

# In Re: Dhampur Sugar Mills Ltd. vs Unknown on 15 September, 1955

## Equivalent citations: AIR1956ALL25

### JUDGMENT

Agarwala, J.

1. This is a reference by the Board of Revenue under Section 57, Stamp Act. It is in respect of the stamp duty to be paid on a document dated 27-11-1947, executed on behalf of a company called the Dhampur Sugar Mills, Ltd., district Bareilly. The Dhampur Sugar Mills, Ltd., entered into an agreement with one Kunwar Murli Manohar, whereby it appointed the latter as its Managing Agent upon certain terms.

The agreement was stamped with a duty of Rs. 225/- and was presented before the Collector of Bareilly on 2-12-1947, with a request that the deed may be examined and the proper stamp duty chargeable thereon may be determined. The Collector referred the case for orders to the Board of Revenue. The Board of Revenue has expressed its tentative opinion that the document is chargeable with an aggregate duty of Rs. 12,184/6/-, but as they were doubtful about their views, they have referred the matter to this Court for its opinion.

2. The document recites that the two parties to the agreement are the Dhampur Sugar Mills, Ltd., a Joint Stock Company, and Kunwar Murli Manohar, the Managing Agent. The agreement mentions a resolution passed at the extraordinary meeting of the share-holders of the Company, whereby Kunwar Murli Manohar was appointed the Managing Agent of the Company for a period of 20 years from 24-9-1947, at the remuneration and upon the other terms, provisions and conditions set out in the draft agreement, Appendix B. The document then recites that the agreement was being executed in pursuance of the aforesaid resolution. The following allowances and commissions Were to be paid to the Managing Agent:

1. An Office allowance of Rs. 1,000/- p. m.
  2. An office allowance of Rs. 18,000/- p.a., rising to Rs. 48,000/- p. a., in five years by an annual increment of Rs. 6,000/- per annum.
  3. A commission on the annual net profits at the rate of 12 1/2 per cent, per annum.
- The other terms of the agreement were :

1. That in the event of the Company being wound up finally or in the event of the

removal of the Managing Agent from office before the expiry of his agreed term the Company shall pay to the Managing Agent by way of compensation a sum equivalent to five times the amount of commission earned by him in any one preceding year as well as the total amount of office allowance;

2. That the Managing Agent shall pay interest at the rate of 6 per cent, per annum on the amount of Rs. 50,000/- which he owes to two persons, Ram Bharosey Lal and Ram Swarup (paragraph 16 of the Agreement);

3. That the Managing Agency is liable to be terminated If the sum of Rs. 1,13,917/14/1, due from the Company to certain creditors, is not arranged to be paid off by Kunwar Murli Manohar;

4. That the Managing Agent, shall be responsible for arranging the repayment of the loan of Rs. 4,00,000/- which had been taken from the Punjab National Bank by the Company.

3. The Board of Revenue was of opinion that

1. Since the appointment of Kunwar Murli Manohar as Managing Agent has been made by the Company on the basis of a resolution passed earlier at an extraordinary meeting of the shareholders, the appointment was not a "Service Agreement" but an "Appointment in execution of a power" chargeable with stamp duty under Article 7 of the Stamp Act,

2. that the promise to pay remuneration to the Managing Agent amounted to a Bond and was chargeable with duty under Article 15 to the extent of Rs. 8,156/4/- plus Rs 2,250/-,

3. that the promise to pay compensation up to five times the annual remuneration to the Managing Agent, in case the Managing Agency came to an end before the expiry of 20 years, amounts to an "Indemnity Bond" chargeable under Article 34 of the Act with a duty of Rs. 9/6/-.

4. that terms relating to the payment of interest on Rs. 50,000/- and of the sum of Rs. 1,13,917/14/1 amounted to a Bond and a duty of Rs. 1,068/12/- plus Rs. 468/12/- was payable thereon under Article 15 of the Stamp Act,

5. that the terms relating to the discharge of the loan of Rs. 4,00,000/- amounted to a "Security by way of further assurance", chargeable under Article 40(c) of the Act with a duty of Rs. 200/-.

4. We have heard Mr. Jagdish Swarup, Standing Counsel, on behalf of the Board, but there has been no appearance on behalf of the Company. We propose to answer the questions set out above in their serial order:

1. In our opinion the Agreement is an ordinary service agreement chargeable with stamp duty as an agreement under Article 5 of the Stamp Act and is not an

"Appointment in execution of a power". The relationship between the Company and its Managing Agent is governed by the same principles as regulate the relationship between master and servant, vide -- 'Morarji Gokaldas Co. v. Sholapur Spinning and Weaving Co. Ltd.', AIR 1944 PC 17 (A). An "appointment in execution of a power" is something quite different.

The word "power" in the phrase has reference to the authority which enables a person to dispose of an interest vested either in himself or in another person. An appointment in execution of a power" means the disposal of property or an interest therein to a particular person by virtue of a power vested in the executant to do so. Where "A" executes a will appointing "B" as the executor and vesting in B the power to nominate some one as the owner of the property and B, the executor, executes a document nominating C as the owner of the property the document is an "appointment in execution of power", not so the document in question.

2. In our opinion the provision in the contract that the Company shall pay certain commission and allowances to the Managing Agent is a mere term of the Managing Agency agreement, and is not a bond. "Bond" is defined in Section 2(5) of the Act and includes "(b) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another". A bond involves an obligation to pay money, but it is an obligation of a different character from a covenant in an agreement the breach of which is compensated by damages, The difference between a bond and a contract has been well stated by Garth C. J. in- -- 'Gisborne and Co. v. Subal Buwri', 8 Cal 284 (B):

"Whether a penal clause is attached to such a covenant or not, the remedy for the breach of it is in form and substance a suit for damages; and by Section 74, Contract, Act, the English rule with regard to liquidated damages is abolished, and the plaintiff in such a suit has no right under any circumstances to claim the penalty itself as such. He can only recover such compensation, not exceeding the amount of the penalty, as the Judge at the trial considers reasonable, but he is entitled to that compensation, whether he proves any actual damages or not.

The remedy upon a bond is very different. The plaintiff in the case of a simple money bond recovers the sum named in the bond, or in the case of a bond conditioned for the performance of covenants" he recovers the actual damage which he can prove that he has sustained. In either case not only is the bond a contract of a different form and nature from a covenant with a penal clause, but the remedy, upon it, and the amount recoverable for the breach of it, is also different."

In the case before us we think that there can be no question that if there be a breach by the company of its undertaking to pay the commission and allowances in the manner provided in the agreement the remedy of the managing agent lies in a suit for damages for breach of contract.

3. The provision in Sub-clause (13) of Clause 7 of the agreement for compensation to be paid to the Managing Agent on the happening of one of the events specified therein is also a term of the

managing agency agreement. It cannot, we think, be treated as a separate contract of indemnity as there is no separate consideration for it. The provision for compensation is not a distinct matter but is part and parcel of the agreement as a whole; and it is not therefore in our opinion liable to duty as an indemnity bond.

4 and 5. The signature of the Managing Agent on the contract has not been attested; the obligations undertaken by him cannot therefore come within the relevant part of the definition of a bond, and are not liable to duty as such.

5. Let these answers be sent to the Board of Revenue.