

Radha Vs. Sankaranarayanan

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Court : Kerala

Decided On : Nov-23-2006

Reported in : 2007(1)KLT20

Judge : M. Sasidharan Nambiar, J.

Acts : [Constitution of India](#) - Article 227; [Kerala Stamp Act, 1959](#) - Sections 2 and 37

Appeal No. : W.P. (C) No. 9309 of 2006

Appellant : Radha

Respondent : Sankaranarayanan

Advocate for Def. : T.D. Rajalakshmi,; E.R. Venkateswaran,; E. Vasanda Kumar

Advocate for Pet/Ap. : V. Chitambaresh, Adv.

Disposition : Petition allowed

Judgement :

M. Sasidharan Nambiar, J.

1. A document styled as an agreement, whereunder the executant undertakes to repay the amount borrowed earlier with interest within the period provided under the document, is a bond or an agreement, is the question to be decided in this

petition. Relying on a decision of this Court in *Gopakumar v. Easwar Pillai* 2006 (1) ILR Ker. 140, learned Munsiff held that the document is a bond and therefore it is insufficiently stamped and impounded the document. It is challenged in this petition filed under Article 227 of [Constitution of India](#).

2. The document is styled as an agreement executed by respondent in favour of petitioner. The recitals in the document show that respondent had borrowed Rs. 80,000/- from petitioner earlier to enable him to go to outside India. Under the agreement, respondent agreed to repay the same with interest at 12% within one year from the date of execution of the agreement. It also provides that on the failure to repay, petitioner is entitled to realise the same personally as well as against the property of respondent. Learned Munsiff held that the document creates an obligation. Following the decision in *Gopakumar's* case it was held that it is a bond and not an agreement and therefore it is insufficiently stamped. Learned Counsel appearing for petitioner relying on the decision of this Court in *Mathai Mathew v. Thampi* 1989 (1) KLT 138 and *State of Kerala v. McDowell and Co. Ltd.* 1994 (1) KLT 802, argued that when the document shows that the amount agreed to be repaid was a pre-existing debt, the document does not create a new obligation and so it is only an agreement and not a bond. Learned Counsel appearing for respondent on the other hand relying on the decision in *Gopakumar's* case argued that the document creates an obligation to pay the amount with interest and hence it is a bond.

3. A learned single Judge (as his Lordship then was) in *Mathai Mathew v. Thampi* (supra) considered this question in detail. It was held that the distinguishing feature of a bond is that the obligation must have been created in the instrument itself and if the obligation was a pre-existing one, it does not partake of the character of a bond. It was held that when a promise is made and accepted, an agreement is created and it is immaterial whether the promise relates to any pre-existing liability or obligation and in the absence of any other definition in the Act, an agreement can be understood as one envisaged in the contract and thus a bond can be distinguished from an agreement on the aforesaid premise. Another single Judge of this Court in *Sreedharan v. Gopi* : 2003(2)KLT372 took the same view reiterating that the essential ingredient which distinguishes a bond and an

agreement is that in the case of a bond, if the obligation was a pre-existing one it would partake the character of a bond. Document which evidences acknowledgment of an antecedent obligation or a pre-existing liability would not normally become a bond. The Apex Court in *State of Kerala v. McDowell and Co. Ltd.* 1994 (1) KLT 802 (SC) construing the definition of bond in Sub-clause (1) of Clause (a) of Section 2 of Kerala Stamp Act, held as follows:

Para 20 : In our view, the definition of bond in Sub-clause (1) of Clause (a) of Section 2 of Kerala Stamp Act, is clear and unambiguous. It must be read as it stands, nothing may be read in or implied. The word 'whereby' must be read as meaning what it ordinarily does, namely, 'by which'. An instrument, therefore, by which a person puts himself under an obligation to pay a sum of money to another on condition that the obligation shall be void if some specific act is, or is not, performed is a bond. The only question to pose is, has the executant of the instrument put himself under an obligation, or bound himself, to pay a sum of money to another, the obligation to be void under specified circumstances? If the executant can be sued for that sum of money only upon the strength of the instrument, the instrument is a bond.

4. In view of the discretion of law in *McDowell's* case (supra) the decision of the learned Single Judge in *Gopakumar's* case is per incuriam. The correct legal position is as held in *Mathai Mathew v. Thampi* (supra) and *Sreedharan v. Gopi* (supra).

5. The recitals in the document clearly establish that Rs. 80,000/- was borrowed by respondent from petitioner prior to the execution of the agreement. Under the agreement respondent only undertook to repay the existing liability within a time frame. It does not create a new obligation. Instead it only reiterates the liability to pay the preexisting liability. Even without the said agreement, petitioner is entitled to sue for realisation of the amount borrowed earlier. The respondent executant need not be sued for the amount upon the strength of that instrument. Unfortunately the court below followed the decision in *Gopakumar's* case where the legal position was correctly settled in *Mathai Mathew's* case. Ext. P2 order is therefore bad.

6. The petition is allowed. Ext. P2 order is quashed. Ext. P1 agreement is not a bond, but an agreement. It is sufficiently stamped and cannot be impounded under Section 37 of Kerala Stamp Act.

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