

ALLAHABAD HIGH COURT

Maheshwar Dayal

Vs.

Neel Kantheshwar Dayal

First Appeal No.38 of 1976

(T.S. Misra and D.N. Jha, JJ.)

08.07.1981

JUDGEMENT

T.S. Misra, J.

1. This appeal arises in the following circumstances; Sheo Dularay tiled an application under S14(2) of the Arbitration Act before the Court below alleging that he was appointed Arbitrator by the present appelland and the respondents Nos.1 and 2 to effect partition of immovable properties situate at village Korar and Sair as also at Lucknow. He made his Award on 9- 10-1913 and filed the same in the Court below on 6-11-1973. The respondents Nos.1 and 2 filed their separate objections praying that the Award be set aside, on a variety of grounds stated in their objections. One of thg common grounds taken in the objections was that the Award having not been made on stamp-paper of requisite value was inadmissible in evidence and cannot be acted upon and that the Award which was compulsorily registrable had not been registered under the provisions of the Indian Registration Act; hence it was invalid. The present appelland Maheshwar Dayal disputed this assertion. A number of other grounds were taken impugning the Award but they need not be mentioned here for the purposes of this appeal. A preliminary issue was framed in the following terms:-

"Whether impugned award is illegal, invalid and inadmissible in evidence for want of proper stamp and compulsory registration as alleged, and if so to what effect,"

2. The trial Court held that the Award in question is vitiated for want of registration and as it was not properly stamped it was liable to be impounded. The application for making the Award Rule of the Court was rejected and the

objections tiled by the present respondents Nos.1 and 2 were allowed. The Award was impounded with a direction to be sent to the Collector for necessary action, Maheahwar Dayal being aggrieved has filed the instant appeal.

3. Shri Hargovind Dayal Srivastava the learned counsel for the appellant while conceding that the award was not made on stamp paper of requisite value submitted that it did not require registration because it did not create any title in favor of any person and that it merely recognized the title which already existed in favor of the wife of Maheshwar Dayal with respect to the house situate in Barood Khana, Lucknow, further, it was submitted that the said house was claimed as exclusive property of the wife of the appellant; hence the award with respect to that property was separable and should have been made a Rule of the Court even the award required registration. It was also argued that for the purposes of registration a document comes into existence only when it is properly stamped. Hence the award which was not at all stamped could not be presented for registration unless the requisite stamp charges and the penalty had been paid, and the period of four months for presenting the document for registration would start from the date the said charges and penalty had been paid. Sri S.D. Misra, the learned counsel for the respondents submitted that by reason of Section 17(1)(b) of the Indian Registration Act the award required registration inasmuch as it had an effect of extinguishing the right of the heirs of Sheo Narain Lal in whose name the property in question situate at Barood Khana, Lucknow, stood recorded and in declaring the said property as the property of Maheshwari Dayal appellant. He also submitted that the award should have been presented for registration within four months from the date of its execution and it was wrong to say that the period of four months would start from the date when the stamp charges and penalty had been paid.

4. We shall now proceed to examine the rival contentions of the parties. It was not in dispute that the impugned award dated 9-10-1973 was not made on stamp paper of requisite value. In fact it did not bear any stamp at all. The award was also not registered under the provisions of the Indian Registration Act. The arbitrator filed this award in the Court without getting it registered. When an objection was raised by the respondents Nos.1 and 2 that the impugned award being not stamped was inadmissible in evidence and could not be acted upon Maheshwari Dayal made an application on 7-7-1975 stating that he was

prepared to pay stamp duty of his 1/3rd share amounting to Rs, 153,75 and praying that Neelkantheshwar and Trideshwar Dayal (respondents Nos.1 and 2) be asked to deposit the remaining 2/3rd share of the stamp duty and thereafter a certificate on the award that proper stamp duty had been paid be endorsed under the Stamp Act and the same be admitted in evidence. Again on 13-8-1975 Maheshwar Dayal filed an application stating that if the other opposite parties would not pay the share of their stamp duty and penalty he was ready to pay the stamp duty and penalty, of any, of their shares also and to obtain a certificate over the award to the effect that the same is properly stamped and is admissible in evidence Shiv Dularey Srivastava the arbitrator also filed his affidavit in the Court below dated 9-1-1976 stating, inter alia, that after completing the hearing of the parties and after the inspection of the properties he sent a registered notice dated 17-9-1973 to the present appellant and the respondents Nos.1 and 2 separately requesting them to appear before him on 23-9-1973 at his residence in village Bibipur, giving them an opportunity to state any other fact or find any document, if they desired, in support of their claims and also file their share of stamp duty and share of registration charges for the award and that in compliance of that notice Neel Kantheshwar Dayal and Trideshwar Dayal jointly approached the arbitrator on 23-9-1973 reiterating their earlier statements and promising to pay their share of stamp duty on the next date of hearing and requested that the registration of the award be done after the same was declared and made the rule of the Court, Maheshwar Dayal also promised to send the stamp duty on the next date of hearing and suggested that the award be registered after the same was declared and made the rule of the Court. 30-9-1973 was fixed as the next date of hearing on which date the stamp duty was to be paid. However, none of the parties filed the stamp duty before the arbitrator by 30-9-1973 (30-9-1973). It is further alleged by the arbitrator that till 9-10-1973 he did not receive the stamp duty from the parties except that Maheshwar Dayal offered his share of stamp duty but since the other two defendants had not deposited their share of stamp duty he did not accept the share of the stamp duty from Maheshwar Dayal also (vide para 26 of the affidavit). The arbitrator says that it was in these circumstances that the award was made without bearing proper stamp and without being registered.

5. A perusal of the award would indicate that ancestral properties in the shape of house, groves and agricultural land were partitioned by the award. Further,

house No.20 Barood Khana, Lucknow, was allotted to the share of Maheshwar Dayal. The award nowhere states that the said house No.20 Barood Khana, Lucknow was purchased by the wife of Maheshwar Dayal in the Benami name of the father of Maheshwar Dayal. On the contrary it is stated that the said house of Barood Khana, Lucknow, is the absolute property of Maheshwar Dayal and that the arbitrator came to know that it was purchased in the name of the father of Maheshwar Dayal out of the funds of Maheshwar Dayal. The award admittedly dealt with immovable properties worth more than Rs. 100/-, and as it purported to create rights in the immovable property in favor of the appellant as also the respondents No.1 and 2 by effecting partition thereof and by declaring the title of Maheshwar Dayal in House No.20, Barood Khana, Lucknow, it required registration under Section 17 of the Indian Registration Act (see *Satish Kumar v. Surinder Kumar*).¹ The impugned award being Unregistered was inadmissible in evidence and could not be acted upon, vide Section 49 of the Indian Registration Act which says that no document required by Section 17 or by any provision of the Transfer of Property Act, to be registered shall affect any immovable property comprised therein nor shall the Court receive it as evidence of any transaction affecting such property unless it has been registered. Since the impugned award required registration the Court could not look into it and could not, therefore, pronounce judgment in accordance with it. Section 17 of the Arbitration Act presupposes an award which can be looked into by the Court. The present appellant cannot successfully invoke Section 17 of the Arbitration Act (see *Ratan Lal Sharma v. Purshottam Harit*).² No doubt the filing of an unregistered award which requires registration is not prohibited under Section 49 of the Indian Registration Act. What is prohibited is that it cannot be taken into evidence so as to affect immovable property falling under Section 17 of that Act. In *Kani Bala Saha v. Ram Gopal Sana*,³ it was observed :-

"That clause (c) means this and nothing more: namely, that where the court finds an error of law in the award itself or in some document actually incorporated thereto on which the arbitrator had based his award, that is to say, finds the statement of some erroneous legal proposition which is the basis of the award, it can remit the award to the arbitrator for re-consideration "and "want of registration is a defect de hors the award or the decision of the arbitrator, and so in our Judgment is not covered by clause (c) of Section 16 (1) Arbitration Act of 1940".

This statement of law was approved by the Supreme Court in *Rikhabdass v, Ballabhdas*, AIR 1962 Supreme Court 551. So want of registration is a defect dehors the decision of the arbitrator.

6. The defect of non-registration of the Award renders the award invalid and no Judgment can be pronounced in terms of that award under Section 17 of the Arbitration Act. Faced with this situation Sri Hargovind Dayal Srivastava, the learned counsel for the appellant submitted that the appellant had moved two applications, one on 7-7-1975 and the other on 13-8-1975 expressing readiness and willingness to pay the entire stamp duty and penalty so as to make the document admissible in evidence. He also submitted that the document should then be returned to the arbitrator to get it registered. In support of his contention the learned counsel referred us to Sections 35 and 42 of the Indian Stamp Act. The Court below did not concede to that request on the ground that as the award was not registered action under Section 35 of the Indian Stamp Act requiring the appellant to pay the stamp duty and the penalty charges be not taken. It was not in dispute that the award was not executed on stamp paper though it should have been executed on stamp paper. 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 Sch.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 ** before whom any instrument, chargeable ** 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, in so far 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".

Section 38 deals with the impounding to the instruments;
It provides;

"(1) When the person impounding an instrument under Section 33 has *** authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by Section 35 or..... 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". By Section 39 the Collector is authorized 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), livable in respect of any instrument have been paid under Section 35, Section 40 orthe 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.

(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 the t;.....".

The impugned 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 so received the Collector may adjudice whether it is duly stamped and he may require penalty to be paid thereon, if in his view it has 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. Every instrument endorsed by the Collector under Section 42(1) of the Stamp Act shall be admissible in evidence and may be acted upon as if it had been duly Stamped. Thus 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, i.e., the instrument when certified by endorsement that proper duty and penalty have been levied in respect thereof, becomes capable of being admissible in evidence and acted upon as if it had been duly stamped (see *Hindustan Steel Ltd, v. Dilip Construction Co.*)⁴. Sub-section (2) of Section 42 of the Indian Stamp Act thus provides that every instrument so endorsed by the Collector under sub-section (1) of Section 42 shall thereupon be admissible in evidence and may be registered and acted upon as if it had been duly stamped. The learned counsel for the appellant submitted that the appellant had expressed his readiness and willingness to pay the entire stamp duty and penalty with respect to the impugned award and so after that had been made the Collector would have made the necessary endorsement and thereafter the document should have been handed over to the Arbitrator for getting it registered. True it is that sub-section (2) of Section 42 provides that after the endorsement under sub-section (1) of Section 42 had been made on the instrument it may be registered but it does not any that every instrument so endorsed may be "presented" for registration. The presentation of an instrument for registration has got to be made within the period prescribed under the provisions of the Indian Registration Act. Sub-section (1) of the Section 42 of the Stamp Act provides that the document endorsed under sub-section (1) of Section 42 may be registered which means that if a document unstamped or insufficiently stamped had already been presented for registration before the Sub-Registrar and he had impounded the same and sent to the Collector for necessary action, and the Collector makes an endorsement on such document that proper duty and penalty have been levied in respect thereof the document would be returned to the Sub-Registrar for

registration and the Registrar shall then register it. But if the instrument was never presented before the Sub-Registrar within the period of limitation prescribed for it, it cannot in our view be presented for that purpose after the expiry of the period of limitation, even when it bears the endorsement under Section 42 (1) of the Indian Stamp Act, Section 23 of the Indian Registration Act provides that subject to the provisions contained in Sections 24, 25 and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution. So, the document has got to be presented for registration within four months from the date of its execution, Section 24 deals with documents executed by several persons at different times, Section 25 of the Indian Registration Act provides that if, owing to urgent necessity or unavoidable accident, any document executed in India is not presented for registration till after the expiration of the time prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration fee, such document shall be accepted for registration.

A combined reading of Sections 23 and 25 of the Indian Registration Act makes it quite manifest that the document has got to be presented for registration within four months of its execution. Even where delay in presentation is unavoidable and the document is not presented within four months for registration before the Sub-Registrar the delay can be condoned by the Registrar provided the delay in presentation does not exceed four months. But if the delay in presentation exceeds four months the Registrar shall have no jurisdiction to condone the delay under Section 25 of the Act. There is no other provision in the Indian Registration Act which empowers the Sub-Registrar or the Registrar to accept a document for registration after the expiry of the period of limitation mentioned in Section 22 or Section 25 of the Act, Sub-section (2) of Section 42 of the Indian Stamp Act does not extend the period of limitation beyond that prescribed by Section 23 or Section 25 of the Indian Registration Act. It merely says that on the endorsement made under sub-section (1) of Section 42 the document may be registered. So, if the document had already been presented within four months as provided under Section 23 or in pursuance of an order passed by the Registrar under Section 25 of the Act that document if unstamped or insufficiently stamped shall be registered, if it bears an endorsement of the Collector under sub-section (1) of Section 42 of the Act. If the presentation of a

document for registration has not been made within eight months the delay can be condoned under Section 23 provided the Registrar is approached within next four months i.e. within eight months of the execution of the document. What is material is that the Registrar should be approached within eight months of the execution of the document. He would naturally take some time and the order may be passed even after that expiry of eight months, but if the Registrar condones the delay the document can be presented for registration. But if the Registrar is approached after the expiry of the period of eight months of the execution of the document the Registrar shall have no jurisdiction to condone the delay under Section 25 of the Act, even if the document bears an endorsement of the Collector under sub-section (1) of Section 42 of the Act.

7. In the case in hand the award was made on 9-10-1973. The arbitrator was aware that the award should be executed on stamp paper and should be registered, as would appear from his averments made in his affidavit dated 9-1-1976 to the effect that he had asked the present appellant and the respondents Nos.1 and 2 to pay the stamp charges and also the registration charges. The parties were also thus made aware that the award was required to be executed on a stamp paper and was also to be registered. Neither the appellant nor the respondents paid the stamp charges and registration charges to the arbitrator. The award was, therefore, not executed on any stamp paper and was also not got registered and the Arbitrator made the award and filed the same without getting it registered. The submission that the award should now be returned to the arbitrator for getting it registered does not, in the circumstances of the case, have any force. That apart, the entire stamp charges and requisite penalty had not been deposited in the Court below and there was no endorsement under sub-section, (1) of Section 42 of the Act. Moreover, the time for presenting the award for registration had already run out long before the appellant had filed his aforesaid applications dated 7-7-1975 and 13-8- 1975 for making good the deficiency in stamp and certainly long before 9-1- 1976 when the Arbitrator filed his affidavit. Proviso (a) of Section 35 of the Indian Stamp Act stipulates that any instrument not being an instrument chargeable with a duty not exceeding ten naya paisa only, or a bill of exchange or promissory note shall, subject to all just exceptions, be admitted in evidence of payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty

of five rupees, or when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion. So, a document may be admitted in evidence "subject to all just exception"? one of the exceptions being that the document is of the exceptions being that the document is inadmissible under any other provision of law e.g. Indian Registration Act or Indian Evidence Act. Section 49 of the Indian Registration Act clearly provides that no document which is required to be registered under Section 17 shall be received as evidence of any transaction unless it has been registered. The court below has declined to admit the document in evidence on this ground as well and we see no illegality in the same. The impugned award could not be remitted to the Arbitrator under Section 16(1)(c) of the Arbitration Act or under Section 151, Civil Procedure Code for rewriting it on stamp paper or for getting it registered. Thus viewed from any angle the Court below was justified not pronouncing the judgment according to the Award under Section 13 of the Arbitration Act. The preliminary objection was correctly decided by the Court below and we see no reason to interfere with the same.

8. In the result, the appeal fails and is dismissed. However, in the circumstances of the case, we make no order as to costs.

Appeal dismissed.

Cases Referred.

1. AIR 1970 SC 833
2. AIR 1974 SC 1066
3. AIR 1945 Cal 19
4. AIR 1969 SC 1238

