

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.4299 of 2012

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India by the plaintiff is directed against the order dated 20.03.2012 of the learned IV Senior Civil Judge, City Civil Courts, Hyderabad passed in I.A.no.3167 of 2012 in O.S.no.111 of 2010 filed with a request to direct the office of the Court below to put up an appropriate note for collecting the stamp duty, if any, payable on the suit documents, as envisaged under Article 48 of Schedule I A of the Indian Stamp Act, 1899.

2. I have heard the submissions of the learned counsel for the plaintiff ('the plaintiff', for brevity) and the learned counsel for the respondents/defendants ('the defendants', for brevity). I have perused the material record.

3. The introductory facts are as follows:

The plaintiff had filed the suit for recovery of money from the defendants by invoking summary procedure under Order XXXVII of the Code of Civil Procedure, 1908 ('the Code', for brevity). The suit was based on two promissory notes said to have been executed by the late husband of the 1st defendant. The application of the defendants filed for granting leave to defend the suit was dismissed by the trial Court. When the suit is posted for consideration, the trial Court passed a *suo motu* order on 31.12.2010, which reads as follows:

“During the course of consideration of the matter, it has been found that the suit is actually based on two documents, i.e., promissory notes executed by the late husband of the defendant no.1. However, the defendant No.1 has stood as surety by executing security bond on the bottom of promissory notes as such both the suit promissory note change its character to that of bonds and the stamp duty ought to have been as per item No.13 of schedule I-A of the Indian Stamp Act, 1899.”

(Reproduced verbatim)

Responding to the said order, the plaintiff had contended that a portion of each of the promissory notes, that is, a distinct bottom portion of each of the instruments consists a contract of guarantee or alternatively a contract of indemnity coming within the ambit of the provision of either Section 126 or Section 124 of the Indian Contract Act and that the duty payable in either case under Articles 30 and 48 of the Schedule I A of the Indian Stamp Act is the same, i.e., 3 per centum of the value of the security subject to a maximum of Rs.100/-. So contending, the plaintiff had filed the interlocutory application praying the Court below to direct the office to put up an appropriate note for collection of the stamp duty payable on the said document. The office of the Court below had put up an office note stating that the stamp duty and penalty are collectable in accordance with the provision of Article 48 of schedule 1-A of the Indian Stamp Act and that an amount of Rs.100/- towards stamp duty and a further sum of Rs.1,000/- towards penalty (i.e., Rs.1,100/- in all) are payable on each instrument and that a total sum of Rs.2,200/- is collectable on the two documents/instruments. The plaintiff is not objecting to the contents of the said office note of the court below and is prepared to comply with the said directions in the office note, as per the submissions made at the hearing. However, the Court below after perusing the documents did not agree with the note put up by its office and therefore, disapproved the office note and had further directed that the stamp duty and penalty are collectable as per Article 13 of Schedule 1-A of the Act and had accordingly rejected IASR of the plaintiff by the order, which is impugned. Hence, the plaintiff is before this Court.

4. Before completing the narration of facts, it is necessary to refer to infra the relevant provisions of law.

Section 2(5) of the Indian Stamp Act defines “Bond”.

“Bond” includes:

- (a) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specific act is performed, or is not performed, as the**

case may be;

- (b) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and
- (c) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another;

5. Articles 13, 30 and 48 of Schedule 1-A of the Indian Stamp Act read thus:

“13. Bond, as defined by Section 2(5), not being Otherwise provided for, by this Act, or by the Andhra Pradesh Court-fees and Suits Valuation Act, 1956 (Act VII of 1956)

(a) Where the amount or value secured does not exceed Rs.1,000/-;	Three rupees for every one hundred rupees or part thereof;
(b) Where it exceeds Rs.1,000/-.	The same duty as under Clause (a) for the first Rs.1,000 and for every Rs.500 or part thereof in excess of Rs.1,000 fifteen rupees

Exemptions

Bond, when executed by any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility, shall not be less than a specified sum per mensem.

30: Indemnity Bond. Bond	The same duty as a Security (No.48) for the same amount.
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48. Security bond or mortgage deed security executed by way of security for the one due execution of an office or to account for money or other property received by virtue thereof, or executed by a surety to secure the due performance of a contract.	3 percentum of the value of the subject to a maximum of rupees hundred.
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Exemptions

Bond or other instruments when executed:

- (a) by any person for the purpose of guaranteeing that the local income derived from private subscription to a charitable dispensary or hospital, or any other object of public utility, shall not be less than a specified sum pre mensem;
- (b) executed by persons taking advances under the Land Improvement Loans Act, 1883 (Central Act 19 of 1883) or the Agriculturists' Loans Act, 1884 (Central Act 12 of 1884), or by their sureties as security for the repayment of such advances;
- (c) executed by officers of Government or their sureties to secure the due execution of an office or the due accounting for money or other property received by virtue thereof].”

6. It is also pertinent to next note that the Court below had referred to the ratio laid down in **Bolisetti Bhavannarayana @ Venkata Bhavannarayana v. Kommuru Vullakki Cloth Merchant Firm, Tenali, represented by partner Kommuru Vullakki and others**^[1], wherein this Court had held that the definition of term ‘bond’ is inclusive and not restrictive and that the definition is exhaustive and not restrictive, and that it does not say that any document not attested by witness would not be a bond, though an obligation is incurred by one to pay money to another. It was also held that ‘accordingly, when clause (b) of Section 2(5) of the Stamp Act mentions that “any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another” would be included within the meaning of “bond”, it does not mean that similar document without attestation by a witness would not be included or excluded by the definition of bond.’

7. It is also apt to further note that the plaintiff had placed reliance on two decisions, viz., **Manda Suryakanthamma v. District Registrar of Assurance, Srikakulam**^[2] and **S.N.Mathur v. Board of Revenue and others**^[3] in support of his contention that the note put up by the office is correct. However, the trial Court held that the ratios in the said decisions are not applicable to the facts and circumstances of the case on hand.

8. The learned counsel for the plaintiff would contend that the view of the

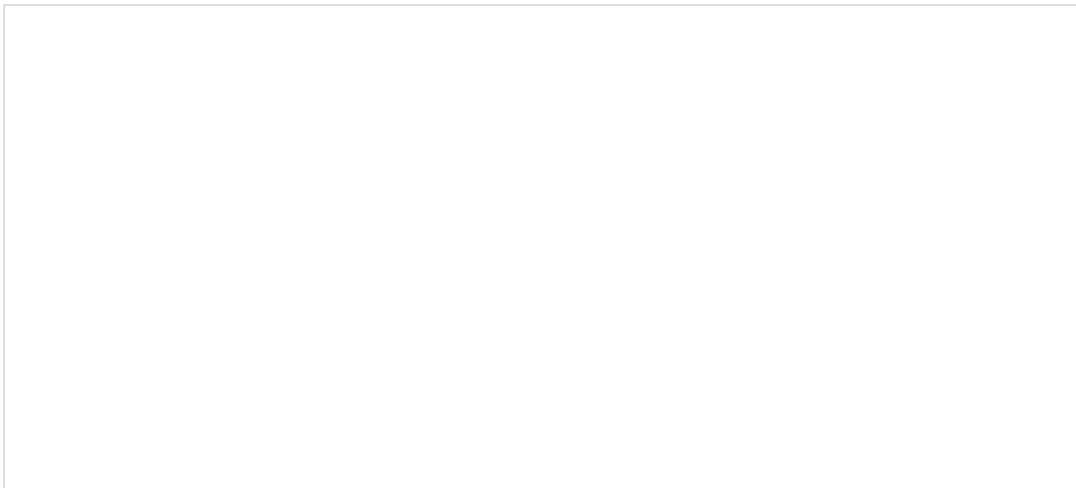
Court below that the provision of Article 13 of Schedule 1-A of the Indian Stamp Act is applicable is highly erroneous and that the trial Court had failed to properly appreciate the ratios in the decisions cited on behalf of the plaintiff and that the trial Court had erroneously followed a decision, which is inapplicable to the facts of the case, and that the trial Court ought to have considered the contents of the office note, which was put up with correct contents, and ought not to have disagreed with the office note and ought to have accepted the same as correct and that the trial Court had failed to take note of the fact that not only the nomenclature of the document, but also the contents of the documents make it evident that on the transactions contained in the documents, viz., two bottom portions of the promissory notes, namely, on the surety/guarantee bonds, the stamp duty and penalty payable respectively are Rs.100/- and Rs.1,000/- that is, in all, Rs.2,200/- on the two documents put together as rightly suggested in the office note of the court below and that the Court below was in error in calling upon the plaintiff to pay the stamp duty and penalty as per Article 13 of Schedule 1-A of the Indian Stamp Act and in rejecting IASR filed by the plaintiff.

9. The learned counsel for the defendants while supporting the orders of the Court below had *inter alia* contended that the Court below cannot be found fault for following a ratio in a Full Bench decision of this Court and for passing a reasoned order after adverting to the facts and the legal position correctly.

10. I have bestowed my attention to the facts and I have given earnest consideration to the submissions. I have carefully gone through the provisions of law, which are extracted supra and the precedents cited.

10.1 The suit is brought by the plaintiff on the basis of two documents for recovery of money from the defendants. Both the suit documents are of the same nature and contain the same content; and they are printed proformae with certain blanks, which are filled by the parties at the time of entering into the transactions. Admittedly, each document is having two portions/parts, viz., (i) the upper portion, viz., promissory note; and (ii) the bottom portion,

which is now the subject matter of controversy. The bottom portion titled 'Jameenu' reads as follows:



The said bottom portion deals with "Jameenu" (security/surety), where under one Mangamma/the 1st defendant stood as a guarantor/surety for the money borrowed by her late husband under the promissory note and agreed to repay the promissory note debt personally in case of failure of the promisee to pay the same to the promisor. The said Jameenu/guarantee portion of the document was attested by two witnesses and was signed by said Mangamma who is the guarantor/surety. The promissory note is a contract. The security bond was executed by way of a security by a surety to secure the due performance of a contract. Therefore, in the well-considered view of this Court, the transaction in question is covered by Article 48 of Schedule 1-A of the Indian Stamp Act and it does not fall within any of the exemptions. Article 30 deals with Indemnity Bond and the duty payable is the same duty as the security bond under Article 48, as rightly contended by the learned counsel for the plaintiff, even assuming for a moment that the said bottom portion of the document is to be construed as an indemnity bond. Article 13, which the trial Court had stated in its order as applicable to the facts of the present case, deals with bond as defined by Section 2(5) of the Indian Stamp Act not being a debenture and not being otherwise provided for, by this Act (the Indian Stamp Act), or by the Andhra Pradesh Court-fees and Suits Valuation Act, 1956. As per the provision of this Article, the stamp duty payable is Rs.3/- for every one hundred rupees or part thereof where the amount or value secured does not exceed Rs.1,000/-; however, where it

exceeds Rs.1,000/-, the duty payable is the same duty as under Clause (a) for the first Rs.1,000/- and fifteen rupees (Rs.15/-) for every Rs.500 or part thereof in excess of Rs.1,000.

10.2 The Full Bench decision of this Court relied upon by the trial Court clearly lays down that even though a bond is not attested, still, it does not mean that a document similar to the bond without attestation by a witness would not be included or excluded in the definition of bond. There is no dispute with the settled proposition. In the case on hand, the portion of the document, which is now in question, is attested by two witnesses. There is also no dispute with the proposition that the stamp duty is determined with reference to the substance of the transaction as embodied in the instrument and not with reference to the title, caption or nomenclature of the instrument. For classification of instruments, that is, to determine whether an instrument comes within a particular description in an Article to the Schedule to the Indian Stamp Act, the instrument should be read and construed as a whole. It is also not in dispute that where an instrument falls under two or more descriptions in the Schedule to the Indian Stamp Act, the instrument shall be chargeable with only one duty, that is the highest of the duties applicable to the different description. [vide **S.N.Mathur v. Board of Revenue and others**] (3rd supra).

10.3 In a contract of guarantee, there are three persons, namely, (i) Principal Debtor; (ii) Surety; and (iii) Creditor. While, in a contract of indemnity, there are only two persons, namely, (i) person to be indemnified; and (ii) indemnifier. Thus, in a contract of guarantee, there is a principal debtor and in a contract of indemnity, there is none. In a Contract of Guarantee, the security is of the creditor and in a Contract of Indemnity; there is reimbursement of loss of the indemnified person. In a contract of guarantee, the surety, when he discharges the debt of the principal debtor, becomes entitled to proceed against the principal debtor. In a Contract of Indemnity, the indemnifier cannot sue the person, who caused loss to the indemnified. In a Contract of Guarantee, there is a promise to be liable for a debt on the

principal debtor's default. In a contract of indemnity, there is a promise to become liable to the Indemnified person whenever he becomes liable. In a contract of guarantee, there is both a primary and secondary liability. In a contract of indemnity, there is only primary liability of the indemnifier to the indemnified person. In a contract of guarantee, the guarantee is unconnected with the contract guaranteed. Thus, in a contract of guarantee, there are three contracts – one between the principal debtor and the creditor, the 2nd between the creditor and the surety and the 3rd an implied contract between the surety and the principal debtor; and the liability of the principal debtor in a contract of guarantee is primary and that of surety is secondary though the liability of the surety is co-extensive with that of the principal debtor unless it is otherwise provided for in the contract. A contract of guarantee is precisely a contract to perform the promise, of discharge of the liability, of a third person in case of his default. Such person who gives guarantee is called the surety and the person in respect of whose default, the guarantee is given is called the principal debtor and the person for whom the guarantee is given is called the creditor. A guarantee may be either oral or written. Therefore, Article 13 of Schedule 1-A of the Indian Stamp Act, in the well-considered view of this Court is not applicable to the facts of the case on hand. But, Article 48, the contents of which are extracted supra, is applicable to the document in question in the case on hand because the bond is a security bond executed by the surety or guarantor in view of the fact that there are three parties to the contract and the surety has undertaken to pay the debt in case of failure of the principal debtor to pay the said debt covered by the promissory note to the creditor.

10.4 Viewed thus, this Court finds that the order impugned of the Court below in not accepting the office note and further directing the plaintiff to pay the stamp duty in accordance with Article 13 of the Indian Stamp Act, is unsustainable under facts and in law and is, therefore, liable to be set aside.

11. In the result, the Civil Revision Petition is allowed and the impugned order is set aside. The Court below is directed to collect stamp duty and

penalty on the two documents in question, as per the office note as the plaintiff is since prepared to pay the stamp duty and penalty as noted in the office note. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SEETHARAMA MURTI, J

01st March 2016
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[\[1\]](#) 1996 (1) ALT 917 (F.B)

[\[2\]](#) AIR 1986 AP 3

[\[3\]](#) 2009 (2) ALD 112