

Ramdeo Vs. Gulabchand

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Court : Rajasthan

Decided On : Dec-05-1957

Reported in : AIR1958Raj183

Judge : J.S. Ranawat and; K.K. Sharma, JJ.

Acts : [Stamp Act, 1899](#) - Sections 2(5) and 2(22)

Appeal No. : Civil Revn. No. 184 of 1952

Appellant : Ramdeo

Respondent : Gulabchand

Advocate for Def. : H.G. Mathur, Adv.

Advocate for Pet/Ap. : B.L. Luhadia, Adv.

Disposition : Revision dismissed

Judgement :

K.K. Sharma, J.

1. This is an application in revision by the defendant challenging the order of the learned Civil Judge, Sambhar dated 29th March, 1952 holding the document which was the basis of the suit to be a bond and ordering the payment of deficiency of stamp duty and penalty thereon. This case has been referred to

Division Bench by a Single Judge of this Court.

2. The defendant being dissatisfied with this order has come to this Court in revision. We have heard Sri B. L. Luhadia on behalf of the applicant and Sri H. G. Mathur on behalf of the respondent. The document in question is attested and the executant after having found a balance of Rs. 4500 against him promised to pay it up to Magsar Sudi 15th Smt. 2007 with interest at the rate of annas eight per cent per mensem. The definition of bond given in Section 2(5) of the Indian Stamp Act is as follows:

'(5) '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 other agricultural produce to another.'

The document, as has been said above, is attested. It is not payable to order or bearer and by this document the executant obliges himself to pay money to another. It therefore comes within Clause (b) of Section 2(5). The definition of promissory note as given in Section 2(22) of the Stamp Act is as follows :

'Promissory note means a promissory note as defined by the Negotiable Instruments Act, 1881; it also includes a 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 happen.'

The definition of promissory note given in the Negotiable Instruments Act is that

'a promissory note is an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.'

Therefore if the document in question had stipulated that the amount would be paid to the order of a certain person or to the bearer of the instrument it would have been taken out of the definition of the word 'bond' as given in Section 2(5) of the Stamp Act. There is however no such stipulation in the document in question. Learned counsel of the applicant has produced a ruling of Nagpur Judicial Commissioner's Court in *Govinda v. Haribhau*, AIR 1933 Nag 391 (A) in which the document purported to be a promissory note payable to the order of a certain person and was attested. It was held by the Judicial Commissioner that although the document was attested yet because it was payable to order it could not be a bond according to Section 2(5) of the Stamp Act. This ruling was distinguished by a later ruling of Nagpur High Court in *Dashrath Tukaram Teli v. Kashiram Raoji*, AIR 1937 Nag 61 (B). In that case the document was entitled a promissory note and contained recital that accounts had been made and so much found due and a promise by the debtor to pay the amount to the creditor on demand. The document was attested by two witnesses and was not specifically made payable to order or bearer, but there were no words indicating an intention that it should not be transferable. It was held that 'the document fell within the definition of a bond contained in Section 2(5)(B) of the Stamp Act.'

The ruling of Nagpur Judicial Commissioner's Court in A I R 1933 Nag 391(A), referred to above, was distinguished on the ground that the document in question in that case was specifically made payable to order. This later ruling of Nagpur High Court is almost on all fours with the present case and we respectfully agree with it.

3. The application for revision has no force and it is dismissed with costs to the contesting opposite party.