

Hindustan Steel Ltd.

Vs

Messrs Dilip Construction Company

Civil Appeal No. 2425 of 1968

(J.C. Shah, V.Ramaswami - I, A.N. Bachawat JJ)

18.02.1969

JUDGMENT

SHAH, J. -

1. The respondents entered into a contract with Hindustan Steel Ltd. for "raising, stacking carting and loading into wagons limestone at Nandini mines". Dispute which arose between the parties was referred to arbitration, pursuant to Clause 61 of the agreement. The arbitrators differed, and the dispute was referred to an umpire who made and published his award on April 19, 1967. The umpire filed the award in the Court of the District Judge, Rajnandgaon in the State of Madhya Pradesh and gave notice of the filing of the award to the parties to the dispute on July 14, 1967, the appellant filed an application for setting aside the award under Sections 30 and 33 of the Indian Arbitration Act, 1940. One of the contentions raised by the appellants was that the award was unstamped and on that account "invalid and illegal and liable to be set aside". The respondents then applied to the District Court that the award be impounded and validated by levy of stamp duty and penalty. By order, dated September 29, 1967, the District Judge directed that the award be impounded. He then called upon the respondents to pay the appropriate stamp duty on the award and penalty and directed that an authenticated copy of the instrument be sent to the Collector, Durg, together with a certificate in writing stating the receipt of the amount of duty and penalty. Against that order the appellant moved the High Court of Madhya Pradesh in exercise of its revisional jurisdiction. The High Court rejected the petition and the appellant appeals to this Court with special leave.

2. It is urged by Counsel for the appellant that an instrument which is not stamped as required by the Indian Stamp Act, may, on payment of stamp duty and penalty, be admitted in evidence, but cannot be acted upon for, "the instrument has no existence in the eye of law". Therefore, counsel urged, in proceeding to entertain the application for filing the award, the District Judge, Rajnandgaon, acted without jurisdiction.

3. The relevant provisions of the Stamp Act may be summarised. Section 3 of the Act provides :

"Subject to the provisions of this Act X X X X the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefor, respectively, that is to say -

(a) every instrument mentioned in that Schedule which, not having been previously executed by any person, is executed in India on or after the first day of July, 1899;

#X X X X"##

"Instrument" is defined in Section 2(14) as including "every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded". An instrument is said to be "duly stamped" within the meaning of the Stamp Act when the instrument bears an adhesive or impressed stamp of not less than the proper amount and that such stamp has been affixed or used in accordance with the law for the time being in force in India : Section 2 (11). Item 12 of Schedule I prescribes the stamp duty payable in respect of an award. Section 33(1) provides, in so far as it is relevant :

"(1) Every person having by law or consent of parties authority to receive evidence X X before whom any instrument, chargeable, X X with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same."

Section 35 of the Stamp Act provides, insofar as it is relevant :

"No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped :

Provided that X X X "

Section 36 provides :

"Where an instrument has been admitted in evidence, such admission shall not, except as provided in Section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped."

Section 38 deals with the impounding of the instruments : it provides :

"(1) When the person impounding an instrument under Section 33 has X X authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by Section 35 or X X X, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of duty and penalty levied in respect thereof,

#X X X X X "##

By Section 39 the Collector is authorised to adjudge proper penalty and to refund any portion of the penalty which has been paid in respect of the instrument sent to him. Section 40 prescribes the procedure to be followed by the Collector in respect of an instrument impounded by him or sent to him under Section 38. If the Collector is of the opinion that the instrument is chargeable with duty and is not duly stamped, he shall require the payment of proper duty or the amount required to make up the same together with a penalty of five rupees; or, if he thinks fit, an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof, Section 42 provides :

"(1) When the duty and penalty (if any), leviable in respect of any instrument have been paid under Section 35, Section 40 or X X, the person admitting such instrument in evidence or

the Collector, as the case may be, shall certify by endorsement 'thereon that the proper duty or, as the case may be, the proper duty and penalty (stating the amount of each) have been levied in respect thereof, X X X X '

(2) Every instrument so endorsed shall thereupon be admissible in evidence, and may be registered and acted upon and authenticated as if it had been duly stamped, and shall be delivered on his application in this behalf to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct :

Provided that -

X X X X X"##

4. The award, which is an "instrument" within the meaning of the Stamp Act was required to be stamped. Being unstamped, the award could not be received in evidence by the Court, nor could it be acted upon. But the Court was competent to impound it and to send it to the Collector with a certificate in writing stating the amount of duty and penalty levied thereon. On the instrument received the Collector may adjudge whether it is duly stamped and he may require penalty to be paid thereon, if in his view it has not been duly stamped. If the duty and penalty are paid, the Collector will certify by endorsement on the instrument that the proper duty and penalty have been paid.

5. An instrument which is not duly stamped cannot be received in evidence by any person who has authority to receive evidence, and it cannot be acted upon by that person or by any public officer. Section 35 provides that the admissibility of an instrument once admitted in evidence shall not, except as provided in Section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

6. Relying upon the difference in the phraseology between Sections 35 and 36 it was urged that an instrument which is not duly stamped may be admitted in evidence on payment of duty and penalty, but it cannot be acted upon because Section 35 operates as a bar to the admission in evidence of the instrument not duly stamped as well as to its being acted upon, and the Legislature has by Section 36 in the conditions set out therein removed the bar only against admission in evidence of the instrument. The argument ignores the true import of Section 36. By that section an instrument once admitted in evidence shall not be called in question at any stage of the same suit or proceeding on the ground that it has not been duly stamped. Section 36 does not prohibit a challenge against an instrument that it shall not be acted upon because it is not duly stamped, but on that account there is no bar against an instrument not duly stamped being acted upon after payment of the stamp duty and penalty according to the procedure prescribed by the Act. The doubt, if any, is removed by the terms of Section 42(2) which enact, in terms unmistakable, that every instrument endorsed by the Collector under Section 42(1) shall be admissible in evidence and may be acted upon as if it has been duly stamped.

7. The Stamp Act is a fiscal measure enacted to secure revenue for the State on certain classes of instruments : It is not enacted to arm a litigant with a weapon of technicality to meet the case of his opponent. The stringent provisions of the Act are conceived in the interest of the revenue once that object is secured according to law, the party staking his claim on the instrument will not be defeated on the ground of the initial defect in the instrument. Viewed in the light the scheme is clear. Section 35 of the Stamp Act operates as a bar to an unstamped instrument being admitted in evidence or

being acted upon; Section 40 provides the procedure for instruments being impounded, sub-section (1) of Section 42 provides for certifying that an instrument is duly stamped, and sub-section (2) of Section 42 enacts the consequences resulting from such certification.

8. Our attention was invited to the statement of law by M. C. Desai, J., in *Mst. Bittan Bibi and Another v. Kuntu Lal and Another* (ILR (1952) 2 All 984) :

"A court is prohibited from admitting an instrument in evidence and a Court and a public officer both are prohibited from acting upon it. Thus a Court is prohibited from both admitting it in evidence and acting upon it. It follows that the acting upon is not included in the admission and that a document can be admitted in evidence but not be acted upon. Of course it cannot be acted upon without its being admitted, but it can be admitted and yet be not acted upon. If every document, upon admission, became automatically liable to be acted upon, the provision in Section 35 that an instrument chargeable with duty but not duly stamped, shall not be acted upon by the Court, would be rendered redundant by the provision that it shall not be admitted in evidence for any purpose. To act upon an instrument is to give effect to it or to enforce it."

In our judgment, the learned Judge attributed to Section 36 a meaning which the legislature did not intend. Attention of the learned Judge was apparently not invited to Section 42(2) of the Act which expressly renders an instrument, when certified by endorsement that proper duty and penalty have been levied in respect thereof, capable of being acted upon as if it had been duly stamped.

9. The appeal fails and is dismissed with costs.

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