RAJASTHAN HIGH COURT

Kedar Singh Chauhan

Vs.

Bhagwan Singh

Civil Special Appeal No. 13 of 2000
(Rajesh Balia and Mohd. Yamin, JJ.)

13.07.2000

JUDGEMENT

Balia, J.

1. In this appeal concerning a suit for money claim founded on promissory note and receipt, two contentions have been raised by the learned counsel for the appellant. The appellant is defendant judgment debtor. The suit was instituted against the appellant by the respondent plaintiff for a sum of Rs. 1, 20,000/- under Order 37, Rules 1 and 2, Civil Procedure Code. The defendant was granted leave to defend the suit. The suit was decreed by the trial Court. The defendant has denied the execution of pro-note in the written statement in favor of the plaintiff and has also denied passing of any consideration. He has also raised objection as to the admissibility of pro note and receipt due to insufficiency of stamps. In spite of his objection abut the admissibility of the document on the ground of insufficiency of the stamp, the document was admitted in evidence marked Exhibit and examination in chief and cross examination of the parties took place in respect of the said document. In his cross examination, ultimately the defendant also admitted that pro note bears his signature. Thus, execution of pro note was also admitted. On appreciating the evidence, the trial Court found that the presumption arising from proof of execution of document about passing of the consideration could not be successfully dislodged by the defendant in the totality of the evidence available on the record. Appeal against the judgment and decree of the learned trial Court was dismissed by the learned single Judge.

2. The first contention that has been raised before us is that the decree is founded on inadmissible evidence inasmuch as the pro note has been insufficiently stamped and therefore could not have been admitted in evidence and no decree could be founded

thereon. We are of the opinion that in view of the clear pronouncement of the Supreme Court in *Javer Chand v. Pukhraj Surana,* [1] this plea is not open to the appellant. The Court has unequivocally stated that at page 1656-1657 :

> "where a question as to the admissibility of a document is raised on the ground that it has not been stamped or has not been stamped properly, it has to be decided then and there when the document is tendered in evidence. Once the Court rightly or wrongly decides to admit the document in evidence so far as parties are concerned, the matter is closed."

The Court further said that once a document has been marked as an exhibited in the case and t rial has proceeded all along on the footing that the document was an exhibit in the case and has been used by the parties in examination and cross examination of their witnesses, Section 36 of the Stamps Act comes into operation and once the documents is taken in evidence it is not open either to the trial Court itself or to a Court of Appeal or revision to go behind that order. Such an order is not one of those judicial orders which are liable to be reviewed or revised by the same Court or a Court of superior jurisdiction.

3. We are, therefore, of the opinion that the trial Court having once admitted the document in evidence and thereafter parties having been allowed to examine and cross-examine, the witnesses which they did, the question of admissibility of the said document under Section 35, of the Act became unjustifiable in view of Section 36 of the Stamps Act. The exception provided under Section 36 are cases referred to in Section 61 of the Stamp Act. The provisions of Section 61 relates to determination of proper stamps duty with which a document is to be stamped. Therefore, though the determination of the amount of duty payable on a document by the Civil Court can be subjected to review or revision but not admissibility of such documents on the ground of lack or insufficiency of stamp after the same has been admitted. We find, therefore, no force in the first contention.

4. The second contention of the learned counsel is to challenge the finding about passing of the consideration of the promissory note. Under Section 118 Negotiable Instruments Act there is a presumption that unless the contrary is proved a negotiable instrument shall be presumed to have been made for consideration. With this presumption in favor of the plaintiff burden was on the defendant to prove want of

consideration. Having perused the record and the findings recorded by the trial Court as well as of the learned single Judge. We are in agreement with the said finding. It does not call for interference. No other point has been raised before us.
5. Appeal fails and is hereby dismissed in limine.

Appeal dismissed.

Cases Referred.

1. AIR 1961 SC 1655