

(1976) 01 BOM CK 0033

Bombay High Court (Nagpur Bench)

Case No: Civil Revision Application No. 31 of 1973

K. Mallaya Lachmayya
Corporation

APPELLANT

Vs

Prbhakar Rao Marotrao Dhote

RESPONDENT

Date of Decision: Jan. 27, 1976

Acts Referred:

- Bombay Stamp Act, 1958 - Section 2, 34, 38
- Negotiable Instruments Act, 1881 (NI) - Section 4

Citation: AIR 1976 Bom 234

Hon'ble Judges: Masodkar, J

Bench: Single Bench

Advocate: S.N. Kherdekar, for the Appellant; R.R. Deshpande, Asst. Govt. Pleader, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. There is hardly any point in the present revision which is directed against the finding obtained by the plaintiff himself as to the nature of the document on the basis of which the suit was filed before the Civil Judge, Senior Division, Chandrapur. By the impugned order it has been found that the said document is a money bond and not a promissory note. Consequently a directing is given for the purpose of impounding the same in terms of Section 34 of the Bombay Stamp Act, 1958.

2. Mr. Kherdekar the learned Counsel appearing for the original plaintiff revision applicant urged two points. Firstly, he contends that upon proper construction of the document it should be treated as a promissory note. Secondly, he submits that under the circumstances, the levy of penalty in the sum of Rs. 2,000/- should be relieved.

3. As to the first point it is obvious that the learned counsel's submission has no merit if a look is taken to the document itself. The label given to the document is not conclusive and it is a question of law to be appropriately decided by the Court as to the nature of document itself. Though the document is styled as promissory note, the contents indicate that it was never intended to be so. By the document, payment of Rupees 13,372.48 is acknowledged and liability to pay the same is agreed upon in the presence of the witnesses. Time is stipulated making it obligatory for the executant to repay this amount within three months. In case a default is made, it is provided that recovery be made as may be permissible by means of law. The terms stated in the document are declared to be binding on the heirs as well as the estate of the executant. The document itself is signed by three witnesses apart from the executant. Thus, by no stretch of imagination it can be said a document which can be called a promissory note. For all purposes it is a money bond securing the payment of the amount in the sum of Rs. 13,372.48, the receipt of which is duly acknowledged. That being the position, no exception can be taken to the order made by the trial court holding that it is a bond within the meaning of Section 2 (Court) of the Bombay Stamp Act. In terms the document is an instrument duly attested by the witnesses, under which the executant has obliged himself to pay the money to another and the consideration is not payable to order or bearer. The requirements of clause (ii) of Section 2 (Court) are thus fully answered. There is not even a remotest possible inference deducible from any of the terms in the document that it is a mere promise to pay money on demand. Thus Article 13 of Schedule I appended to the Act required this document to be stamped accordingly. It is not disputed that under Article 13, the amount of Rs. 202.50 was proper stamp duty.

4. As to the second part of the submission, it is for the applicant to move the Collector u/s 38 of the Act. After getting the document appropriately impounded u/s 34, the authority admitting the document in evidence is not given any discretion to relieve the party of the penalty u/s 34. It is only the Collector, who after receipt of the certificate that the document has been properly impounded, is enabled to take into account the circumstances of the execution of each document and make order to refund the penalty in excess of Rs. 5/- under sub-section (1) of Section 38. Mr. Kherdekar submitted that plaintiff was an illiterate man and was not well versed in law and bona fide believed that Rs. 2. 50 was the proper stamp duty payable on the document concerned. There appears to be much truth in what Mr. Kherdekar submits. But it is for the Collector to apply his mind and make orders as required by Section 38 of the Act. No relief can be given at this stage which is being sought for by the learned Counsel.

5. In the result the revision fails and is rejected. After the applicant-plaintiff pays in accordant with the order the deficit stamp duty and amount of penalty, the Court will take the document on record u/s 34 and send certificate to that effect to the Collector as required by law. The applicant will be at liberty to move the Collector u/s

38 of the Act. Time of three months is given to pay the deficit stamp duty and deposit the amount of penalty. There would, however, be no orders as to costs in this revision.

6. Application rejected.