NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (227) No.592 of 2014

Smt.Alka Pant, aged about 52 years, W/o Late Shri Maheshchand Pant, R/o Nehru Nagar, Shiwam Heights, H. No.103, First Floor, Bilaspur, P.S. Civil Lines, Dist: Bilaspur (CG)

----Petitioner

Versus

Abhishek Jaiswal, aged about 31 years, S/o Late Shri K.B. Jaiswal, R/o 27 Kholi, Vikas Nagar, Bilaspur, P.S. Civil Lines, Dist: Bilaspur (CG)

---- Respondent

For Petitioner	:	Mr.B.P.Gupta, Advocate
For Respondent	:	Mr. Ali Asgar, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

18/04/2017

Heard.

1. The trial Court by the impugned order dated 22.7.2014 rejected the objection of the defendant objection finding that the agreement dated 9.4.2012 is not admissible and it cannot be marked as exhibit, against which, this writ petition under Article 227 of the Constitution of India has been filed.
2. Learned counsel for the petitioner would submit that the agreement dated 9.4.2012 is a bond and not an agreement and therefore, the impugned order deserves to be set aside.
3. On the other hand, learned counsel for the respondent would oppose the writ petition and submit that it is out and out

agreement, therefore, the trial Court is absolutely justified in rejecting the objection of the petitioner/defendant.

4. I have heard learned counsel appearing for the parties, considered their rival submissions made herein and also gone through the record with utmost circumspection.

5. 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.

6. 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.

7. The Full Bench of the Madhya Pradesh High Court in the matter of **Santsingh Ladharam v. Madandas Gyandas Panika and Anr**.[1], has noted the essentials of the bond as under:-

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[1] 1976 MPLJ (FB) 238

> "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."

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

9. The Calcutta High Court in the matter of **Gisborne and Co. v. Subal Bowri**[2], 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

[2] (1882) ILR 8 Cal. 284

> 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."

10. The Full Bench of the Delhi High Court in the matter of **Hamdard Dawakhana (Wakf) Delhi reference**[3], 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."

11. The Special Bench of the Calcutta High Court in the matter of **Bengal Paper Mills v. The Collector of Calcutta and**

[3] AIR 1968 Del. 1 (FB)

Ors.[4], 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."

12. The Allahabad High Court in the matter of **Maula Bux and other v. Munna Lal and others**[5], 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 conventing 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."

13. The Rajasthan High Court in the matter of **Moolchand and another v. Lachman and another**[6], 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. Faiz**[7].

[4] AIR 1976 Cal. 416
[5] AIR 1939 All. 205
[6] AIR 1958 Raj. 72
[7] AIR 1942 Lah. 50

14. The nature of document in the instant case dated 9.4.2012 has to be ascertained in the light of the above stated provisions of law.

15. On perusal of the of the aforesaid document, it would appear that the petitioner herein has undertaken to pay a sum of ₹ 5 lacs to the respondent herein without interest within a month from the date of execution of the document and in case, the amount is not paid, the respondent is entitled to institute a suit for recovery of the said amount. The document is duly attested by two witnesses Shailendra Netam and Devendra Singh. Thus, it clearly satisfies all the requirement of the agreement, therefore, the trial Court is absolutely justified in rejecting the objection of the petitioner.

16. I do not find any jurisdictional error in the order impugned. The writ writ being without substance is liable to be and is hereby dismissed. No order as to cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-