IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2023

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

C.R.P.No.3344 of 2018
and C.M.P.No.18962 of 2018

Basheer Ahamed ... Petitioner

Vs.

Rajaveni ... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order in I.A.No.42 of 2018 in O.S.No.90 of 2015 dated 04.08.2018 on the file of Additional District Judge (Fast Track Court), Villupuram.

For Petitioner : Mr.N.Suresh

For Respondent : Mr.T.S.Baskaran

ORDER

This Civil Revision Petition has been filed by the 1st defendant questioning the dismissal of the application filed under Section 35 of the Indian Stamp Act in

I.A.No.42 of 2018 in O.S.No.90 of 2015 by the Additional District Judge (FTC), Villupuram, dated 04.02.2018.

2.The respondent/plaintiff filed the suit for recovery of money against the petitioner and another, based on a promissory note dated 23.05.2012. The petitioner/1st defendant filed an application under Section 35 of the Indian Stamp Act on the ground that the promissory note that was marked as Ex.A1 is inadmissible in evidence, since the promissory note in question is not the one payable on demand and sufficient stamp duty has not been paid. The Court below on considering the contentions raised on either side, came to a conclusion that the issue that has been raised by the petitioner can be gone into while dealing with the suit. It can also be noticed that the Court below has also rendered certain *prima facie* findings on the promissory note. But ultimately, the Court has held that the burden of proof is only upon the respondent to prove her case and while considering the same, the objection raised by the petitioner regarding the promissory note marked as Ex.A1 can be taken into consideration. Aggrieved by the same, the petitioner/1st defendant has filed the present Civil Revision Petition under Article 227 of the Constitution of India.

3.Heard Mr.N.Suresh, learned counsel appearing on behalf of the petitioner and Mr.T.S.Baskaran, learned counsel appearing on behalf of the respondent.

4.Mr.N.Suresh, learned counsel for the petitioner mainly raised two contentions. The first contention that was raised by the learned counsel for the petitioner is that the plain reading of the promissory note clearly shows that it is a promissory note payable otherwise than on demand and hence, the stamp duty ought to have been paid under Article 49(b) Schedule 1 of the Indian Stamp Act and whereas, the stamp that is available in the promissory note does not satisfy this requirement. In view of the same, it was contended that the document itself is inadmissible evidence for any purpose by virtue of proviso to Section 35 of the Indian Stamp Act. To substantiate his submission, the learned counsel for the petitioner placed reliance upon the judgment of this Court in ***P.Bency and Others vs. Martin Mary*** reported in ***2008 1 MLJ 638***.

5.The second contention that was raised by the learned counsel for the petitioner is that a plain reading of the alleged promissory note makes it very clear that no Sale Deed was executed and there was no occasion for the petitioner/1st defendant to receive Rs.25,00,000/- (Rupees Twenty Five Lakhs only) and hence, this can be tried atleast as a preliminary issue so that the suit itself can be brought to an end at the earliest.

6.Per contra, the learned counsel for the respondent submitted that there is absolutely no ground to interfere with the order passed by the Court below. The learned counsel submitted that the contention raised by the learned counsel for the petitioner is unsustainable, since Section 35 of the Indian Stamp Act underwent an amendment through Act 21 of 2006 and by virtue of the said amendment, the bill of exchange or a promissory note can be admitted in evidence even if there is a deficit stamp duty provided that the party is willing to pay the correct stamp duty as per the Schedule to the Act. To substantiate his submission, the learned counsel relied upon the judgment of the Bombay High Court in ***Neolite Polymer Industries Pvt. Ltd. vs. Standard Chartered Bank*** reported in MANU/MH/0593/2007 The learned counsel submitted that this judgment was rendered after taking into consideration the amendment that took place in the year 2006. In view of the same, the learned counsel submitted that the judgment that was cited by the learned counsel for the petitioner may not apply to the facts of the case and the said judgment did not take into consideration the amendment that came into effect from the year 2006.

7.The learned counsel for the respondent further submitted that the issue that has been raised by the learned counsel for the petitioner to be considered as a preliminary issue, is a mixed question of fact and law and hence, the same can only be decided after full-fledged trial. The learned counsel submitted that a time limit can be fixed for the disposal of the suit and that there are absolutely no merits in the present Civil Revision Petition and the same is liable to be dismissed.

8.This Court has carefully considered the submissions made on either side and also the materials available on record.

9.The short issue that arises for consideration in the present civil revision petition is as to whether the promissory note that was marked as Ex.A1 must be held to be inadmissible in evidence, in view of the insufficient stamp duty that was paid and whether the order passed by the Court below requires the interference of this Court.

10.For proper appreciation, the relevant portion in the promissory note that was marked as Ex.A1 is extracted hereunder:

> நான் தங்களிடம் நிலம் கிரையம் வாங்கிய வகையில் பாக்கித் தர வேண்டிய தொகை ரூபாய் இருபத்து ஐந்து இலட்சத்தை, தாங்கள் திண்டிவனம் நீதிமன்றத்தில் தொடர்ந்துள்ள வழக்கினை வாபஸ் பெற்ற பிறகு தர சம்மதிக்கிறேன். இந்தப்படி நான் எழுதிக்கொடுத்த பிராம்சரி நோட்டு. இந்த இரசீது இரண்டு பிரதிகள் எடுக்கப்பட்டு ஆளக்கொரு பிரதி கொடுக்கப்பட்டுள்ளது.

11.The learned counsel for the petitioner submitted that a plain reading of the promissory note shows that Ex.A1 promissory note is payable otherwise than on demand, since the promissory note itself makes it clear that the payment of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) will be made after the proceedings pending before the Dindivanam Court is withdrawn. To substantiate this submission, the learned counsel has relied upon the Judgment of this Court in ***P.Bency and Others vs. Martin Mary*** referred *supra*.

12.It is true that a reading of the promissory note shows that it is not a promissory note payable on demand and it is a promissory note payable otherwise than on demand and hence, the stamp duty ought to have been paid under Article 49(b) of the Schedule 1 of the Indian Stamp Act. Having held so, it must be seen if the deficit stamp duty by itself will render this document inadmissible. The judgment that was cited by the learned counsel for the petitioner in no uncertain terms holds that the promissory note of this nature is inadmissible in evidence and it cannot be validated by paying deficit stamp fee and penalty. When this judgment was rendered, the amendment that was made to Section 35 of the Indian Stamp Act was not brought to the notice of the learned Judge. The learned Judge went by the provision that was available before the amendment and hence, came to a conclusion that the promissory note is inadmissible in evidence and it cannot be validated by paying deficit stamp fee and penalty.

13.The amendment was brought in through Act 21 of 2006 to Section 35 and proviso (a) was inserted in the following manner:

(a) any such instrument [shall] be admitted in evidence on payment of the duty with which the same is chargeable or, in the case

of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penaly of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portions;

14.The effect of this amendment was considered by the Bombay High Court in ***Neolite Polymer Industries Pvt. Ltd. vs. Standard Chartered Bank*** referred *supra*. For proper appreciation, the relevant portions in the judgment are extracted hereunder:

4. In so far as the defence that the bills have not been duly stamped is concerned, Section 3 of the Indian Stamp Act, 1899 provides for a charge of stamp duty inter alia on every Bill of Exchange payable otherwise than on demand. Article 13 of the Schedule to the Stamp Act provides for various rates of stamp duty in respect of Bills of Exchange which are payable otherwise than on demand. Section 2(3) of the Stamp Act contains a definition of a Bill of Exchange payable on demand and the definition is to the following effect:

(3) Bill of exchange payable on demand. - "Bill of exchange payable on demand" includes

(a) an order for the payment of any sum of money by a bill of exchange or promissory note, or for the delivery of any bill of exchange or promissory note in satisfaction of any sum of money, or for 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;

(b) an order for the payment of any sum of money weekly, monthly, or at any other stated period; and

(c) a letter of credit, that is to say, any instrument by which one person authorises another to give credit to the person in whose favour it is drawn; Under Clause (b) a Bill of Exchange continues to remain one payable on demand where it contains an order for the payment of any sum of money weekly, monthly, or at any other stated period. Section 35 of the Act provides that an instrument chargeable with duty shall not be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, unless such instrument is duly stamped. Clause (a) of the proviso prior to its amendment by the Finance Act of 2006 was to the following effect:

> *(a) any such instrument not being an instrument chargeable with a duty not exceeding ten naye paise only, or a bill of exchange or promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;*

Bills of Exchange and promissory notes were excluded from the coverage of Clause (a) of the proviso to the Indian Stamp Act as it earlier stood. The Finance Act of 2006 amended the provisions of Section 35 by deleting the words "not being an instrument chargeable with a duty not exceeding ten naye paise only or a Bill of Exchange or a promissory note, shall, subject to all just exceptions". Instead of the aforesaid words, the word "shall" was substituted. The net consequence, therefore, of the amended provisions of the Indian Stamp Act is *that all instruments are now capable of being admitted in evidence on the payment of the duty with which an instrument is chargeable or the deficit stamp duty in the case of deficiently stamped instrument together with penalty as prescribed. In the present case, the Bills of Exchange have admittedly been stamped subsequently in 2006. The effect of the amendment of Section 35 by the Finance Act of 2006 is to remove the bar on the admission of Bills of Exchange and promissory notes which have not been stamped or which were insufficiently stamped subject to due stamp duty and penalty being paid. Upon the payment of the requisite stamp duty, the embargo which is imposed by the substantive provisions of Section 35 is lifted and the Bills of Exchange are admissible in evidence.*

15.I am in total agreement with the above judgment of the Bombay High Court. The Bombay High Court has specifically taken into consideration Clause (a) of the proviso prior to its amendment and after the amendment and has come to the conclusion that the amended provision of the Indian Stamp Act now enables all the instruments to be admitted in evidence on the payment of duty with which an instrument is chargeable or the deficit stamp duty in the case of deficiently stamped instrument together with penalty as prescribed. In view of the same, the ground of attack made by the petitioner to the effect that Ex.A1 ought to have been stamped under Section 49(b) of the Schedule 1, can now be rectified by directing the respondent/plaintiff to pay the deficit stamp duty. The learned counsel for the respondent submitted that the respondent has already paid the deficit stamp duty.

16.In view of the above, the main ground that was raised by the learned counsel for the petitioner has no legs to stand by virtue of the specific amendment that came into effect in the year 2006. The order passed by the Court below can be sustained on the above reasonings.

17.Insofar as the second ground that was raised by the learned counsel for the petitioner to the effect that the Court below should be directed to consider the contentions raised on the promissory note as a preliminary issue, the same may not be sustainable. After the amendment was brought into force to Order XIV of C.P.C., Order XIV Rule 2 as it stands makes it very clear that where issues both of law and fact arise in the same suit, and the Court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first where that issue relates to a) the jurisdiction of the Court or b) a bar to the suit created by any law. It is therefore clear that an issue can be tried as a preliminary issue if it pertains to law only and it should not be a combination of both law and fact. The preliminary issue that has been raised by the learned counsel for the petitioner is obviously an issue of both fact and law and hence, it cannot be tried as a preliminary issue.

18.In the light of the above discussion, this Court does not find any ground to interfere with the fair and final order passed by the Court below and the order passed by the Court below is hereby sustained. However, it is made clear that the grounds raised by the learned counsel for the petitioner on merits, can be put forth before the Court below and the Court below shall decide the suit on its own merits and in accordance with law. Whatever observations were made by the Court below while passing the order in the application and whatever observation has been made by this Court while disposing of this Civil Revision Petition, will not have any bearing and all the issues are kept open to be decided by the Court below.

N. ANAND VENKATESH, J.

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19.In the result, this Civil Revision Petition is dismissed and the Court below is directed to dispose of the suit in O.S.No.90 of 2015, within a period of three months from the date of receipt of copy of this order and to report compliance. No Costs. Consequently, connected miscellaneous petition is closed.

06.01.2023

Internet : Yes
Index : Yes
Speaking Order / Non Speaking Order
Neutral Citation Case : Yes / No
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To

The Additional District Judge (Fast Track Court),
Villupuram.

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and C.M.P.No.18962 of 2018