HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.4164 OF 2017

ORDER:

The present Civil Revision Petition is filed, under Article 227 of the Constitution of India, by the petitioner - defendant challenging the order, dated 30.06.2017, passed in O.S. No.5 of 2016 by the learned Principal Senior Civil Judge, Nellore, holding that the entries made in the unstamped ledgers are admitted even without payment of stamp duty and penalty since they were maintained in regular course of business and they are not required to be stamped.

2. The petitioner herein is the defendant in the aforesaid suit while respondent is the plaintiff.

3. The main contention of the petitioner - defendant in this revision petition is that the entries in the copies of ledger evidencing passing of consideration to the father of petitioner itself is a loan transaction and, therefore, they are liable to be stamped, and unless stamp duty and penalty is paid on the said entries, those copies of ledgers are inadmissible in evidence. The said objection was taken by the petitioner before the trial Court when the aforesaid case was coming up for marking the said documents on behalf of respondent - plaintiff. The trial Court did not consider the said objection, thereby committed an error in passing the order holding that the entries in the copies of day book are admissible in evidence without payment of any stamp duty and penalty.

4. During hearing, Sri V. Siva Prasad Reddy, learned counsel for the petitioner while reiterating the contentions urged in the revision, placed reliance on two judgments of this Court in **Chowdary Punam Chand Hastimal Co., v. Sugavasi Venkataswamy**[1] and **Rai Sahib Ramdyal Ghansi Ram and Sons v. Ramnivas**[2]. On the strength of principles laid down therein, the learned counsel for the petitioner contended that the entries in the books of account maintained in regular course of business are inadmissible in evidence without payment of stamp duty and penalty thereon, and requested to allow the revision.

5. Whereas, Sri P. Sridhar Reddy, learned counsel for the respondent drawn the attention of this Court to a judgment rendered by a learned Single Judge of this Court in **K. Narasimhulu Naidu, Chittoor v. G. Subbarama Reddy**[3], and on the basis of the principle laid down therein, the entries in the books of account are admissible in evidence even without payment of stamp duty and penalty thereon as those entries do not create any agreement between the parties, nor promise to pay any amount and, therefore, they are admissible in evidence and requested to pass appropriate orders holding the judgment of this Court.

6. Considering the rival contentions and material available on record, the point that arises for consideration is:

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[1]. AIR 1972 A.P. 282
[2]. AIR 1963 A.P. 138
[3]. 2003 (6) ALT 118

Whether the entries in the copies of day book/ledger maintained in a regular course of business create any agreement between the parties for repayment of loan amount? Or whether it would constitute an acknowledgement of debt either under Section 18 or under Section 19 of the Limitation Act, 1963? If so, whether the entries in the copies of day book/ledger are admissible in evidence without payment of stamp duty and penalty?

POINT:

7. Copies of entries in the day book/ledger maintained by the respondent are placed on record. The said entries bearing various dates are only brought forward entries and not a fresh transaction between the parties regarding payment of any amount. Therefore, such brought forward entries, at best, may amount to settling the amount if it is duly signed by the person concerned under it and it would not constitute a fresh agreement between the parties. The entries were signed by the father of petitioner, and when father of petitioner signed under the entries, it would constitute an acknowledgment of debt under Section 19 of the Limitation Act, 1963 (for short 'Act, 1963'), and the decisions in **Chowdary Punam Chand Hastimal Co.**[1] and **Rai Sahib Ramdyal Ghansi Ram and Sons**[2] relied on by the learned counsel for the petitioner are directly on the issue of acknowledgment of debt. The first decision relates to Section 19 of the Act, 1963 and the other decision relates to Section 18 of the Act, 1963. If the entries and signing there-under constitute an acknowledgement of debt, they are liable to be stamped. But, the aforesaid two decisions relied on by the learned counsel for the

petitioner are clear that when the entry of acknowledgement of debt, it need not be stamped as held in paragraph No.6 in **Chowdary Punam Chand Hastimal Co.**[1], which is as under:

> “6. There is a basic fallacy in this argument It confuses the Acknowledgement of a liability in respect of a right contemplated by Section 18 of the Limitation Act with the acknowledgment of a debt referred to in Art. 1 of Schedule 1 of the Stamp act. The two are distinct and separate. The Acknowledgement under the Limitation Act is merely that of a liability in respect of any property or right. That pre-supposes the pre-existence of the property or right. That I why sub-section (1) of Section 18 says that from the date of the said Acknowledgement, a fresh period of limitation starts to run, as district from the original period of limitation arising from the pre-existing property or right. The acknowledgment contemplated by the Stamp Act is, however of a debt arising under the instrument itself which is required to be stamped. That Acknowledgement is for the purpose of supplying evidence of a debt in any book or on a separate piece of paper, when such book or paper is left in the creditor's possession. While the former Acknowledgement under the Limitation Act is only an Acknowledgement of the liability in respect of a preexisting right. the Acknowledgement under the Stamp Act is an evidence of the debt itself. When a liability is incurred for the first time, it is natural and logical that the document evidencing it should be stamped as per the provisions of the Stamp Act. If, however, it is merely a payment on a pre-existing debt or an acknowledgment that it existed, it need not be stamped because there is no fresh contract in respect of a debt or a right. that is why Section 18 (1) requires that the recognition of a liability, in order to be treated as an Acknowledgement within the meaning of Section 18 should be before the expiration of the prescribed

> period for a suit or application in respect of any property or right. If, such recognition or Acknowledgement is made after the expiration of the prescribed period, then it is no Acknowledgement at all. There is no such inhibition in regard to time as far as the Acknowledgement under the Stamp Act is concerned. Thus, in my view, there is a clear distinction between the two acknowledgments. One should not be carried away by the similarity in the names."

8. Therefore, when the entries are treated as an acknowledgement of debt, they are not liable to be stamped and no stamp duty and penalty need to be collected to admit those documents. In **K. Narasimhulu Naidu**[3] relied on by the learned counsel for the respondent, this Court considered the entry evidencing payment of amount of Rs.6,000/- in the books of account maintained in the regular course of business and concluded that it is neither an agreement, nor a promissory note. Therefore, it need not be stamped. Even if these principles laid down are applied to the facts of the present facts of the case, there would not create a fresh agreement between the parties and it is only an acknowledgment of debt within Section 19 of the Act, 1963, and by applying the principle laid down in **Chowdary Punam Chand Hastimal Co.**[1], I held that the entries in the day book/ledger sought to be marked are only acknowledgment, they need not be stamped. Therefore, the order of the trial Court needs no interference since it is free from any legal infirmity warranting interference of this Court exercising power under Article 227 of the Constitution of India.

9. Accordingly, the Civil Revision Petition is dismissed. No order as to costs.

Consequently, Miscellaneous Petitions, if any, pending in the present revision, stand closed.

M. SATYANARAYANA MURTHY, J

October 24, 2018
Mgr