THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.5020 OF 2017

O R D E R

This civil revision petition under Article 227 of the Constitution is preferred by the defendants in O.S.No.179 of 2007 on the file of the learned Additional Senior Civil Judge, Ibrahimpatnam, Ranga Reddy District-cum-Full Additional Charge IX Additional Senior Civil Judge, L.B.Nagar, Ranga Reddy District at L.B.Nagar. They are aggrieved by the order dated 24.07.2017 passed by the trial Court dismissing I.A.No.170 of 2017 filed by them under Section 33 of the Indian Stamp Act, 1899 (*for brevity*, 'the Act of 1899') seeking a direction to the respondent-plaintiff to pay the deficit stamp duty along with penalty on the document titled 'Hand loan agreement-cum-money bond'. It was their case that the said money bond was stamped insufficiently and required to be impounded. By the order under revision, the trial Court opined that the document in question should be treated as an agreement of sale and that the petitioners-defendants had no *locus* to seek a direction to the respondent-plaintiff to pay the deficit stamp duty, as it was for the trial Court to direct so at the time of marking of the document, if at all it required payment of deficit stamp duty.

Heard Sri Venkata Suresh Sistla, learned counsel for the petitioners-defendants, and Sri T.B.B.Krishna Mohan, learned counsel for the respondent-plaintiff.

Though the Court below was correct in stating that it would be within its power to direct payment of stamp duty or deficit stamp duty, as the case may be, upon any document produced in evidence before it at the time of its marking, it was not correct in concluding that the opposite party has no right to raise the issue. It would always be open to the opposing party to point out to the Court that the document is insufficiently stamped or has not been stamped at all and seek impounding thereof. Further, as the trial Court has also recorded the finding that the document in question needs to be treated as an agreement of sale and not as a bond, the said finding would be open to challenge in the present revision, notwithstanding the fact that the trial Court reserved to itself the power to direct the respondent-plaintiff to pay deficit stamp duty on the subject document at the time of its marking in evidence, if warranted.

Perusal of the subject document, which is titled 'Hand loan agreement-cum-money bond', reflects that the petitioners-defendants recorded therein that they had approached the respondent-plaintiff and requested him to advance a hand loan of Rs.2,75,000/- to meet their urgent family and legal necessities and due to rapport with their family, the respondent-plaintiff agreed to advance the said hand loan amount and arranged the same. Acknowledging receipt of the said hand loan amount of Rs.2,75,000/- from the respondent-plaintiff, the petitioners-defendants stated that to avoid future loss and inconvenience, both the parties entered into the said document of 'Hand loan agreement-cum-money bond' with certain terms and conditions. The relevant terms and conditions therein are extracted hereunder:

> '1. That, in pursuance of this Hand Loan Agreement, the Ist party members this day has received the hand loan amount of Rs.2,75,000/- (Rupees Two Lakhs and Seventy Five thousand only) from the IInd party member and they having acknowledge the receipt of

payment issued a separate receipt to that effect in favour of IInd party member.

2. That, the Ist party members hereby promised to repay the hand loan amount to the IInd party member within Nine (09) months from the date of this agreement without fail.

3. That, the Ist party members hereby declared that, if in case they failed to repay the hand loan amount to the IInd party member within the aforesaid promised time, they shall execute the Regd. Sale Deed in favour of the IInd party member in respect of their joint family property i.e., Agricultural land admeasuring Ac.0-20 gts., out of total extent of Ac.5-04 gts., out of Sy.Nos.756/ , 968/ , 972/ , 974/--, 975/--, 976/ and 981 situated at Bagayath Ibrahimpatan Vg., Ibrahimpatan Mdl., R.R.District, bounded by: North: Land of Ist party members, South: Road, East: Land of Telamoni Nagender and West: Land of Ist party members, treating the hand loan amount received by the Ist party members, as the total sale consideration for the above said land.'

The suit in O.S.No.179 of 2007 was filed by the respondent-plaintiff seeking specific performance of this 'Hand loan agreement-cum-money bond' dated 19.02.2006. This document was executed on a non-judicial stamp paper worth Rs.100/-.

Section 2(5) of the Act of 1899 defines a 'bond' 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.'

It is clear from the aforestated definition 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 a 'bond'.

Though it is well settled that the mere nomenclature of a document would not be decisive of the true character of the transaction recorded therein, it would still be indicative of the intention of the parties executing the said document. In the present case, the document in question is titled 'Hand loan agreement-cum-money bond'. The recitals therein clearly bear out that the petitioners-defendants, having secured a hand loan from the respondent-plaintiff, undertook to repay it within nine months without fail. In the event they failed to do so, they further undertook to execute in his favour a registered sale deed in respect of their joint family property. The primary purpose of this document was therefore to record the obligation undertaken by the petitioners-defendants to repay the hand loan amount to the respondent-plaintiff within a time frame. The document was also attested by two witnesses. It therefore fulfilled the requirements of Section 2(5)(b) of the Act of 1899 in all respects. Merely because their failure to abide by this obligation entailed sale of the joint family property by the petitioners-defendants did not transform this document into an agreement of sale.

In **M.R.SREEDHARAN V/s. G.GOPI**[1], a learned Judge of the Kerala High Court affirmed that the essential feature for construing a document as a 'bond' is that it must create an obligation to pay and no such obligation can be inferred from a mere acknowledgment of borrowal.

In **STATE OF KERALA V/s. McDOWELL & CO. LTD.**[2], the majority opinion was that an instrument whereby a person puts himself under an obligation to pay a sum of money to another is a

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[1] AIR 2004 KERALA 167
[2] (1994) Suppl. 2 SCC 605

'bond' and the only question to pose is whether the executant of the instrument put himself under an obligation or bound himself to pay a sum of money to another. The Supreme Court observed that if the executant could be sued for the sum of money only upon the strength of the instrument, the instrument is a 'bond'.

As the subject document also provided that in the event of failure on the part of the petitioners-defendants to repay the amount within nine months, they would be liable to sell their joint family property to the respondent-plaintiff, the present suit was instituted. In effect, the document in question is the basis for the suit which seeks to enforce the repayment in the form of specific performance of the agreed sale of the joint family property. This would however not dilute the fact that the essential undertaking of the petitioners-defendants thereunder was that they would repay the amount within the time stipulated and therefore, the subject document cannot be construed to be an agreement *simpliciter* for sale of the joint family property of the petitioners-defendants. The finding of the trial Court to the contrary is therefore erroneous on facts and in law and is accordingly set aside.

The civil revision petition is allowed to that extent leaving it open to the trial Court to take necessary steps for collection of deficit stamp duty along with penalty thereon as and when the said document is presented for marking in evidence, treating it as a 'bond'. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

2nd FEBRUARY, 2018
PGS