**(1943) 07 BOM CK 0024**

**Bombay High Court**

**Case No:** Civil Revision Application No. 32 of 1942

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| Bhagwandas Totaram Agarval | | APPELLANT |
| | Vs | |
| Chhaganlal Raichand | | RESPONDENT |

**Date of Decision:** July 30, 1943

**Acts Referred:**

- Stamp Act, 1899 - Section 36

**Citation:** AIR 1944 Bom 235(1) : (1944) 46 BOMLR 411

**Hon'ble Judges:** Lokur, J

**Bench:** Single Bench

**Final Decision:** Dismissed

**Judgement**

Lokur, J.

This is an application in revision u/s 25 of the Provincial Small Cause Courts Act. The plaintiffs sued to recover Rs. 650 due on an instrument passed for Rs. 1,841 on September 18, 1937, and signed by " the firm Shivkisen Totaram by the pen of the defendant." The plaintiffs alleged that the defendant was a partner of the firm of Shivkisen Totaram, and that the other two partners had paid their shares in the amount of the instrument, and wanted to recover the balance from the defendant. Although the instrument is described as a promissory note for Rs. 1,841, it was stamped with only one anna stamp, and it was contended that the stamp was insufficient and, therefore, the instrument was inadmissible in evidence. The learned Judge below held that the instrument was a deedi of agreement as it made provision for the place of payment and, therefore, admitted it in evidence on payment of the deficit stamp and penalty. He held the amount claimed to be due from the defendant and passed a decree in favour of the plaintiffs.

2. It is now urged that the instrument is really a promissory note and not a mere agreement, and reliance is placed on the ruling in Deva Ratna v. Fakir Adam (1902) 4 Bom. L.R. 428 where it was held that a promissory note did not lose its character as

such merely because it contained a: promise to pay at a certain place. I think that this contention must be upheld and the instrument on which the suit is based is really a promissory note and not a bond, and the lower Court erred in treating it as a deed of agreement and admitting it in evidence on the payment of the deficit stamp and penalty.

3. But once a document is rightly or wrongly admitted in evidence, it is not permissible u/s 36 of the Indian Stamp Act, 1899, to the Court at any subsequent stage of the suit or proceeding, whether it is a Court of appeal or revision or the trial Court, to reject it. Mr. Thakor, however, contends that although the admissibility of an insufficiently stamped document cannot be questioned at a subsequent stage after it is once admitted in evidence, yet it cannot be acted upon. Section 35 of the Indian Stamp Act provides that no instrument chargeable with duty shall be admitted in evidence for any purpose, or shall be ''acted upon, unless it is duly stamped. But once it is admitted in evidence, it is to be presumed that the document was for the purpose of that proceeding duly stamped and has to be treated as such. Hence it has to be acted upon as a document duly stamped. In Bala Raghu Dhanwade Vs. Bhiku Genu Jambhale, , a promissory note which was insufficiently stamped was wrongly admitted in the trial Court and a decree was passed on it. In appeal the District Judge held that as the promissory note had been insufficiently stamped it was absolutely void and set aside the decree. But in second appeal it was held that the document having been once admitted in evidence in the trial Court, it could not be called in question on the ground that it was not duly stamped as provided by Section 36 of the Indian Stamp Act and the decree of the trial Court was restored. Thus, although the promissory note was insufficiently stamped, it was acted upon as it had been rightly or wrongly admitted in evidence in the trial Court. This was made clear in Venkata Reddi v. Hussain Setti ILR (1933) Mad. 779 where it was observed that Section 36 of the Indian Stamp Act applied not only to documents admitted in the course of evidence in support of subsidiary points arising in the suit but also to cases where the documents in question formed the foundation of the suit. Hence the argument that although the admissibility of the instrument cannot be questioned, yet it cannot be acted upon must fail.

4. It is next contended that the instrument is not signed by the defendant in his personal capacity and that he has only written the name of the firm as the writer but not as the executant. There is some force in this contention, but the defendant himself has admitted in his deposition that he signed the instrument for the firm of Shivkisen Totaram. It was definitely alleged in the plaint that the defendant was a partner of that firm and had executed the document as such. That allegation was not challenged in the written statement, and in view of his admission, the trial Court was right in passing a decree against him.

5. The rule is, therefore, discharged with costs.