

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No.532 of 2016**Order reserved on : 16.11.2016Order delivered on : 02.01.2017

Sukhram Dewangan, aged about 66 years, S/o. Shri Deocharan Dewangan, R/o. Behind Yadu Dharamshala (Opposite Vyasnarayan Yadu's House) Ramshgar Para, Bhatapara, Tahsil Bhatapara, District Baloda Bazar-Bhatapara (Chhattisgarh).

--- **Petitioner**
Defendant

Versus

Rishi Agrawal, aged about 36 years, S/o. Shri Ganesh Prasad Agrawal, R/o. Vrindawan Colony, Bhatapara, P. S. Bhatapara (Town), District Baloda Bazar - Bhatapara (Chhattisgarh).

--- **Respondent**
Plaintiff

For petitioner	:	Mr. B. M. Rao, Advocate.
For respondent	:	Mr. A. S. Rajput, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

ORDER [C.A.V.]

1. The question involved in this writ petition whether the document filed by the respondent/plaintiff styled as "Ikrarnama" dated 09.02.2015 is a bond as defined under Section 2(5)(b) of the Indian Stamp Act, 1899 (hereinafter called as "Act of 1899") or it is an agreement under Section 2(e) of the Contract Act, 1872 (hereinafter called as "Act of 1872").
2. The respondent/plaintiff filed a suit for recovery of ₹ 50,000/- from the petitioner/defendant along with agreement dated 09.02.2015, in which the petitioner/defendant filed an application under Section 35 of the Act of 1899 that the document *i.e.* agreement is not duly

stamped as it is falling within the meaning of Section 2(5) of the Act of 1899, therefore, it is not admissible in evidence and it will not be adjudicated, which was opposed by the respondent/plaintiff by filing objection as it is said to be an agreement.

3. By the order impugned, the trial Court has held that it is an agreement duly stamped and duly executed and rejected the application filed by the petitioner/defendant.
4. Feeling dissatisfied with said order, this writ petition under Article 227 of the Constitution of India has been filed.
5. Mr. B. M. Rao, learned counsel appearing for the petitioner, referring the judgment of the Division Bench of Madhya Pradesh High Court in Shantilal v. Vijay Kumar¹ would submit that the trial Court has wrongly construed the instrument as an agreement and failed to direct the respondent/plaintiff to pay adequate stamp duty before accepting the document, therefore, the impugned order is liable to be set aside.
6. Mr. A.S.Rajput, learned counsel appearing for the respondent, would submit that the document is an agreement within the meaning of Section 2(e) of the Act of 1872 and therefore, the trial Court has absolutely justified in holding that it to be agreement and as such, the writ petition deserves to be dismissed.
7. I have heard leaned counsel appearing for the parties, considered their rival submissions made herein and also gone through the documents appended with the petition with utmost circumspection.

1 2009 (4) MPHT 489

8. The definition of bond given in Section 2(5)(b) of the Indian Stamp Act, 1899 read as under:-

"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 specified 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.

9. The definition of bond is inclusive definition and the bond as defined in Section 2(5)(b) is to be given the widest meaning. An instrument which satisfies the conditions mentioned in the above section is included within definition of bond. The necessary requisites of bond are that the instrument should be signed, attested by witness, not payable to order or bearer and by the instrument a person should oblige himself to pay money to another or to deliver grain or other agricultural produce to another.

The Full Bench of the Madhya Pradesh High Court in the matter of Santsingh Ladharam v. Madandas Gyandas Panika and Anr.², has noted the essentials of the bond as under:-

"5.The essentials of a bond are:

- (1) There must be an undertaking to pay;
- (2) The sum should be a sum of money but not necessarily certain;
- (3) The payment will be to another person named in the instrument;
- (4) The maker should sign it;
- (5) The instrument must be attested by a witness; and
- (6) It must not be payable to order or bearer."

10. In the present case, the order of the trial Court has been challenged that the document in question is not an agreement. For

² 1976 MPLJ (FB) 238

determining the true character of an instrument, the instrument is required to be read as a whole and its dominant purpose is to be ascertained. The basic difference between the bond and the agreement is that in the case of bond, in the event of breach, the party to the instrument, who is obliged to pay, is liable to pay the sum stipulated in the instrument whereas in the case of agreement the quantum of damages is to be fixed by the Court.

11. The Calcutta High Court in the matter of Gisborne and Co. v. Subal Bowri³, while considering the difference between the bond and agreement, has held that:-

“The definition of a bond in Section 5 of the Act is precisely what we understand by a bond in England, and it is an obligation of a different character from a covenant to do a particular act, the breach of which must be compensated in damages.

Whether a penal clause is attached to such a covenant or not, the remedy for the breach of it is in form and substance a suit for damages; and by Section 74 of the Indian Contract Act, the English rule with regard to liquidated damages is abolished, and the plaintiff in such a suit has no right under any circumstances to claim the penalty itself as such. He can only recover such compensation, not exceeding the amount of the penalty, as the Judge at the trial considers reasonable; but he is entitled to that compensation whether he proves any actual damages or not.

The remedy upon a bond is very different. The plaintiff in the case of a simple money bond recovers the sum named in the bond, or in the case of a bond conditioned for the performance of covenants he recovers the actual damage which can prove that he has sustained. In either case not only is the bond a contract of a different form and nature from a covenant with a penal clause, but the remedy upon it, and the amount recoverable for the breach of it, is also different.”

3 (1882) ILR 8 Cal. 284

12. The Full Bench of Delhi High Court in the matter of **Hamdard Dawakhana (Wakf) Delhi reference**⁴, while considering the same issue held that:-

“(12) It is trite to say that every bond is an agreement. So is the case with a mortgage or sale or exchange. But what we have to see is whether that agreement has acquired the character of a "bond". We have already noticed the relevant clauses in the instruments in question. There is no dispute that under those instruments one of the parties thereto had obliged itself to pay moneys to others.

(14) The test laid down by the learned Chief Justice for distinguishing a "bond" from an "agreement", is : In the former case, in the event of breach the party to the instrument, who had obliged to pay money to the other, is liable to pay the sum stipulated in the instrument. In the latter case, the quantum of damages has to be fixed by the Court. If we apply that test to the facts of the present case, it is clear that the liability of Hamdard Dawakhana is fixed. Its liability is to pay the same stipulated. There is no question of damages in this case.”

13. The Special Bench of Calcutta High Court in the matter of **Bengal Paper Mills v. The Collector of Calcutta and Ors.**⁵, while considering the difference between the bond and agreement following judgments of the Delhi High Court and Calcutta High Court has held that:-

“43. In the matter of *Hamdard Dawakhana* (supra), a Full Bench of the Delhi High Court, on the basis of the Calcutta High Court's judgment, reported in (1862) ILR 8 Cal 284, which we have cited above, has explained the difference between a 'bond' under Section 2(5) and an 'agreement'. In the case of a bond in the event of breach, the party to the instrument who had obliged to pay money to the other is liable to pay the sums stipulated in the instrument. In the latter case, the quantum of damages has to be fixed by the Court.”

4 AIR 1968 Del. 1 (FB)

5 AIR 1976 Cal. 416

14. The Allahabad High Court in the matter of Maula Bux and other v. Munna Lal and others⁶, while considering the document which was in the form of agreement but satisfied the conditions of bond held that:-

“An instrument, in the form of an agreement between two parties, reciting that a certain sum is due from the first party to the second conventioning that the first party will pay the same with interest in certain installments, and being attested by witnesses and not being payable to order or bearer, comes within the definition of a bond as given in Section 2(5) of the Stamp Act, and the stamp duty payable thereon is that for a bond, although the instrument appears to be in the form of an agreement.”

15. The Rajasthan High Court in the matter of Moolchand and another v. Lachman and another⁷, has held in case where a document besides an acknowledgment includes a stipulation to pay interest it becomes an agreement relying upon Full Bench decision of Lahore High Court in the matter of Firm Shivram Punanram v. Faiz⁸.

16. The nature of document in the instant case dated 09.02.2015 has to be ascertained in the light of above-stated proposition of law. On the perusal of the documents, it appears that petitioner-Sukhram Dewangan has undertaken to pay sum of ₹ 50,000/- to defendant-Rishi Agrawal and also to pay interest @ 6% per annum within two months and if that sum is not repaid, then the petitioner will be entitled to claim the said amount by way of suit in the Court along with interest and as such it is duly signed by the petitioner as well as by the defendant and attested by two attesting witnesses. Thus, it

6 AIR 1939 All. 205

7 AIR 1958 Raj. 72

8 AIR 1942 Lah. 50

clearly satisfied all the requirements of “an agreement”. Therefore, the trial Court is absolutely justified in holding that the subject document is agreement and rightly rejected the application filed by petitioner and as such no interference is warranted in the impugned order passed by the trial Court.

17. For the foregoing reasons, the writ petition deserves to be and is accordingly dismissed leaving parties to bear their own cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-