IN THE HIGH COURT OF JUDICATURE OF BOMBAY BENCH AT AURANGABAD

LETTERS PATENT APPEAL NO.13 OF 2014
IN
WRIT PETITION NO. 9317 OF 2011
WITH
CIVIL APPLICATION NO. 13854 OF 2012 IN LPA NO. 13 OF 2014

1] The Nanded District Central
Co-op. Bank, Head Office :-
Station Road, Nanded,
Through its General Manager.

2] The Nanded District Central
Co-op. Bank, Branch Office Mantha,
Taluka Hadgaon, Dist. Nanded,
Through its Branch Manager.

... Appellants.
(Ori.Resp.No.1&2 in WP)

Versus

1] Shiva Sahakari Up Jal Shinchan
Sanstha Ltd., Shivprasad Nagar
(Manatuha), Taluka Hadgaon,
District Nanded,
Through its chairman
Mr. Narendra S/o Shivprasad Maliwal,
Age Major, Occu:- Agril,
R/o. Manatuha, Taluka Hadgaon,
District Nanded.

2] Rajesh Surendrakumar Maliwal
Age : Major, Occu:- Agriculture,
R/o. Manatuha, Taluka Hadgaon,
District Nanded.

3] Kamalkishor Shivprasad Maliwal
Age : Major, Occu:- Agriculture,
R/o. Manatuha, Taluka Hadgaon,
District Nanded.

4] Omprakash Kanhyalal Gilda,
Age : Major, Occu:- Agriculture,
R/o. Manatuha, Taluka Hadgaon,
District Nanded.

5] The Collector,
Nanded,
Taluka & Dist. Nanded.

... Respondents.
(Resp.No.1 is Ori.Petitioner in
WP Resp.No.2 to 4 are
ori.Res.No.3 to 5 in W.P.)

....

Mr. K.J.Suryawanshi, Advocate for appellants.
Mr. M.V.Deshpande h/f Mr. Kamaljeet Chandliya, Advocate
for Respondents Nos. 1,2

...

CORAM : R.M.BORDE AND V.K.JADHAV, JJ.

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DATE OF RESERVING THE JUDGMENT : 24.04.2015
DATE OF PRONOUNCING THE JUDGMENT: 06.05.2015

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JUDGMENT :- (Per V.K.Jadhav, J.)

1. In a recovery dispute before the learned Judge of the Co-operative Court, Nanded, issue has been raised that the promissory notes are inadmissible in evidence since they are not properly stamped.

2. For the sake of brevity, hereinafter, the parties are referred to by their original status before the learned Judge of the Co-operative Court.

3. That, the opponent society had applied for loan to the disputant bank and accordingly the loan of

Rs.11,94,000/- was sanctioned with certain conditions of repayment for a particular period on executing the promissory notes by the opponent society. The opponent Society, since failed to repay the loan amount as per the terms and conditions thereof, the disputant bank has filed a recovery dispute bearing No.156/2005 against the opponent society and its Managing Committee Members before the learned Judge, Co-operative Court for recovery of Rs.13,17,395/- with future interest @ 15% per annum and penal interest @ 3% per annum from 25.05.2000.

4. The disputant Bank has submitted an application below Exh.68 before the learned Judge of the Cooperative Court for impounding of the promissory notes executed by the opponent Society. Said application was strongly objected by the opponent Society by filing say at Exh.69. The learned Judge of the Co-operative Court, by order dated 13.7.2009, rejected the application below Exh.68 by relying upon the provisions of Section 35 of the Indian Stamp Act, 1899 (hereinafter, referred to as "the Act of 1899" for brevity).

5. Being aggrieved by the same, the disputant bank has preferred an appeal bearing No.26/2010 before the

learned Member, the Maharashtra State Co-operative Appellate Court, Mumbai, Bench at Aurangabad, who by its Judgment and order dated 29.8.2011 allowed the appeal and thereby set aside the order dated 13.7.2009 passed below Exh.68 by the learned Judge of the Co-operative Court, Nanded in dispute bearing No.156/2005 and, further directed the learned Judge of the Co-operative Court to exhibit the promissory notes in question and read it in evidence.

6. The opponent Society being aggrieved by the same has filed Writ Petition No.9317/2011 before the learned Single Judge of this Court challenging the Judgment and order dated 29.8.2011 passed by the Member of the Cooperative Appellate Court, Aurangabad. The learned Single Judge of this Court, by judgment and order dated 25.7.2012, quashed and set aside the judgment and order passed by the Co-operative Appellate Court and upheld and confirmed the order passed by the learned Judge of the Cooperative Court below Exh.68 in dispute bearing No.156/2005. The Writ Petition is allowed to the above extent and disposed of accordingly.

7. Being aggrieved by the judgment and order dated 25.7.2012 passed by the learned Single Judge of this Court in Writ Petition No.9317/2011 as aforesaid, the disputant Bank preferred present Letters Patent Appeal before this Court.

8. The learned counsel for the disputant bank submits that, as per the provisions of Section 2(l) of Bombay Stamp Act, 1958 (Maharashtra Stamp Act, 1958), the term "*Instrument*" includes every document by which any right or liability is, or purports to be, created, transferred; limited, extended, extinguished or recorded, but does not include a bill of exchange, cheque, promissory note, bill of lading, letter of credit, policy of insurance, transfer of share, debenture, proxy and receipt. The learned counsel thus submits that in view of the aforesaid definition, stamp duty is not payable on promissory notes. Learned counsel also submits that as per the provisions of Section 76 of the Bombay Stamp Act, 1958, the provisions of the Act of 1899 to the extent of the documents specified in entry No.91 of List I in seventh schedule to the Constitution of India are not made applicable. Learned counsel further contends that, as per the provisions of Section 3 (b) and Section 11 (b) of the Act of 1899, the promissory notes drawn or made out of India on or

after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in India, are only chargeable with the duty of the amount as indicated in the Schedule as proper duty therefor. The learned counsel thus submits that the learned Single Judge of this court has not considered the relevant provisions of the Act of 1899, Bombay Stamp Act, 1958 as aforesaid, and, thereby arrived at erroneous conclusion. The counsel thus submits that the impugned judgment and order dated 25.7.2012 passed by the learned Single Judge in Writ Petition No.9317/2011 is liable to be quashed and set aside.

9. The learned counsel for the opponent Society submits that, in view of the proviso (a) to Section 35 of the Act of 1899, it would be evident that, the provisions of Section 35 does not apply *inter alia* to a bill of exchange or a promissory note. The learned counsel submits that, an instrument which is chargeable with duty can be admitted in evidence upon the payment of duty and penalty as the case may be, however, this would not apply to the excepted categories of the instruments specified in proviso (a) to Section 35 of the Act of 1899. The learned counsel, in order to substantiate his contention, placed reliance in a case **M/s.**

Wolstenholme International Ltd., Vs. Twin Stars Industrial Corporation and others. reported in **AIR 2001 Bombay 409**.

10. Entry No.91 of List I of Schedule VII of the Constitution of India relates to rates of duty in respect of bills of exchange, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts. Entry 63 of List II relates to stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty. The power to prescribe rates of stamp duty between the exclusive jurisdiction of the Union and the State: (a) as regards the instruments specified in Entry 91 of List I, the power exclusively belongs to Parliament, and (b) regarding other instruments, the power belongs to the States under Entry 63 of List II. Entry 44 of List III relates to stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty. The charging provisions levying stamp duty could be enacted by both the Parliament and the State Legislature subject to provisions of Article 254 of the Constitution.

11. In view of the above, the term "*instrument*" as defined under 2 (l) of the Maharashtra Stamp Act, 1958 includes every document by which any right or liability is, or purports to be, created, transferred; limited, etc., however, the term does not include a bill of exchange, cheque, promissory note, bill of lading etc. since they are governed by the Act of 1899. Considering this aspect, we do not find any substance in the submission made on behalf of the disputant Bank that as per the provisions of Section 2 (1) of the Bombay Stamp Act, 1958, the promissory note, bill of exchange, cheque etc. since excluded from the definition of instrument, no stamp duty is payable on it.

12. We have carefully gone through the provisions of Section 3 (b) and Section 11 (b) of the Act of 1899. So far as Clause (a) of Section 3 is concerned, same is comprehensive enough to include foreign bills and notes payable in India, they are specially provided in clause (b) and excluded from Clause (c). So far as provisions of Section 11 of the Act of 1899 are concerned, it enumerates the instrument which may be stamped with adhesive stamps. The words "drawn or made out of India" govern the whole clause (b). The learned Member of the Co-operative Court has committed a grave error of law in applying the provisions of Section 11 (b) to the

issue involved in the case. In the facts and circumstances of the present case, we find the provisions of Section 3 (b) and Section 11 (b) of the Act of 1899 quite irrelevant and inapplicable to the issue under consideration.

13. Before we deal with the provisions of Section 35 of the Act of 1899, the expression “Bill of exchange payable on demand” requires consideration.

14. This expression has been defined in the Act of 1899 and also under the provisions of the Negotiable Instruments Act, 1881. Section 2 (3) of the Act of 1899 defines the expression 'bill of exchange payable on demand' which is reproduced as follows :-

> “***S.2(3) “Bill of exchange payable on demand”****:- “Bill of Exchange payable on demand” includes-*
>
> *(a) an order for the payment of any sum of money by a bill of exchange or promissory note or for the delivery of any bill of exchange or promissory note in satisfaction of any sum of money, or for the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency, which may or may not be performed or happen;*

(b) an order for the payment of any sum of money weekly, monthly, or at any other stated period; and

(c) a letter of credit, that is to say, any instrument by which one person authorizes another to give credit, to the person in whose favour it is drawn."

Section 19 of the Negotiable Instruments Act, 1881 elaborates expression 'Instrument payable on demand' which is reproduced as below :-

*"19. **Instruments payable on demand.**- A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand."*

15. A Bill of Exchange or Promissory Note in which no time is specified, is payable on demand according to Section 19 of the Negotiable Instruments Act, 1881. Section 2 (3) of the Act of 1899 extends the definition of 'bill of exchange payable on demand'. The expression "on demand" in a promissory note has a technical meaning. It means payable immediately or forthwith. The true import of the words "on demand" is that the debt is due and payable immediately. A promissory note in which no time for payment is specified is one payable on demand. If any time is fixed for payment, then payment could be demanded and the amount becomes payable only after that period and in

such a case '*instrument*' is only one payable otherwise than on demand. A promissory note payable on a specified date, or, on or before the specified date, or payable after specified period or payable in installments, is of course a promissory note payable otherwise than on demand.

16. Schedule I Article 49 of the Act of 1899 provides for the duty on promissory notes payable otherwise than on demand. No stamp duty is payable on a bill of exchange payable on demand.

17. In the light of the above discussion, the proviso (a) to Section 35 of the Act of 1899 (as it stood prior to the amendment of Finance Act, 2006) is reproduced as below :-

> *"(a) any such instrument not being on instrument chargeable with a duty not exceeding ten naye paise only, or a Bill of Exchange or Promissory Note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion."*

18. In the instant case, the time limit is prescribed for payment in the promissory notes alleged to have been executed by the opponent society. It is of course a promissory note payable otherwise than on demand. From the proviso, it is clear that a promissory note payable otherwise than on demand, if not sufficiently stamped as required under Article 49(b) of the Schedule I to the Act of 1899, is inadmissible in evidence for any purpose. Said promissory note cannot be re-validated under the proviso to section 35 of the Act by paying deficit stamp duty and penalty therein. This is by way of punishment for omission to affix proper stamp at the time of execution. This privilege as provided by above stated proviso of validating by stamping after execution is not allowed to promissory note, bill of exchange, etc. The learned Single Judge of this Court in the case of **M/s Wolstenholme International Ltd., Vs Twin Stars Industrial Corporation and others** (supra) in paragraph no.11 has rightly considered this legal position.

19. In view of the above, we find that the learned Single Judge of this Court has rightly taken a view that, the judgment and order passed by the learned Member of the Co-operative Appellate Court is not in consonance with the

relevant legal provisions. The learned Single Judge of this Court has rightly quashed and set aside the judgment and order of the learned Member of the Co-operative Court and upheld and confirmed the order passed by the judge of the Co-operative Court. Letter Patent Appeal is thus devoid of any merits and the same, therefore, deserves to be dismissed. Accordingly, we proceed to pass the following order.

<u>ORDER</u>

1. Letter Patent Appeal No.13/2014 in Writ Petition No. 9317 of 2011 is hereby dismissed.

2. In the facts and circumstances of the case, there shall be no order as to costs.

3. Pending civil application do not survive for consideration and stands disposed of.

(V.K. JADHAV, J.) **(R. M. BORDE, J.)**

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