

(1971) 07 KAR CK 0014

Mysore High Court

Case No: Civil Revision Petition No. 492 of 1970

Raghunath
Balakrishna
Deshpande

APPELLANT

Vs

Biharilal
Krishnaprasad Dave

RESPONDENT

Date of Decision: July 16, 1971

Acts Referred:

- Negotiable Instruments Act, 1881 (NI) - Section 13, 13 (1), 4
- Stamp Act, 1899 - Section 2 (22), 2 (5), 2 (6)

Citation: AIR 1972 Kar 159

Hon'ble Judges: V.S. Malimath, J

Bench: Single Bench

Advocate: W.K. Joshi, for the Appellant; K.S. Satya Moorthy, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

V.S. Malimath, J.

This is a defendant's revision petition against the Order passed by the Munsif of Belgaum in R. O. S. No. 442/1968 wherein he recorded his findings on the preliminary issues to the effect that the suit document is a promissory note and not a money bond and that it is admissible in evidence as the said document is duly stamped as a promissory note.

2. Shri. W. K. Joshi. the learned counsel for the petitioner submitted that the learned Munsiff committed an error in holding that the suit document is a promissory note and not a money bond. It is not disputed that if the document is a money bond, the same is not duly stamped. It is also not disputed that if the suit document is construed as a promissory note, it is duly stamped and admissible in evidence. The

only question for consideration, therefore, is as to whether the suit document is a promissory note as contended by the plaintiff or a money bond as contended by the defendant,

3. The expression "promissory note" has been defined in Section 2(22) of the Indian Stamp Act as follows:

"2 (22) "Promissory note" means a promissory note as defined by the Negotiable Instruments Act. 1881; it also includes a note promising 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."

The expression "bond" has been defined in Section 2(5) of the Indian Stamp Act as follows:

"2 (5) "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 him-self 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."

As the promissory note has been defined in Section 2(22) of the Indian Stamp Act as meaning a promissory note as defined in the Negotiable Instruments Act it is necessary to advert to the relevant provisions of the Negotiable Instruments Act. The expression "promissory note" has not been defined in any definition section or in Section 3 pertaining to the interpretation clause. We, however, find the definition of the expression "promissory note" in Chapter II of the Negotiable Instruments Act under the Head "of notes bills and cheques." Section 4 of the Negotiable Instruments Act reads as follows:--

"4. A "promissory note" is an instruments 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."

Another relevant provision to be noticed in this connection is Section 13 which is also contained in Chapter II. Section 13 reads as follows:--

"13. (1) A "negotiable instrument" means a promissory note, bill of exchange or cheque payable either to order or to bearer.

Explanation (i):-- A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to

particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable.

Explanation (ii):-- A promissory note, bill of exchange or cheque is payable to bearer which is expressed to be so payable or on which the only or last endorsement is an endorsement in blank.

Explanation (iii):-- Where a promissory note, bill of exchange or cheque, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order it is nevertheless payable to him or his order at his option.

(2) A negotiable instrument may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, one or some of several payees."

The document in question reads as follows:

Belgaum. 21-12-1965.

To,

Shri Biharilal Krishna Prasad Dave, Age 30 year, occupation Doctor, Religion Hindu, This day at Belgaum.

I Raghunath Balkrishna Deshpande Age 47. caste Hindu, profession business of Angol, this day at Belgaum. promised to pay you on demand the sum of Rs. 7,000/- (Seven Thousand) received cash this day as Hand loan without interest as the sum was needed by me for my personal need. I have taken the amount from you.

Sh.- R. B. Deshpande.

Witness:

(1) R. H. Deshpande. Advocate, and

(2) G. S. Adhyapak".

It is clear from the recitals in the document that there is an unconditional undertaking, signed by the maker, to pay a certain sum of money, viz.. Rs. 7,000/- only to Shri Biharilal Krishna Prasad Dave. The document will be a promissory note if it fulfils the following conditions specified in Section 4:

(1) It must be in writing and signed by the maker;

(2) It should not be a bank note or a currency note;

(3) It must contain an unconditional promise to pay a sum certain in money only;

(4) It must be payable on demand or at a fixed or determinable future time; (5) It must be payable (i) to a specified person; (ii) or to the order of a specified person;

(iii) or to the bearer of the instrument.

It is not disputed that the first four conditions are fulfilled in this case. There cannot be any doubt that the 5th condition is also satisfied, inasmuch as the amount is payable to the person specified in the document itself. I find it difficult to accede to the contention of Shri W. K. Joshi, the learned counsel for the petitioner that the document in question is not a promissory note because of the absence of the words in the document making it negotiable. It is necessary to note that the 5th condition requires that the amount must, be payable to a specified person or to the order of a specified person or to the bearer. It is, therefore, clear that even if there are no recitals in the document that the amount is payable to the order of a specified person or to the bearer, the document will still be a promissory note if the amount is payable to a specified person.

Shri W. K. Joshi's contention that if the amount is payable to a specified person, the document cannot become a promissory note stands clearly dislodged by illustration (b) to Section 4 of the Negotiable Instruments Act which reads as follows:--

"A signs instruments in the following terms:--

(a) xx xx xx

(b) I acknowledge myself to be indebted to B in Rs. 1,000/- to be paid on demand, for value received."

(c) xx xx xx

The instruments respectively marked (a) and (b) are promissory notes"

Illustration (b) to Section 4 clearly shows that the document is a promissory note if the amount is payable to a specified person notwithstanding the fact that there are no recitals to the effect that the amount is payable to the order of a specified person or to the bearer.

4. It was next urged by Shri Joshi that as the document is attested, the same is not a promissory note. It is no doubt true that a promissory note does not require attestation. At the same time, it is necessary to note that there is nothing in the Negotiable Instruments Act to indicate that an attestation of a document like the promissory note is prohibited. Attestation of a document as usually got done for the sake of abundant caution even though attestation is not the requirement of law. Merely because the document in question which is otherwise a promissory note, has been attested, it does not lose its character as a promissory note. I have, therefore, no hesitation in holding that the document in question is a promissory note.

5. Shri W. K. Joshi next submitted that though the document in question is a promissory note as defined in Section 2(22) of the Indian Stamp Act, the same also answers the definition of the expression "bond" given in Section 2(6) of the said Act. Relying upon Section 6 of the Indian Stamp Act. Shri Joshi submitted that if the

document comes within two or more of the descriptions in Schedule I it shall be chargeable only with the highest of such duties where the duties chargeable thereunder are different. He submitted that if the document in question is a bond as defined in Section 2(5) of the Indian Stamp Act. it is chargeable with duty higher than a promissory note. As the necessary stamp has not been affixed as a money bond, he urged that the document is not duly stamped and that therefore the same is not admissible in evidence. It is not disputed that the document in question does not bear the requisite stamp as a bond. The question for consideration therefore is as to whether the document in question is a bond.

6. Shri W. K. Joshi submitted that the document in question is a bond as it answers the definition given in Section 2(5)(b) of the Stamp Act. u/s 2(5)(b), the following conditions have to be satisfied if the document is to be construed as a bond:

- (i) that under the document an obligation is created to pay the money by the executant to another person;
- (ii) that the document is attested by a witness; and
- (iii) that the amount is not payable to order or bearer.

It is not disputed by both the parties that the first two conditions are satisfied. The controversy is on the question as to whether the third condition has been satisfied. As already noticed, there are no recitals in the document itself indicating that the amount is payable to order or bearer. Section 13(1) of the Negotiable Instruments Act defines a negotiable instrument as meaning a promissory note, bill of exchange or cheque payable either to order or to bearer. Explanation (i) to the said Section states that a promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable. I have already come to the conclusion that the document in question is a promissory note as defined in Section 2(22) of the Indian Stamp Act. A document which is a promissory note would be a negotiable instrument u/s 13(1) of the Negotiable Instruments Act if the amount is payable either to order or to bearer. But, in view of the latter part of Explanation (1) to Section 13 of the Negotiable Instruments Act a promissory note shall be deemed to be payable to order if the amount is expressed to be payable to a particular person and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable. Therefore the conditions mentioned in explanation (i) to Section 13(1) of the Negotiable Instruments Act are fulfilled. Therefore, the document in question is a negotiable instrument within the meaning of that expression u/s 13 of the Act and the amount is in law, payable to order though there are no express words to that effect in the document itself. The amount under the document becomes legally payable to order by the operation of explanation (i) to Section 13(i) of the Negotiable Instruments Act. In other words, by the operation of

law, the expression "payable to order" has to be read as having been Incorporated in the document itself. All the legal consequences do follow on the basis that the amount is payable to order even though there is no express recital to that effect in the document. As under the document in question the amount in law is payable to order, it is clear that the third condition u/s 2(5) of the Stamp Act to which I have adverted to above is not satisfied. As the amount is payable to order under the document, the document does not answer the definition of the expression "bond" given in Section 2(5)(b) of the Stamp Act. But, it was urged by Shri Joshi that though in law the amount is payable to order under the document in question, the document is still a bond as there are no recitals in the document itself expressly stating that the amount is payable to order.

7. Shri W K. Joshi. the learned counsel for the petitioner placed reliance on the decision of the Patna High Court in [Ram Narayan Bhagat and Another Vs. Ram Chandra Singh and Others](#), The documents dealt with by the Lordships of the Patna High Court were similar to the document under consideration in this case. In those two documents construed by the Patna High Court, the amount was payable to the specified respective creditors. The documents were attested. There were no recitals in these documents to show that the sums due are payable to order or bearer. On consideration of the several authorities placed before their Lordships, they came to the conclusion that those documents are bonds as defined in Section 2(5)(b) of the Stamp Act. Their Lordships took the view that as there are no specific recitals in the documents to the effect that the amounts are payable to order or bearer, the documents are bonds u/s 2(5)(b) of the Stamp Act even though by the application of Explanation (i) to Section 13(1) of the Negotiable Instruments Act, the amounts due under these two documents are in law payable to order. With great respect. I find myself Unable to agree with the view taken in the said decision. There are no words in clause (5) of Section 2 of the Stamp Act indicating that the non-playability of the amount to order should be expressed in the document itself. In my opinion, in view of explanation (i) to Section 13(1) the expression "payable to order" has to be read as being part of the document as the document otherwise answers the definition of a promissory-note u/s 4 of the Negotiable Instruments Act as well as u/s 2(22) of the Stamp Act. When the amount under the document in question is in law payable to order. I do not find any justification to proceed on the basis that the amount is not payable to order while construing the document under the Stamp Act. In my opinion, the document must be construed even under the Stamp Act giving full effect to the legal consequences that flow as a result of the application of Explanation (i) to Section 13(1) of the Negotiable Instruments Act.

8. Shri Satya Murthy. the learned counsel for the respondent submitted that this is not a case in which Section 6 of the Stamp Act can be invoked. He submitted that Section 6 of the Indian Stamp Act can be invoked only in cases where the document answering both the descriptions under the same Act is liable to different Stamp duty. It was urged that if the document is a promissory-note, it will be governed by

the Indian Stamp Act, whereas if the document is a bond the same will be governed by the Mysore Stamp Act, 1957. The definition of the expression "bond" in Section 2(5) of the Indian Stamp Act is similar to the definition of the expression "bond" given in Section 2 (1) (a) of the Mysore Stamp Act, 1957. As I have come to the conclusion that the document in question does not answer the definition of the expression "bond" either under the Indian Stamp Act or under the Mysore Stamp Act. "it is unnecessary to consider the contention urged by Shri Satya Murthy that there is no scope for invoking Section 6 of the Indian Stamp Act.

9. For the reasons stated above, this revision petition fails and the same is dismissed. No costs.