

**Chetan Kumar Vs. Nathusingh**

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**Court :** Madhya Pradesh

**Decided On :** Nov-09-2006

**Reported in :** AIR2007MP31

**Judge :** N.K. Mody, J.

**Appeal No. :** Writ Petition No. 4495/2006

**Appellant :** Chetan Kumar

**Respondent :** Nathusingh

**Disposition :** Petition allowed

**Judgement :**

ORDER

**N.K. Mody, J.**

1. Being aggrieved by the order dated 6-7-2006 passed by Additional District Judge, Manasa in Civil Suit No. 1-B/2006 during the course of recording of statement, the present petition has been filed.

2. Short facts of the case are that the petitioner filed a suit against the respondents on 20-6-2005 for realization of Rs. 2,96,400/- alleging that respondent took a loan of Rs. 2,32,700/- on 19-6-2002 and executed the promissory note in favour of the petitioner, which is duly signed by the witnesses. Further case of the petitioner

was that the amount was payable along with interest on demand. It was alleged that in spite of demand the amount was not paid. Hence, the suit was filed. Suit was contested by the respondents on various grounds including on the ground that the alleged document is not duly stamped. It was prayed that suit be dismissed.

3. On the basis of pleadings of the parties, learned Trial Court framed the issues and fixed the case for evidence. During the course of Examination-in-Chief of the petitioner on 6-7-2006, when the questioned document promissory note was put for evidence, the learned Court below made an observation that on the document it is mentioned as 'Promissory Note', but as per the contents, the amount is payable on demand or order and the said document is counter signed by the witnesses Shyamlal Purva, therefore, the said document contains the ingredients of Promissory Note under Section 2(22) and also bond under Section 2(5) of the Indian Stamp Act. In the circumstances, it was held that petitioner is liable to pay the stamp duty payable under the provisions of Indian Stamp Act treating the document as bond. Being aggrieved by the impugned order, the present petition has been filed.

4. Learned Counsel for the petitioner submits that from the perusal of the document, Exhibit P-2, it is evident that on the top of the document it is mentioned as 'Promissory Note'. In the document it is specifically mentioned under:

bu :i;ksa dk eqvktok esjs dks fey pqdk gS Abu :i;ksa dks vki ftl oDr ekaxksxs ml oDr ;k vki ftldks fnykosaxs mldks nsmWaxk;g eSaus jkth [kq'kh ls fcuk u'kk ikuh ds fy[k fn;k lks lgh A

Learned Counsel submits that since the questioned document contains the ingredients of 'Promissory Note', therefore, the petitioner is required to pay the stamp duty which is payable on Promissory Note under the provisions of Indian Stamp Act.

5. The word 'bond' is defined under Section 2(5) of the Act in Indian Stamp Act, which reads as under:

'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 himself to pay money to another; and

(c) any instrument so attested, whereby a person obliges himself to deliver grain or of her agricultural produce to another.

Similarly, the word 'Promissory Note' is defined under Section 2(22) of the Act, which reads as under:

Section 2(22). 'Promissory Note' means a promissory note as defined by the Negotiable Instruments Act, 1981.

It also includes as 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 happens.

6. Whether document is a bond or a Promissory Note, in this regard Full Bench of this Court has considered at length in the matter of Sant Singh v. Madandas Panika, reported in 1976 J.L.J. 235, wherein the Hon'ble Full Bench observed the essentials of Promissory Note and Bond as under:

Essentials of Promissory Note are:

(1) An unconditional undertaking to pay;

(2) The sum should be a sum of money and should be certain;

(3). The payment should be to the order of a person, who is certain, or to the bearer of the instrument;

(4) The maker should sign it.

If the aforesaid four conditions exist, the instrument is a Promissory Note.

Essentials of Bond are:

- (1) There must be an undertaking to pay;
- (2) The sum should be a sum of money, but not necessarily certain;
- (3) The payment will be to another person named in the instrument;
- (4) The maker should sign it;
- (5) The instrument must be attested by a witness; and
- (6) It must not be payable to order or bearer.

It was further observed that on a comparison between the 'Promissory Note' and that of a 'Bond', three distinguishable features emerge:

- (i) If money payable under the instrument is not certain, it cannot be a promissory note, although it can be a bond.
- (ii) If the instrument is not attested by a witness, it cannot be a bond, although it may be a promissory note.
- (iii) If the instrument is payable to order or bearer, it cannot be a bond, but it can be a promissory note.

7. In the case *Jeevan Lal v. Smt. Khatija Bai*, reported in 2004 (II) M.P.W.N. 351, this Court had an occasion to consider the Promissory Note and the Bond and it was observed that, 'merely, because a document in question is also attested by two witnesses would not make a document a bond when it otherwise satisfies a requirement of the Promissory Note.'

8. Learned Counsel for the respondents placed reliance on a decision *Praveen Nahar v. Krishan Gopal Sanghi*, reported in 2006(1) M.P.H.T. 485 : 2006(1) MPLJ 83, wherein it is held that, 'In a document where the amount is payable in equal instalments and the document is duly signed by the executant and is attested by six witnesses then the said document is Bond.'

9. From perusal of the law laid down in the case of Sant Singh (supra), it is evident that for holding a document as Bond it is necessary that it should not be payable to order or bearer. Since the document in question is having a recital that the amount was payable to order or bearer, therefore safely it can be said that the nature of document in question is Promissory Note.

In view of this, the petition is allowed. The impugned order is set aside and it is held that document in question is Promissory Note.

No order as to costs. C.C. as per rules.

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