ORDER SHEET

IA NO: GA/1/2023
APOT/387/2023
with
CS/186/2016
IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE
(Commercial division)

HOWRAH MILLS CO. LTD.
-Versus-
PRIMARC SRIJAN PROJECTS LLP.

BEFORE
The Hon'ble Justice I.P. MUKERJI
-And-
The Hon'ble Justice BISWAROOP CHOWDHURY
Date: 17th November, 2023

Mr. Abhrajit Mitra, Sr. Adv.
with Mr. Sarvapriya Mukherjee,
Mr. Satadeep Bhattacharayya,
Mr. Yashvardhan Kochar,
Mr. Sumanta Biswas &
Mr. Bikash Shaw, Advs.
...for the defendant/appellant.

Mr. Ratnanko Banerji, Sr. Adv.
With Mr. Paritosh Sinha,
Mr. Saubhik Choudhury,
Mr. Shounak Mukhopadhyay &
Mr. Tirthankar Das, Advs.
...for plaintiffs/respondents.

As the point involved in this appeal is short and a long hearing at the admission stage of the appeal took place, we have decided to dispose of this appeal now after dispensing with all formalities.

The document involved is the minutes of the meeting of the parties held on 9th May, 2017.

According to the appellant/defendant, this document was required to be stamped and being not so, could not be considered by the learned judge trying the suit. The learned judge, by a detailed judgment and order dated 22nd September, 2023, ruled that the application filed by the appellant/defendant to the above effect had no merit and dismissed the same.

Apparently during the stage when the suit was being made ready for hearing, the appellant/defendant did not dispute the execution of the said document dated 9th May, 2017. Since execution was not denied, it was taken by the respondents/plaintiffs to be an admitted document. In those circumstances, it was represented before the Court that the respondents/plaintiffs would not be formally proving it. The document dated 9th May, 2017 was not tendered in evidence as an exhibit.

In normal practice, the document ought to have been exhibited as an admitted document, the formal proof of which has been dispensed with by the Court.

We must also record here the averment made by the appellant/defendant in the written statement that the minutes of the meeting dated 9th May, 2017 only recorded the views, discussion and statements of respective parties, that no agreement was executed between them and that the document could not be considered as an agreement.

Quoting this averment, the learned judge opined in paragraph 25 of the impugned judgement and order, as follows:

> "**25.** In the present case, the first instrument that is the agreement dated 27th August, 2015 is impounded. In the said agreement charge was created. Due to failure on the part of the defendant, a meeting was held and the second instrument dated 9th May, 2017 was executed. The defendant in its written statement has specifically stated that "*The defendant further denies and dispute that any agreement was duly recorded in the meeting dated 9th May, 2017. The defendant says that the said Meeting dated 9th May, 2017 only records views, discussion and statements of respective parties. No agreement was executed between the parties. The defendant further says that the* Minutes of the Meeting *dated 9th May, 2017 cannot be constituted as an agreement.*"

Mr. Abhrajit Mitra, learned senior advocate appearing for the appellant/defendant, contends that the said minutes referred to a charge created and thus it was compulsorily required to be stamped under Article 32(b)(ii) to schedule IA of the Indian Stamp Act, 1899.

Mr. Ratnanko Banerjee, learned senior advocate appearing for the respondents/plaintiffs, inter alia, contends showing us the agreement dated 27th August, 2015 at page 67 of the stay petition that the said document already recorded a charge of the subject property and that there could not be a subsequent similar charge created by the minutes dated 9th May, 2017. Therefore, the said minutes were not required to be stamped.

Mr. Banerjee places paragraphs 20 and 22 of the impugned judgement to submit that the learned judge duly considered his argument and ruled that the charge referred at the minutes "is also available in the agreement in clause 7(i) and (x)".

Two points are very important in this appeal. The first is that if it was the case of the appellant/defendant that the document was invalid for lack of adequate stamp, the document ought not to have been admitted by them. This is so because, if a document is required to be stamped, and not so, or deficiently stamped, it is temporarily invalid until and unless it is properly stamped after impounding or by any other method prescribed by the Indian Stamp Act, 1899. Admission of a document by a party signifies that it is valid in all respects. Since an unstamped or deficiently stamped document does not bind a party to any transaction stated therein to have been made by execution of the document, he cannot admit the document. In those circumstances, the Court was required to decide the value of the said admission and whether the appellant/defendant was permitted to retract from its admission of that document and insist on its non-consideration and impounding by the Court.

Secondly, the learned Court ought not to have only relied on the admission of the appellant/defendant that the said minutes did not constitute an agreement because it has a duty under the Indian Stamp

Act, 1899 to decide and rule whether a document is properly stamped or not and if it is not, to take appropriate steps under the law.

We did not admit and hear out this appeal by the usual procedure which would delay the trial of the suit. We dispose of this appeal and the connected application by setting aside the impugned judgement by observing that the learned judge shall first go into and decide the above question de novo on the basis of the observations made above while proceeding with the trial of the suit. We request the learned judge to render the said decision as early as possible preferably before the Christmas vacation.

The appeal (APOT/387/2023) and the connected application (GA/1/2023) are disposed of.

(I.P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)

K. Banerjee
A.R. (C.R.)