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C.R.P. No. 4472 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2024

CORAM

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

C.R.P. No. 4472 of 2024

and

C.M.P. No. 24963 of 2024

S.Sivalingam

... Petitioner

Vs.

R.Subramaniyan

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 11.06.2024, made in I.A.No.01 of 2023 in C.O.S.No.01 of 2023, on the file of the Court of the District Judge of Nilgiris at Udhagamandalam and allow the Civil Revision Petition.

For Petitioner : Ms. S.Kadarkarai

For Respondent : Mr. C.K.Chandrasekhar

ORDER

This civil revision petition arises out of the order dated 11.06.2024 passed by the District Court of Nilgiris at Udhagamandalam in I.A. No. 01 of 2023 in C.O.S. No. 01 of 2023.



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2. The simple point involved in this case is whether the document found at page 36 of the typed set of papers is a bond or not. If it is a bond, then it falls within the scope of Section 2(5)(b) of the Indian Stamp Act (hereinafter referred to as 'the Act' for short). Consequently, it must bear the stamp duty required under Article 15 of the Schedule.

3. The test to determine whether a document is a bond or not is whether the liability to pay the amount arises by virtue of the document or not. It is similar to a promissory note, except without the clause "on demand." However, if the document reflects a pre-existing liability between the parties, then it does not come within the scope of a bond under Section 2(5)(b) of the Act. See, *State of Kerala vs. McDowell & Co Ltd.*, (AIR 1995 SC 1445).

4. Bearing this principle in mind, I examine the documents in question. There is no dispute that the plaintiff and the defendant signed the agreement on 09.05.2022. The agreement states that the plaintiff supplied materials to the defendant and the defendant made payments, leaving an outstanding balance of Rs. 58,00,000/-. Clause (1) of the document records that the parties mutually agreed that the defendant will pay the plaintiff a sum of Rs.58,00,000/-. It merely records a pre-existing liability. Treating this



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document as a bond, the defendant filed an application, I.A. No. 01 of 2023, in C.O.S. No. 01 of 2023 under Order 13 Rule 3 of the Code of Civil Procedure.

5. He wanted the Court to impound the document, as it is hit by virtue of Sections 33 and 35 of the Act. I fail to understand how Section 35 applies. Section 35 applies to documents that do not carry any stamp at all. The document in question shows it has been executed on Rs.20 stamp paper, and therefore, the question of applying Section 35 does not arise.

6. Now, I turn to whether Section 33 will be applicable to the facts of the case. Section 33 applies in situations where an authority empowered to record evidence finds a document produced before him or her that is insufficiently stamped.

7. Mr. S. Kadarkarai, learned counsel for the petitioner, pleads that if the document is treated as a bond, then it is insufficiently stamped.

8. As pointed out above, the document merely records a pre-existing transaction between the plaintiff and the defendant. The liability is not created



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by the document. Therefore, I cannot treat it as a bond. I do not find any reason to take a different view than the one taken by the learned Trial Judge in the impugned order.

9. In the result, this Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Index : Yes / No

Speaking order : Yes / No

NCC : Yes / No

kv

To

The District Judge of Nilgiris at Udthagamandalam.



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V.LAKSHMINARAYANAN, J.,

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