THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION NO.4098 of 2017

ORDER :

Inspite of service of notice, there is no representation on behalf of the respondent.

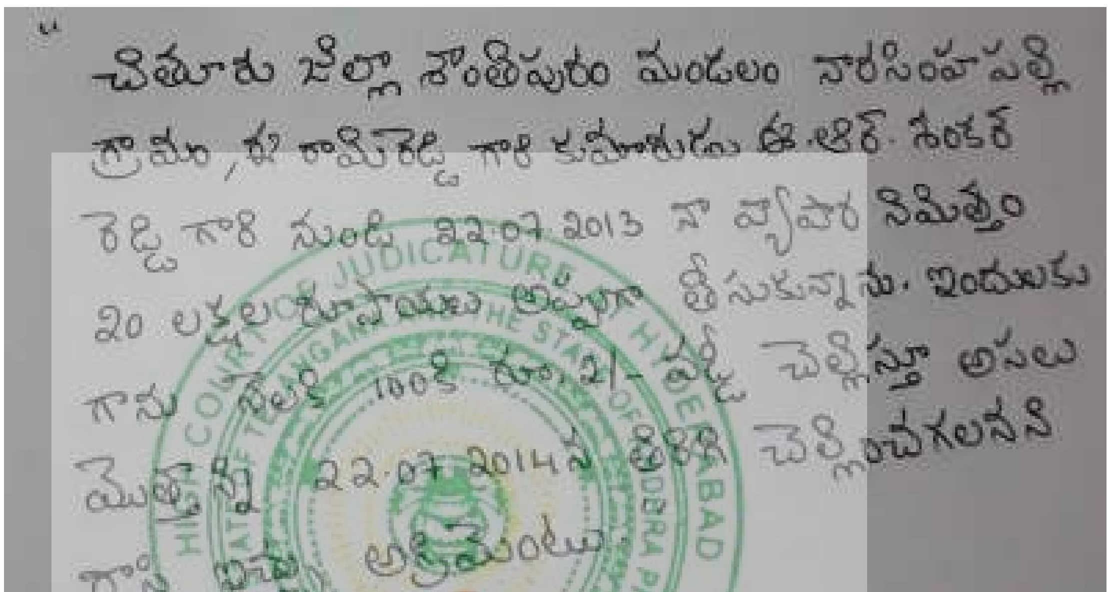
2. Assailing the docket order dated 20.03.2017, passed in O.S.No.586 of 2014 by Senior Civil Judge, Palamaner, wherein the Court below directed the petitioner/plaintiff to pay stamp duty and penalty on the document, wherein the defendant promised to repay an amount with interest, the present revision is filed.

3. The facts in issue are as under:

The petitioner/plaintiff filed O.S.No.586 of 2014, seeking a direction to the defendant to pay suit amount with interest from the date of the suit till the date of realization. The said suit was based on a document executed on a non-judicial stamp paper of Rs.10, dated 12.07.2013, wherein it has been stated that defendant borrowed a sum of Rs.20 lakhs from the plaintiff and promised to repay the same with interest before 22.07.2014. During the pendency of the suit, the trial Court directed the plaintiff to pay stamp duty and penalty to the defendant. Challenging the same, the present revision came to be filed.

4. The facts in issue would show that the defendant borrowed the amount for his business purpose and is said to have executed a document dated 22.07.2013, agreeing to repay the said amount with interest @2% on or before 22.07.2014. Though the contents of the

document disclose that the defendant agreed to pay, but a close perusal of the same would show that it is nothing short of a promissory note. In order to appreciate the same, it would be useful to extract the contents of the said document (non-judicial stamp paper), which reads as under:


" చిత్తూరు జిల్లా శాంతిపురం మండలం నారసింహపల్లి
గ్రామం, శ్రీ రామిరెడ్డి గారి కుమారుడు ఈ.ఆర్. శంకర్
రెడ్డి గారి నుండి 22.07.2013 నా వ్యాపార నిమిత్తం
20 లక్షల రూపాయలు అప్పుగా తీసుకున్నాను. ఇందుకు
గాను నెలకి 100కి రూ.2/- వడ్డీ చెల్లిస్తూ అసలు
మొత్తాన్ని 22.07.2014న తిరిగి చెల్లించగలనని
గారికి ఇచ్చిన అగ్రిమెంటు

5. The short question that arises for consideration is whether the said document can be held to be an agreement warranting payment of stamp duty or whether it has to be treated as a promissory note?

6. Issue identical to the case on hand came up for consideration before this Court in *Gurana Asirinaidu Vs. Lenka Suryanarayana*[1]*:*

The facts in the said case are that the defendant therein borrowed a sum of amount and executed a promissory note agreeing to repay the said amount, on demand, with interest @ 24% per annum, but failed to pay the same. When the plaintiff sought to

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[1](2005 (1) ALD 713, 2005 (1) ALT 659)

mark the suit pro-note, the defendant objected to the same, on the ground that it was not properly stamped, and is not admissible in evidence. Admittedly, in the said case also the suit document was executed on a non-judicial stamp paper worth Rs.10/-.

After referring to various Sections of the Negotiable Instruments Act (for short, 'the Act') viz., Section 2(22) with regard to promissory note, Section 2(11) 'duly stamped' and Section 2(13) 'impressed stamp', this Court held that the document should be allowed to be marked as an exhibit on behalf of the plaintiff.

It would be appropriate to refer to relevant paragraphs of the judgment containing appropriate Sections and Rules, which reads as under:

> "5...
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> Section 2(22) defines 'promissory note' means a promissory note, as defined by the Negotiable Instruments Act, 1881. It also includes a note promising 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.
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> As per Section 2(11) of the Act 'duly stamped', as applied to an instrument, means that the instrument bears an adhesive or impressed stamp of not less than the proper amount, and that such stamp has been affixed or used in accordance with the law for the time being in force in India.
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> As per Section 2(13) 'impressed stamp' includes – (a) labels affixed and impressed by the proper officer, and (b) stamps embossed or engraved on stamped paper.

Section 10 deals with the mode of payment of duties, except as otherwise expressly provided in this Act, all duties with which any instruments are chargeable shall be paid, and such payment shall be indicated on such instruments, by means of stamps.

Section 11 of the Act deals with the use of adhesive stamps. The following instruments may be stamped with adhesive stamps, namely:

(a) Instruments chargeable with a duty not exceeding ten naye paise except parts of bills of exchange payable otherwise than on demand and drawn in sets;

(b) Bills of exchange and promissory notes drawn or made out of India;

(c) Entry as an advocate, vakil or attorney on the roll of a High Court;

(d) Notarial acts; and

(e) Transfers by endorsement of shares in any incorporated company or other body corporate.

Section 35 deals with 'instruments not duly stamped inadmissible in evidence, etc. However, in certain cases though they were initially insufficiently stamped, they are admissible in evidence subject to the payment of deficit stamp duty as well as the penalty payable. But however, under the proviso, the following documents are excepted, such as instrument chargeable with duty not exceeding 10 naye paise only, a bill of exchange, or a promissory note.

6. Similarly, Rule 3 of the Indian Stamp Rules, 1925 gives the description of stamps. As per the said rule, 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 the Government for the purpose of the Act, and 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 an instrument of any other

kind. The said rules also makes it clear that there are two kinds of stamps, indicating the payment of duty with which the instruments are chargeable, namely (i) impressed stamps, and (ii) adhesive stamps."

Rule 5 provides how a promissory note is to be executed, according to which a promissory note or a bill of exchange shall, except as provided by Section 11 or by Rules 13 and 17, be written on paper on which a stamp of the proper value, with or without the word 'hundi' has been engraved or embossed.

Rule 13 refers to the use of adhesive stamps on certain instruments. This rule enumerates the instruments, which may be stamped with adhesive stamps, namely (i) bill of exchange payable otherwise than on demand, and drawn in sets, when the amount of duty does not exceed 10 naye paise for each part of the set. (the other part of the rule is not relevant).

Rule 17 provides for the use of special adhesive stamps when the documents, like bill of exchange, cheques and promissory notes drawn or made out of India with stamps bearing the word 'foreign bill'.

Rule 18 provides that when an instrument bears a stamp of proper amount but on improper description, the Collector may, on payment of the requisite duty, certify by an endorsement that it is duly stamped.

Similarly, Article 49 of the Schedule to the Act provides how a promissory note is to be stamped i.e., value of the stamp".

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11. In view of the above position of the rules as well as the decisions referred, to, there is no prohibition as to the execution of a promissory note on an impressed stamp paper. What is required for a valid promissory note is that it should be stamped properly, as provided under the Act and the Rules. Section 10 of the Act refers the mode of

duties to be paid. As per this provision, except as otherwise expressly provided in the Act, all duties with which any instrument chargeable shall be payable and such payment shall be indicated on such instruments by means of stamps. Further, as already referred to Section 11, where the word 'may' used, is indicative of the choice for the already referred to Section 11, where the word 'may' used, is indicative of the choice for the executants of the document. A promissory note executed using impressed stamp paper or adhesive stamps are equally valid and admissible in evidence, provided that they are stamped with requisite value.

12. In view of the above, as the disputed document is admittedly executed on an impressed stamp paper of the value of No.5-00, which is more than the requisite value, it should be treated as a valid document executed with the requisite stamp duty, as provided under the Act and the Rules.

13. Therefore, the impugned order is set aside, and the matter is restored to the file of the lower Court with a direction to receive the disputed document and mark the same as an exhibit on behalf of the plaintiff and proceed with the suit in accordance with law."

7. In view of the judgment referred to above and as the circumstances therein lead to a conclusion that the document in dispute therein should be treated as valid and admissible in evidence, I am of the view that the order under challenge warrants interference since the facts on hand are identical to the one referred to above which shows that admittedly in the present case suit document was executed on a non-judicial stamp paper, which appears to be a promissory note and hence it should be treated as a valid document.

8. Accordingly, the revision is allowed, setting aside the docket order dated 20.03.2017, passed in O.S.No.586 of 2014, by Senior Civil Judge, Palamaner. The Court below is directed to receive the disputed document and mark the same as an exhibit on behalf of the plaintiff and proceed with the suit, in accordance with law. No costs.

Consequently, miscellaneous petitions, if any pending, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

30.06.2017
vhb