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Court : Madhya Pradesh

Decided On : Feb-24-2000

Reported in : AIR2001MP8

Judge : A.K. Mishra, J.

Acts : [Stamp Act, 1899](#) - Sections 12 and 36

Appeal No. : C.R. No. 2538 of 1998

Appellant : Pole Chand

Respondent : Hukum Chand

Advocate for Def. : A.D. Mishra, Adv.

Advocate for Pet/Ap. : A.K. Pandey, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

A.K. Mishra, J.

1. This revision petition has been filed by the defendant against the order dated 30-9-98 passed by ADJ Khairagarh whereby the trial Court has held that promissory note in question was admissible in evidence and stamps were properly

cancelled.

2. Promissory note in question was with respect to the amount of Rs. 60,000/- which was payable on demand and it was executed on 2-8-94 allegedly by the defendant/petitioner. In the promissory note there were 10 stamps, each of 20 paisa, total worth being Rs. 2/-.

3. An objection was raised by the defendant by filing an application under Section 151 of the C. P. C. that stamps affixed on the promissory note were not cancelled as required under Section 12 of the Indian Stamps Act. It is also alleged that only one stamp was having the signature and on three other stamps one line was drawn. The line so drawn did not indicate the intention whether it was to cancel those stamps or otherwise. Hence the promissory note was not admissible in the evidence as a document because it was not executed in accordance with Sections 36 and 12 of the Indian Stamps Act.

4. Learned trial Court by the impugned order has held that the promissory note in question was duly stamped and the stamp of 25 paisa only was required to be affixed and the stamps having the denomination of Rs. 1 were cancelled and held the same to be admissible in evidence.

5. Learned counsel for the petitioner has submitted that the stamps have not been properly cancelled as required under the provisions of Section 12 of the Indian Stamps Act, 1899. Thus the document in question was not admissible in evidence and as such it should be deemed to be a stamp as not cancelled. He further submitted that stamp cannot be said to be cancelled by writing on or across the same his name or initials or the name or initial of his firm with the true date of his so writing or any other effectual manner. Simply putting a line cannot be said to be the cancellation in an effectual manner. Thus the trial Court has committed a grave error of law while holding the stamps to be cancelled and in admitting the document in evidence. Section 12 of the Indian Stamps Act is being reproduced as under :--

'Cancellation of adhesive stamps -- (1) (a) Whoever affixes any adhesive stamps to any instrument chargeable with duty which has been executed by any person

shall, when affixing such stamp, cancel the same so that it cannot be used again; and

(b) Whoever executes any instrument on any paper bearing an adhesive stamp, shall at the time of execution, unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.

(2) Any instrument bearing any adhesive stamp which has not been cancelled so that it cannot be used again, shall, so far as such stamp is concerned be deemed to be unstamped.

(3) The person required by Sub-section (1) to cancel an adhesive stamp may cancel it by writing on or across the stamp his name or initials or the name or initials of his firm with the true date of his so writing, or in any other effectual manner.'

From a bare reading of Section 12 of the Indian [Stamp Act, 1899](#) it is the mandatory requirement that stamp has to be cancelled in the manner so that it cannot be used again. Firstly, the duty is that of a person who is affixing the adhesive stamp, to cancel it under Sub-section (1)(a) of Section 12 of the Indian Stamp Act. Sub-section (1)(b) of the said section says that if there is failure on the part of the person affixing the adhesive stamps or he fails to cancel it, the duty is cast on the executant to cancel the stamps at the time of execution, it may further be seen that if the adhesive stamps have not been cancelled, the instrument is rendered unstamped. In case the stamp is capable of being used again, the intention of the section is to see that the stamp once affixed is cancelled so that it cannot be used again and also to see that adhesive stamp is not put subsequent to the execution of that document, hence cancellation is required while affixing the stamp at the time of executing the document.

6. Sub-section (3) of Section 12 of the said Act provides the mode of cancellation of the adhesive stamp it can also be cancelled by writing the name across the stamp. In case the firm is affixing the stamp to execute the instrument chargeable with duty, the name of the firm or the initials of the firm on or across the stamp shall be sufficient compliance with the true date of his so writing. Sub-section (3) of

Section 12 further provides that stamp can be cancelled in any other effectual manner and such effectual manner has to be read in context of Subsection (1) of Section 12. Such an effectual manner for cancellation of the stamp must be such which cancels the stamp so that it cannot be used again.

7. In the case of *Motiram v. Mangharam*, AIR 1942 Sind 130 it was held that stamp must be rendered incapable of being used again. It should be defaced in such a manner that it cannot be used again. In the case of *Narayan Reddy v. Dr. J. Sarojni Devi*, AIR 1963 AP 378, the words 'effectual manner' were considered and the test laid-down was whether an ordinary man would, on seeing the stamp, believe that it had already been used so as to preclude him from using it again.

8. Learned counsel for the petitioner has placed reliance on the decision of Bombay High Court in the matter of *Dhirajlal Mohanlal Kathewadi v. Ranchhod Balram Nayak* reported in AIR 1974 Bombay 256. In the said case it was held that the question whether a particular stamp is cancelled so that it cannot be used again is only a question of fact. Bombay High Court has considered the said question. Similar view has been taken by the Rajasthan High Court in the matter of *Central Bank of India, Light Metal Products Pvt. Ltd.* (sic)

9. Yet another question arises in the case that there are ten adhesive stamps which are affixed over the pronote of 20 paisa each and the line which has been put is fully across three stamps and partially over two stamps. One stamp shows that mark of line on the top and fourth stamp shows the line on the side corner. Thus it is clear that in the document in question signatures occurred fully or partially on three stamps of 20 paisa each and the line which has been put fully across the three stamps.

10. Thus it is beyond any pale of controversy that S. No. two, three and four stamps of the top row on which the line and the signature both occur, no doubt on third fully but on two and four some partial line and signature both occur, the cancellation is of the stamps of 60 paisa; in the top row, hence in the instant case even if other stamps are ignored, having not been cancelled, there is proper cancellation of stamps of 60 paisa and the stamp which was required to be affixed was of 25 paisa. Thus, the document is admissible in evidence. However, it has to

be held that cancellation of the few stamps only would not make the cancellation of the other stamps. Each of the stamps affixed must be cancelled in any other effective manner, otherwise, those stamps shall be deemed to be not duly affixed and to that extent the document shall be considered to be unstamped. In the instant case requirement of stamp was that of 25 paisa and hence the document is held to be admissible in evidence. Simply by putting a line without crossing it may not amount to the effective cancellation. However, it is a question of fact which depends upon how in a given case the revenue stamp has been cancelled. Thus it has to be ascertained in every case whether stamp has been cancelled in a manner rendering it incapable of being used again.

11. In the result, the revision is held to be without any merit. The same is dismissed. Parties are directed to bear their own costs.

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