

**Thomas and Anr. Vs. Subordinate Judge's Court and Ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/727649](http://sooperkanoon.com/727649)

**Court :** Kerala

**Decided On :** Feb-27-2004

**Reported in :** AIR2004Ker338

**Judge :** A. Lekshmikutty, J.

**Acts :** [Stamp Act, 1899](#) - Sections 2

**Appeal No. :** O.P. No. 15404 of 2000 (T)

**Appellant :** Thomas and Anr.

**Respondent :** Subordinate Judge's Court and Ors.

**Advocate for Def. :** P.V. Chandra Mohan, Adv. for Respondent Nos. 2 and 3

**Advocate for Pet/Ap. :** M.K. Dileep Kumar, Adv.

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**A. Lekshmikutty, J.**

1. This writ petition is filed to issue a writ of certiorari or other appropriate writ order of direction to quash Ext. P2 order of the first respondent and permit the petitioners to mark Ext. P1 document without paying the penalty of the bond in the

trial of the suit O.S. No. 1037/1997 pending before the Sub Court, Thrissur.

2. The petitioners are the plaintiff in O.S. No. 1037 of 1997. The suit is for recovery of a sum of Rs. 2,19,800/- from respondents 2 and 3. The case of the petitioners is that the second respondent has availed a loan of Rs. 2,19,000/- for enabling him to purchase a bus. Later, the second respondent has resiled from his promise to repay the amount even after the passage of time. So, the petitioners have approached the third respondent, father of the second respondent. The third respondent has voluntarily come forward to settle the matter by executing a 'Vyavastha' for the discharge his son's debt in favour of the petitioners. The said Vyavastha is drafted in the form of a Karar, in lay-man's language. The mediators who intervened the matter has also affixed their names and signatures. Even after the execution of Ext. P1, the third respondent has not offered any payment at all. Hence the suit is filed for realisation of the amount based on Ext. P1 document.

3. The third defendant alone contest the suit. He filed written statement denying the allegation in the plaint except the fact that the second respondent is his son. After framing the issues, the trial Court has proceeded with the trial of the suit putting in the special list. On 20-3-2000, the first petitioner was examined as P.W. 1. During his testimony along with other document he attempted to mark Ext. P1 document from his side. The counsel for the third respondent has objected the marking of the document alleging that it is insufficiently stamped. The Court below then upheld the contention and immediately ordered that the penalty must be paid. But the amount which is to be remitted as penalty has not decided immediately. For its determination, the examination of the first petitioner has been abruptly stopped so as to constitute the document as a bond. The Court below has patently erred in appreciating the essential ingredient of the bond that it is an obligation to pay the amount which is created originally by the instrument itself and not at all an acknowledgment of a pre-existing liability of a debt. By Ex. P1 document, the third respondent has only acknowledged his son's liability existing quite earlier. That being so, the liability of the third respondent is not a new one created by the document. The petitioners have already produced other documents which would go to show that the liability to pay is existing otherwise. Independent of Ext. P1 document. That being so, Ext. P1 document never fall in the category of the bond.

The trial Court passed Ext. P2 order, against which this original petition is filed.

4. The nomenclature of Ext. P1 is 'Vyavastha'. The third respondent is the first party in the said document and petitioners are party Nos. 2 and 3 therein. As per Ext. P1, the first party undertook to pay an amount of Rs. 2,19,800/- which was due from his son Sasidharan. Admittedly, the original transaction was between the petitioners and Sasidharan, son of the third respondent. By executing Ext. P1 document the third respondent agreed to pay the said amount within six months from the date of execution of the document on 29-8-1992. The document was voluntarily executed by the third respondent making him liable for the debt due from his son. So, it cannot be stated that it is an acknowledgment of the pre-existing liability on the other hand a new liability has been created by the executant of the document to the petitioners mentioned therein. The document is attested by the witnesses. So, it could be a bond as defined under Section 2(a) of the Stamp Act.

5. Learned counsel for the petitioner relied on the decision reported in Mathai Mathew v. Thampi (1989 (2) Ker LT 138). In the said decision, it is held that the document which evidences acknowledgment of an antecedent obligation or a pre-existing liability would not normally become a bond. A document evidencing an antecedent liability may also become a bond if a new obligation is created by the document despite its reference to any pre-existing obligation. Here, in the instant case, a new obligation is created by executing a, document despite its reference to a pre-existing debt.

6. The real test to decide whether it is a bond or agreement depends upon the obligation created by the said document. If it is an acknowledgment of a pre-existing liability or acknowledgment of an antecedent obligation. It would not normally become a bond. There was no obligation for the third respondent to pay the amount which was advanced to his son by the petitioners. But as per Ext. P1, an obligation is created by the third respondent to pay the amount to the petitioners. Therefore, the Court below has rightly found that the document is a bond which is not sufficiently stamped and the petitioners are liable to pay deficit stamp duty. There is no illegality or patent error in the impugned order and hence

not liable to be quashed. Hence this original petition, is dismissed.

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