

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.6314 OF 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioner - plaintiff questioning the docket order, dated 11.09.2017, passed by the learned III Senior Civil Judge, City Civil Court, Secunderabad, regarding admissibility of two suit documents on the ground that document No.1 is both promissory note as well as bond, while document No.2 is only a receipt.

2. The suit was filed for recovery of amount based on promissory note allegedly executed by respondent - defendant in favour of petitioner - plaintiff. As the trial Court declined to mark the documents holding that they are not promissory note, but bond, the petitioner questioning the same filed the present revision.

3. The contention of the petitioner in this revision is that the first page of the document consists of two parts. The first part is promissory note, and the second part is security bond, but the entire page cannot be treated as one document to deny the admission of document in evidence treating the same as bond in view of absence of specific word "to pay the amount either to the plaintiff or to his order as and when demanded" as it did not contain an unconditional undertaking.

4. Learned counsel for the petitioner relied on two judgments, one is in **Bahadurrinisa Begum v. Vasudev Naick**¹ and another in **Raj Bahadur Singh v. Mahadeo Prasad Halwal**². Based on these principles, he contended that the document is a promissory note and not a bond and no stamp duty and penalty is required to be paid.

5. Whereas, during hearing, learned counsel for the respondent placed reliance on a judgments of this Court in **Bolisetti Bhavannarayana, Venkata Bhavannarayana v. Kommuru Vullakki Cloth Merchant Firm, Tenali**³ and **A. Shakunthala v. A. Mangamma**⁴, and **State Bank of Hyderabad per V.V. Shastri v. Ranganath Rathi**⁵. On the basis of the principles laid down by the Full Bench, Single Bench and Division Bench of this Court, respectively, the learned counsel contended that unconditional undertaking is sufficient to treat the same as not a promissory note and it is a bond.

6. The suit is filed for recovery of Rs.4.00 lakhs together with interest at 2% per month on the foot of the promissory note, dated 25.10.2010 allegedly executed by the defendant in favour of the plaintiff. But, at the time of marking the document, an objection was raised that the documents sued upon are only bonds and not promissory notes as it lacks a main requirement of unconditional undertaking to pay the amount. The trial Court accepted the said contention and held that

¹. AIR 1967 AP 123

². AIR 1981 All 58

³. 1996 (2) ALD 424

⁴. 2016 (3) ALD 541

⁵. AIR 1966 A.P. 215

the document No.1 filed by the plaintiff is both promissory note as well as bond and hence the trial Court ordered to impound the said document and pay stamp duty and penalty as per law under Section 6 of the Indian Stamp Act, 1899 (for short 'Act, 1899').

7. The aforesaid order is assailed in the present revision under Article 227 of the Constitution of India.

8. The document sued upon is styled as promissory note, dated 25.10.2010 and after affixing revenue stamp and obtaining the signature of the executant on the document, the other document styled as a security. Therefore, the document consists of two parts. The first part is a promissory note and the second part is a security, which is not filled, thereby it is incomplete document, which is not signed by executant, who gave security for the amount covered by the first part of the document i.e., promissory note. But, whereas, promissory note was signed by the executant, but there is no unconditional undertaking to repay the amount borrowed by the defendant.

9. Section 4 of the Negotiable Instruments Act, 1881 (for short 'Act, 1881'), promissory note is defined as follows:

“4. **“Promissory note”**.-A “promissory note” is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.”

10. To treat the document as promissory note, it must satisfy four conditions; which are i) it should be in writing; ii) it should have an unconditional undertaking; iii) it should be signed by the maker, and iv) it should be in favour of certain persons or to a bearer. But, in the present case, the unconditional undertaking i.e., clause (ii) is found missing in the document. As the unconditional undertaking is absent in the document, the trial Court concluded that it is a bond, not promissory note. Section 13 of the Act, 1881 is not relevant for the purpose of deciding the present controversy before this Court. The Division Bench of this Court in **Duggineni Seshagiri Rao v. Kothapalli Venkateswara Rao**⁶, held that if the document is satisfied first three conditions, it can be treated as a promissory note within the meaning of promissory note as defined under Section 4 of the Act, 1881, but, in the earlier judgment of this Court in **Ranganath Rathi**³, the Court took a different view and held that the document which contains a promise to pay on demand is not necessarily a promissory note and the question came up for consideration where the words 'on demand' were there but notwithstanding the existence of the words on demand, the document did not satisfy the test of negotiability and that they were not promissory notes. But, in the present case, the unconditional undertaking was found missing in the promissory note, but in the facts of the judgment 'on demand' was found missing. In the latter judgment of Full Bench of this Court in **Bolisetti Bhavannarayana, Venkata Bhavannarayana**¹ held thus:

⁶. 2001 (6) ALT 95

“2. As to the first question, we may remind ourselves of the fact that the Indian Stamp Act, 1899, (in short, the "Stamp Act"), levies stamp duty on various documents at varying rates and, therefore, it becomes necessary first to determine the nature of any document before deciding the question of proper stamp duty payable on such document. Accordingly the definition of a 'bond' or a 'promissory note' as given in the Stamp Act alone is material for the purpose of determination of the nature of any document. Section 2(22) of the Stamp Act defines 'promissory note' as follows:

This definition of promissory note itself indicates that there may be several types of promissory notes. Out of these various categories of promissory notes, some may be treated as 'negotiable instrument' within the meaning of Section 13 of the Negotiable Instruments Act and some others may not be so treated, but by that very fact, the nature of the document will not change, if it is otherwise a promissory note. In other words, if a document is a 'promissory note' within the meaning of Section 4 of the Act, it will continue to be 'promissory note', whether it comes or does not come within the meaning of the term 'negotiable instrument' as defined in Section 13 of the Act. For this reason, we are of the view that Section 13 of the Negotiable Instruments Act, or the definition of the term 'negotiable instrument' is wholly irrelevant when it comes to deciding the nature of a particular document as a promissory note, or otherwise. Similarly and for similar reasons, it is wholly irrelevant to refer to the provisions of Section 13 of the Act while deciding the nature of any document as a 'bond' or otherwise. Accordingly anything to the contrary held in any of the authorities referred to in the orders of reference is not a good law.

3. As to the second question, the document in question reads as follows:

"Dated 21-1-1980 Hand letter given on behalf of Kommuru Vullaki Cloth Merchants, Tenali to Sri Boliseti Bhavannarayana son of Rama Mohana Rao, resident of Dhulipudi village.

For the purpose of our necessity we have on this day taken a sum of Rs. 5,000/- (Rupees Five thousand only) as hand loan from you. We shall pay the above sum with interest at 1.50% per mensem.

1. Sd /-Kommuru Ramamohana Rao

2. Sd/- Kommuru Satyanarayana.

Scribe Annam Punnaiah."

A critical analysis of the document in question would show that it consists of two parts and is not attested. The first part reads: "For the purpose of our necessity we have on this day taken a sum of Rs.5,000 /- (Rupees Five thousand only) as hand loan from you." The second part says: "We shall pay the above sum with interest at 1.50% per mensem." The first part of the document is undoubtedly an acknowledgement of debt, but the second part is a promise to pay with interest. Article 1 of Schedule I of the Stamp Act describes an "acknowledgement" as:

"Acknowledgement, of a debt exceeding twenty rupees in amount or value, written or signed by or on behalf of, debtor in order to supply evidence of such debt in any book (other than a banker's pass book or) on a separate piece of paper when such book or paper is left in the creditor's possession provided that such acknowledgement does not contain any promise to pay the debt or any stipulation to pay interest or to deliver any goods or other property."

As the document in question admittedly contains a "promise to pay the debt" as also "stipulation to pay interest", it cannot be an acknowledgement on the face of its description as given in Article 1 of Schedule I of the Stamp Act. It cannot also be a promissory note, because it does not satisfy all the ingredients of a promissory note as defined in Section 4 of the Negotiable Instruments Act, read with Section 2(22) of the Stamp Act The document in question does not contain any promise to pay "to, or to the order of a certain person", nor "to the bearer of the instrument." It is, therefore, also not a promissory note. Then what is the nature of the document?

4. Though the amount mentioned in the document in question is "not payable to order or bearer", the makers of the document have obliged themselves to pay money with interest to the person named at the top of the document. It has, therefore, to be seen if the document can be said to be a "bond".

5. Section 2(5) of the stamp Act defines "bond" as follows: "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 would, thus, appear that the said definition of the term "bond" is not exclusive, but inclusive. In other words, the definition is exhaustive and not restrictive. It does not say that any document not attested by witnesses would not be a bond, though an obligation is incurred by one to pay money to another. Accordingly when Clause (b) of Section 2(5) of the Stamp Act mentions 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 included within the meaning of "bond", it does not mean that similar document without attestation by a witness would not be included, or excluded from the definition of "bond". Under the circumstances, we are of the view that the document in question is a bond, though not attested by a witness."

and laid down certain requirements to constitute a promissory note.

When the instruments proposed to be marked before the Court applying the definition of promissory note under the Act, 1881 and the Act, 1899, the Court concluded that the document is not a promissory note in terms

of Section 2 (22) of the Act, 1899 and Section 4 of the Act, 1881, but it would fall within the definition of Section 2 (5) (b) of the Act, 1899 and treated the same as one. If these principles are applied to the present facts of the case, the document sued upon is not a promissory note as the main requirement of unconditional undertaking to repay the amount is found missing. But, the learned counsel for the petitioner relied on two decisions in support of his contention; one in **Bahadurrinisa Begum**⁴, where this Court considered the definition of promissory note under Section 4 of the Act, 1881, and similarly in another judgment **Raj Bahadur Singh**⁴, the Allahabad High Court considered Section 2 (5) of the Act, 1899 and Section 2 (22) of the Act, 1899 to decide whether document is a bond as defined under Section 2 (5) of the Act, 1899 or promissory note as defined under Section 2 (22) of the Act, 1899. But, these decisions are not binding precedents in view of the full bench decision of this Court in **Bolisetti Bhavannarayana, Venkata Bhavannarayana**¹. But, in **Duggineni Seshagiri Rao**⁶ rendered by a Division Bench of this Court was on the issue of inchoate stamped instruments and the same cannot be treated as a binding precedent in view of the Full Bench judgment of this Court in **Bolisetti Bhavannarayana, Venkata Bhavannarayana**¹. Therefore, the full bench judgment will prevail over the other judgment as it is binding precedent on this Court. Applying the above principles, it is difficult to reverse the order passed by the trial Court holding that it is a bond. Hence, I find no merit in this revision and it is liable to be dismissed.

11. Accordingly, this Civil Revision Petition is dismissed. However, in the circumstances of the case, there shall be no order as to costs.

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

JUSTICE M. SATYANARAYANA MURTHY

November 09, 2018
Mgr

