Tex India and ors. Vs. Punjab and Sind Bank, Body Corporate Constituted Under the Provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, Through Shri Sohan Singh Talwar, Chief Manager and Shri Gurcharan Singh Dadiala, Manager and Chairperson, Debts Recovery Appellate Tribunal

Tex India and ors. Vs. Punjab and Sind Bank, Body Corporate Constituted Under the Provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, Through Shri Sohan Singh Talwar, Chief Manager and Shri Gurcharan Singh Dadiala, Manager and Chairperson, Debts Recovery Appellate Tribunal

SooperKanoon Citation : sooperkanoon.com/353250

Court : Mumbai

Decided On : Jun-24-2003

Reported in : AIR2003Bom444; 2003(4)ALLMR99; 2004(2)BomCR250

Judge : C.K. Thakker, C.J. and ;V.K. Tahilramani, J.

Acts : Bombay Rent Act - Schedule - Article 6; Bombay Stamp Act, 1958 - Sections 49, 50, 51, 52 and 52B; Bombay Stamp Rules - Rules 5, 13 and 18; Bombay Stamp (Amendment) Act, 1989

Appeal No. : Writ Petition No. 3709 of 2003

Appellant : Tex India and ors.

Respondent : Punjab and Sind Bank, Body Corporate Constituted Under the Provisions of the Banking Companies (Ac

Advocate for Def. : Rajesh Nagory and ;Bharat Ranghani, Advs., i/b., ;Haridas & Co. for respondent No. 1

Advocate for Pet/Ap. : P.K. Samdani and ;Harish Pandya, Advs., i/b., ;Wadia Ghandy & Co.

Disposition : Petition partly allowed

Judgement :

C.K. Thakker, C.J.

1. Rule. Mr. Rajesh Nagory, learned Advocate instructed by M/s. Haridas & Co., appears and waives service of notice of rule on behalf of respondent No. 1-contesting respondent. No notice to respondent No. 2-tribunal is necessary.

2. In the facts and circumstances, the matter is taken up for final hearing today.

3. This petition is filed against an order passed by the Presiding Officer of the Debts Recovery Tribunal-II, Mumbai, on June 19, 2002 in order below Exhibit 49 in Original Application No. 457 of 2000 and confirmed by the Debts Recovery Appellate Tribunal, Mumbai, on April 4, 2003 in Misc.Appeal No. 295 of 2002.

4. Application, Exhibit 49, was filed by the present petitioners for rejecting certain documents produced by the Bank on the following rounds:-

'1) Those documents which are stamped are bearing adhesive stamps of date prior to six months of their use.

2) Demand promissory note (exh.17) bearing revenue stamp of Re.1/- cannot (be) said to be duly stamped.

'3) The letters of waiver, letter agreeing to pay penal interest and letter authorizing the applicant (Bank) to recall the loan at Exh.18 to 20 do require stamping but are not stamped.

'4) Hypothecation agreements are not stamped as per Article 6 in schedule to Bombay Rent Act.

'5) Letter of revival dated 20/7/1998 has not been referred to in the original application.'

5. The Tribunal considered all the documents, and the objections raised by the petitioners. It held that so far as Exhibits 18 and 20 were concerned, they did not create any right in favour of any party, but only recorded something. Hence, they were required to be admitted in evidence. The contention and objection was, thus, negatived. Similar, with regard to pro-note, it was held that adhesive stamp was permissible in the light of Rules 5, 13 and 18 of the Rules framed under the Bombay Stamp Act, 1958 (the Act, for short) and, hence, it could be admitted in evidence.

6. Regarding Hypothecation Agreement, as well as letter of revival, it was held that they were not adequately stamped. They were, therefore, ordered to be impounded. Likewise, Exhibit 19 was also impounded.

7. Against the Order passed by the Debts Recovery Tribunal, an appeal was preferred by the present petitioners, and the appeal was also dismissed by the Appellate Tribunal, upholding the order passed by the Debts Recovery Tribunal. Against that order, the present petition is filed by the petitioners.

8. We have heard the learned counsel for the parties.

9. In our opinion, so far as Exhibits 18 and 20 are concerned, neither the Debts Recovery Tribunal, nor the Appellate Tribunal, had committed error of law and/or jurisdiction in admitting them in evidence. According to both the Tribunals, those documents did not create any right in favour of any party, but only recorded something. In our opinion, the view taken by both the Tribunals cannot be said to be illegal.

10. Regarding Exhibit 19, Hypothecation Agreement, an order had already been passed impounding it.

11. The question relates to the documents at serial No. 1.

12. The learned counsel for the petitioners has challenged the order qua documents at serial No. 1 on the ground that they were bearing adhesive stamps of the date prior to six months from the date of purchase of such stamps. Both the tribunals, relying on Section 49 of the Act, rejected the objection of the petitioners.

13. The Counsel for the petitioners drew our attention to the relevant provisions of the Act, particularly Sections 49 and 52B, read with a circular, dated February 7, 1990. Section 49, according to the learned counsel, grants allowance in case of printed forms no longer required by bankers, companies and corporations. In such cases, provision for allowance has been made by the legislature. The counsel is right in contending that it would not apply to the facts of the case when the documents are sought to be used in evidence.

14. Section 52B is material, and reads as under;-

'Invalidation of stamps and savings

Notwithstanding anything contained in Sections 47, 50 and 51 and 52,--

(a) Any stamps which have been purchased but have not been used or in respect of which no allowance has been claimed on or before the day immediately preceding the date of commencement of the Bombay Stamp (Amendment) Act, 1989 (hereinafter referred to as the commencement date') , and the period of six months from the date of purchase of such stamps has not elapsed before the commencement date, may be used before a period of six months from the date of purchase of such stamps is completed, or delivered for claiming the allowance under the relevant provisions of this Act; and any stamps not so used or so delivered within the period aforesaid shall be rendered invalid.

(b) Any stamps which have been purchased on or after the commencement date but have not been used, or no allowance has been claimed in respect thereof, within a period of six months from the date of purchase thereof, shall be rendered invalid.

15. It was submitted that when the stamps were not used for the period prescribed under the Act, they could not be affixed on the documents and such documents

could not have bene admitted in evidence. Hence, the view taken by both the Tribunals is illegal and contrary to law.

16. It was also rightly submitted that the reliance which was placed on Circular dated February 7, 1990 would not help the Bank, since they related to allowance and refund of stamp duty. This is, admittedly, not a case of refund of stamp duty. In our opinion, therefore, that part of the order passed by the Debts Recovery Tribunal, and confirmed by the Appellate Tribunal, deserves to be quashed and set aside by holding that the documents at serial No. 1 could not have been admitted in evidence and the objection ought to have been upheld.

17. The petition is accordingly partly allowed. Rule is made absolute to the above extent, holding that the documents at serial No. 1 are not admissible in evidence. In the facts and circumstances, there shall be no order as to costs.

18. Parties be given copies of this order duly authenticated by the Sheristedar/Private Secretary.