the conclusion that the Rule 3(iii) is mandatory, and since the document was executed in the State of Andhra Pradesh, by using the stamp papers, purchased in the State of Tamil Nadu, it is inadmissible.

7. Two questions arise for consideration, viz.,

1) what is the meaning to be given to the expression "instruments chargeable with duty under the Act as in force in that State", employed in Rule 3(iii) of the Rules, and

2) whether the defect that is referable to Rule 3(iii) is curable.

8. To answer the first question, it becomes necessary to have an idea and about the Act, vis-à-vis the provisions of the Constitution of India. The Act is a Central Legislation enacted by the Parliament. The implementation or enforcement of the Act is such that, in certain aspects, the Central legislature, and in other aspects, the State legislatures are conferred with the powers to legislate. This is evident from the fact that though the Act contains Schedule, which stipulates the stamp duty, each State has its own Schedule, covering that very subject. This is a typical enactment, whose subject figures in all the three Lists, viz., List-I, List-II and List-III of VII Schedule to the Constitution of India. Entry 91 of List-I (Union List) of VII Schedule reads,

91. Rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts.

9. From this, it is clear that the Parliament is competent to enact upon the rates of stamp duty, in respect of various instruments and documents, including the promissory notes.

10. Entry 63 of List-II (State List) of VII Schedule, reads,

63. Rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.

11. This entry is almost residuary in nature, and the Legislature of a State is conferred with the power to legislate on rates of stamp duty, on all instruments, other than those, covered by Entry 91 of the List-I of the VII Schedule. The similarity between these two provisions is that, the power to enact upon the rate of stamp duty is conferred upon the Central and State Legislatures, respectively.

12. The subject is also included in Entry-44 of List-III (Concurrent List) of VII Schedule, in the limited context of providing for levy of stamp duties, other than judicial stamps. It reads,

44. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.

13. This provision specifically excludes the power to stipulate the rate of stamp

duty.

14. It has already been mentioned that "promissory note" figures in Entry 91 of List I of VII Schedule to the Constitution of India. If the promissory notes are subjected to levy of stamp duty, it is on account of the law made by the Parliament. Since the field is occupied, the State Legislature has no power to legislate upon it, under Entry 63 of List II of VII Schedule.

15. In V.V.R. RAMA SHARMA'S case (1 supra), the issue, that fell for consideration before the Hon"ble Supreme Court was, as to whether use of stamps, purchased in one State, for execution of documents, in another State, would amount to violation of law. The instrument involved in that case was, the one of insurance, which, too, fell under Entry 91 of List I. The Officers of the Life Insurance Corporation of India were sought to be prosecuted on the ground that they used stamps, purchased in other States for execution of the documents in the State of Uttar Pradesh. A Rule analogous to Rule 3(iii) of the A.P. Rules was also in force. Quashing the prosecution, the Supreme Court held,

Para-22...If the instrument falls under the categories mentioned in Entry 91 of List I, the power to prescribe the rate will belong to Parliament, and for all other instruments or documents, the power to prescribe the rate belongs to the State Legislature under Entry 63 of List II. Therefore, the meaning of Entry 44 of List III is that excluding the power to prescribe the rate, the charging provisions of a law relating to stamp duty can be made both by the Union and the State Legislature, in the concurrent sphere, subject to Article 254 in case of repugnancy. So, in the case at hand, it is Entry 91 of List I of the 7th Schedule which would be applicable and the States does not have the power to circumvent a central law

16. The law laid down by the Hon"ble Supreme Court squarely applies to the facts of the case. Therefore, the answer to the first question would be, that the insistence on use of stamp papers purchased in the State of Andhra Pradesh can be only in respect of the instruments, that are covered by Entry 63 of List II of the VII Schedule to the Constitution, and not those, that fall in Entry 91 of List I of the VII Schedule.

17. Assuming that the answer to the first question is not in favour of the petitioner, it needs to be seen, as to whether the defect arising out of the use of stamp paper purchased in other State is curable in nature. An attempt was made before the trial Court, to convince it that use of impressed stamps for execution of promissory notes is not permissible. However, that was repelled, by placing reliance upon certain judgments. This Court in Gurana Asirinaidu Vs. Lenka Suryanarayana, and the Madras High Court in P. Moorthy Vs. A.R. Kothandaraman, took the view that Section 11 of the Act, which permits use of adhesive stamps for promissory notes, does not, by itself, prohibit the execution of the promissory notes on impressed stamps. Emphasis was laid upon the word "may", employed in that Section. The said issue is no more res integra. The

principal objection was, about to the use of stamp papers, purchased from the State of Tamil Nadu.

18. It needs to be borne in mind that the stamp papers are printed and supplied by the Union Government, and individual States do not have any power to print their own stamps, whether "adhesive" or "impressed". There is a detailed and perfect arrangement as regards the distribution of revenues, derived out of sale of stamps of different categories; between the Union and State Governments. The insistence under Rule 3(iii) of the Rules is mostly advisory in nature, and is a mechanism, to ensure that the indiscriminate use of stamps purchased from other States for execution of documents in the State of Andhra Pradesh does not result in deprivation of the corresponding income to it. Beyond that, the language employed in Rule 3(iii) of the Rules does not proceed to attach invalidity to the documents, in the event of violation thereof. Obviously, keeping this in view, Section 37 was included in the Act. The provision reads,

Sec. 37: Admission of improperly stamped instruments:-

The State Government may make rules providing that, where an instrument bears a stamp of sufficient amount but of improper description, it may, on payment of the duty with which the same is chargeable, be certified to be duly stamped, and any instrument so certified shall then be deemed to have been duly stamped as from the date of its execution.

19. In exercise of power conferred under this Section, Rule 18 of the Rules was made by the State of Andhra Pradesh. It reads,

Rule 18. Provision for cases in which improper description of stamp is used:-
When an instrument bears a stamp of proper amount, but of improper description, the Collector may, on payment of the duty with which the instrument is chargeable, certify by an endorsement that it is duly stamped.

Provided that where the stamp borne on the instrument is a postage stamp and the proper description of stamp is a stamp bearing the words "Indian Revenue" the Collector shall so certify, if the instrument was executed before and shall not so certify if it was executed on or after the 1st April, 1935.

20. The mechanism provided for u/s 37 of the Act, read with Rule 18 of the Rules ensures that the stamp duty of proper description is collected in the State, and the defect is cured. It is not as if that the stamp papers purchased in the State of Tamil Nadu, when used in the State of Andhra Pradesh become invalid. At the most, it is a defect as to form or description. A combined reading of Section 37 of the Act and Rule 18 of the Rules make it clear that the defect of this nature can be cured. Not only the admissibility of the document is preserved, but also the defect referable to Rule 3(iii) of the Rules is curable.

21. The insistence on use of stamp papers is basically a measure to provide evidence as to the date of execution and the authenticity of the transaction. Earning of revenue by the State is secondary to this. The slight defect as to the

form of stamp cannot be permitted to render the entire document inadmissible. An inadvertent mistake to which, both the parties to the suit have contributed, must not defeat a claim, if it is otherwise proved and valid.

22. In the instant case, the necessity to undertake an exercise referable to Section 37 of the Act and Rule 18 of the Rules does not exist, in view of the answer to the first question.

23. For the foregoing reasons, the C.R.P. is allowed, and the order under revision is set aside. As a consequence, the objection raised by the respondent, as to the admissibility of the promissory note, is overruled. The miscellaneous petition filed in this C.R.P. shall also stand disposed of. There shall be no order as to costs.