



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Writ Petition No. 1119 / 2024

Maharashtra Road Transport Corporation
Through its Partner
Jaikumar s/o Dindayal Thanvi
Age : 58 years; Occ. Business
C/o Maharashtra Road Transport
Corporation, Jafargate, Mondha Road,
Aurangabad.

..Petitioner

Versus

1. United India Insurance Company Limited
Having its Head Office at Madras and one
of its Divisional Office at Aurangabad
Through its Divisional Manager,
Osmanpura, Aurangabad.

2. The Branch Manager
Nath Pulp Paper Mill Ltd.
Paithan Road, Aurangabad
Through its Power of Attorney Holder,
United India Insurance Company Limited
Divisional Office for himself
And for special GPA holder.

..Respondents

Advocate for the Petitioner : Mr. Namit S. Muthiyan

Advocate for Respondent No.1 : Mr. S. V. Kulkarni

CORAM : SHAILESH P. BRAHME, J.

RESERVED ON : 16 DECEMBER 2024

PRONOUNCED ON : 19 DECEMBER 2024

FINAL ORDER :

. Heard both the sides finally at the admission stage.

2. The petitioner is original defendant in Special Civil Suit No.145/2016 for recovery of an amount of Rs.3,71,778/- alongwith interest. The respondents are original plaintiffs. It is founded on the agreement of subrogation cum special power of attorney dated 24.06.2015 executed by the respondent no.2 in favour of the respondent no.1/Insurance Company. Respondent no.1 being subrogee is claiming the amount in question from the petitioner as the petitioner/transporter caused damages to the goods loaded from Paithan Road to Mumbai.

3. The claim of the respondents is denied by the petitioner on various counts. The parties went on trial. When the first witness of the respondents was in box, the agreement of subrogation was confronted to the witnesses. The lawyer of the petitioner objected for exhibiting it as it was unregistered and insufficiently stamped.

4. Respondents submitted application at Exhibit-50 for exhibiting the agreement of subrogation

which is opposed by the petitioner by filing Say. By order dated 18.10.2023 passed below Exhibit-1, application was allowed and the agreement was marked as Exhibit-40. This is the order under challenge.

5. Learned Counsel for the petitioner submits that the document is unregistered one and bears stamp duty of Rs.100/-. It is submitted that it is not only agreement of subrogation but special power of attorney in favour of respondent no.1 conferring additional rights. He would submit that as per article 48(b) of schedule-I of Maharashtra Stamp Act, the document would require stamp of Rs.500/-. Being special power of attorney, as per article 5(h)(A)(iv)(a), additional stamp of Rs.372/- needs to be affixed.

6. Learned Counsel further adverts to Section 17(2)(f) of (Maharashtra Amendment) Registration Act, to buttress that the registration of the document is mandatory. It is vehemently contended that document in question is inadmissible in evidence and learned Judge committed perversity in ignoring the above provisions of law.

7. Per contra, Mr. S.V. Kulkarni for the

respondent no.1 supports impugned order. He would submit that the transaction between the parties is not loan or security transaction. The document is not covered by Section 17(1)(a) to (f) of the Registration Act. The claim pertains to recovery of an amount which would not attract stamp duty on the power of attorney.

8. Having heard both the sides, find that the suit is founded on the agreement of subrogation cum power of attorney which is sought to be exhibited. Respondent no.1 is insurer of the respondent no.2 as per insurance policy for covering various risks. The contract between the parties pertains to risk during the transport. There is no transaction as such of debts or loan in between the parties. The recovery which is sought from the petitioner is for the damages of the goods caused during transit.

9. The document is inadmissible as per Section 34 of the Maharashtra Stamp Act, if it is not duly stamped. As per Section 33, the provisions of impounding of the document are applicable. Article 48(b) pertains to power of attorney. The stamp duty of Rs.500/- is leviable if it is in suit or

proceeding under the Small Cause Courts Act. Whereas Article 5(h)(A)(iv)(a) is about the stamp duty payable on agreement creating obligation, right or interest not covered under any other article. The stamp duty of 0.1% is payable. The document is insufficiently stamped. It is liable for impounding. Unless it is impounded, it is not admissible in evidence. The parties would be at liberty to resort to the procedure of impounding.

10. Another objection pertains to registration. The document which is compulsorily registrable, cannot be received in evidence as per Section 49. My attention is invited to Maharashtra Amendment Act to sub-clause (f) of Section 17(2) which reads as follows :

“17(2)(f) agreement relating to the Deposit of title deeds, where such deposit has been made by way of security for the repayment of a loan or an existing or future debts”

11. The transaction between the parties was not that of loan or any existing or future debts. Respondent no.1 is insurer. It is stepping in the shoes of respondent no.2 for recovering the damages. I do not think that registration is essential. Sub-Clause (f) is not attracted to the case in hand.

12. The document has been marked as Exhibit-40 when it is insufficiently stamped. The marking of the document is for the identification. The contents thereof have to be proved by the respondent no.5. It is not a case that at the threshold, the document can be discarded. As there is provision of impounding of document, the probative value would depend upon the payment of deficit Court fees. In such situation, I find that impugned order needs modification. It shall be substituted by following order :

ORDER

(a) The agreement of subrogation cum power of attorney is marked as Exhibit-40 for the purpose of identification only and its admissibility would depend on the payment of deficit stamp duty and subject to procedure of impounding.

(b) The parties are at liberty to undertake procedure of impounding expeditiously.

(c) The writ petition is disposed of in above terms. No order as to costs.

**SHAILESH P. BRAHME
JUDGE**