

The Bengal Paper Mills Co. Ltd. vs The Collector Of Calcutta And Ors. on 11 August, 1976

Equivalent citations: AIR1976CAL416, (1976)2COMPLJ357(CAL), AIR 1976 CALCUTTA 416, (1976) 2 CALLJ 357 ILR (1976) 2 CAL 479, ILR (1976) 2 CAL 479

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Bench: Sabyasachi Mukharji

JUDGMENT

Sankar Prasad Mitra, C.J.

1. This matter has come up before us in view of the provisions of Sub-section (2) of Section 57 in Chapter VI of the Indian Stamp Act. 1899, which provides that when the Chief Controlling Revenue Authority refers a case to the High Court, it shall be heard by not less than three Judges.

2. On June 6, 1973, there was an agreement between the Bengal Paper Mills Co., Ltd., and the West Bengal Industrial Development Corporation Ltd. The agreement related to a loan of Rs. 15,00,000/- which the Corporation granted to the Bengal Paper Mills Co., Ltd., The document was stamped with Rs. 1.50 P, plus a duty of 10 P. as additional duty, it being' agreed between the Corporation and the Company that if on adjudication any further duty was payable the same would be paid by the Company. The Corporation applied to the Collector of Calcutta, for adjudication of the stamp duty payable on the document. The Collector examined the matter. The Collector found that the Company had applied to the Corporation for a loan The Corporation had sanctioned the amount of Rs. 97,28,444.58p. to the borrower (i.e. the Company) as an interest free loan under the terms and conditions laid down in the deed. The Corporation decided that the loan would be paid by instalments. The Corporation, as the first instalment of the loan had paid Rs. 15,00,000/- on the execution of the document. The borrower, i.e., the Company acknowledged the receipt of the loan and executed a separate receipt therefor. By the document the borrower, i.e., the Company undertook to repay to the Corporation the loan of Rs. 15,00,000/- by three equal instalments of Rs. 5,00,000/-. The first of such instalments would be paid on May 31, 1991; the second instalment on May 31, 1992 and the third instalment on May 31, 1993 without any interest. The borrower also agreed to certain conditions, if any default in repayment of the instalments had occurred.

3. The Collector was of the view that the document was a loan bond within the meaning of Section 2, Sub-section (5) (a) of the Indian Stamp Act. 1899. He imposed a duty of Rs. 18,000.10 P. assessed

under Article 15 of Schedule 1-A to the Act. He directed that the said sum of Stamp Duty was to be deposited with the Collector by June 29, 1973.

4. Against the Collector's order the Company submitted a petition before the Board of Revenue, West Bengal for setting aside the Collector's order.

5. The Member, Board of Revenue, heard the Company's petition on June 23, 1973. He agreed with the Collector and rejected the petition.

6. On June 25, 1973, the Company moved an application to this Court under Article 226 of the Constitution for quashing the Collector's order dated June 16, 1973 and the order of the Member, Board of Revenue dated June 23, 1973. This was Matter No. 477 of 1973.

7. This Court issued a Rule on June 26, 1973 and granted an interim injunction restraining inter alia the Collector and the Member, Board of Revenue from giving effect to their respective orders.

8. On February 3, 1975, this Court made the Rule absolute and directed the Collector of Calcutta, and the Member, Board of Revenue to submit a statement of case within three weeks from the service of the order, The time was subsequently extended.

9. In compliance with this Court's order made on February 3, 1975, a Reference has been made for a decision on the following points:--

(i) Whether on the facts and in the circumstances of the case the Collector of Calcutta, was justified in holding that the agreement dated 6-6-1973 between the Bengal Paper Mills Co. Ltd., and the West Bengal Industrial Development Corporation Ltd., was a bond within the meaning of Section 2(5)(a) of the Indian Stamp Act, 1899.

(ii) Whether the Collector was justified in assessing duty of Rs. 18,000-10 P. on the said document under Article 15 of Schedule 1-A of the Indian Stamp Act, 1899 and

(iii) Whether the Board of Revenue was justified in rejecting the petition dated 23-6-1973 of the Bengal Paper Mills Co., Ltd., and in holding that this was not a doubtful case

10. Appearing for the Company Mr. Gupta has relied on some of the relevant provisions of the Indian Stamp Act, 1899. Section 2(5) of the Act runs thus:

"Section 2(5). Bond -- "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;"

11. Mr. Gupta also referred to Items 1, 16, 26, 34, 56 and 57 of Schedule 1-A to the Act. These items deal respectively with (1) Administration Bond, (2) Bottomry Bond, (3) Customs Bond, (4) Indemnity Bond, (5) Respondentia Bond; and (6) Security Bond or Mortgage Deed.

12. Apart from Section 2(5) and the aforesaid items in the Schedule, Mr. Gupta also referred to Section 8 of the Act which provides for Bonds, Debentures or other Securities issued on loans under Act 11 of 1879.

13. The principal contention of learned Counsel for the applicant' is that the ' Stamp Act conceives of (1) the three categories of bonds mentioned in Section 2(5), (2) the six other types of bonds mentioned in the Schedule and (3) the bonds referred to in Section 8. He submitted that apart from these varieties of bonds no other document can be said to be a 'Bond' within the meaning of the Indian Stamp Act, 1899. His contention is that the document in question does not answer any of these categories.

14. Reliance has been placed on *Gisborne and Co. v. Subal Bowri*, (1862) ILR 8 Cal 284. In this case a Division Bench of this Court was considering an agreement for payment of compensation in the event of failure to cultivate indigo on 20 bighas of land for 10 years. The Court held that an instrument containing a covenant to do a particular act, the breach of which was to be compensated in damages, was not a bond and required an Eight Annas Stamp only. It is clear that this was a case of an agreement to do a certain act, and the agreement provided that in default of performance of the act certain damages had to be paid by the defaulting party. The document was held to be an agreement and not a bond.

15. The next case to which reference was made was the case of *Jiwanlal v. Rameshwarlal*, .

16. In this case the Supreme Court was construing certain provisions of Clause (f) of Section 2 of the Bihar Money Lenders (Regulation of Transactions) Act, 1939. According to this clause 'loan' means "an advance, whether of money or in kind on interest made by a money-lender, and shall include a transaction on a bond bearing interest executed in respect of past liability and any transaction which in substance is a loan.

17. The Supreme Court, in paragraph 6, at pages 1120 to 1121 observed:

"..... It is, however, urged on behalf of the appellant that a promissory note is not a bond, even though the promissory note in dispute might have been executed in respect of past liability and bore interest. Now the word "bond" has not been defined in the 1939 Act. It is true that a bond for the purpose of Stamp Act is not the same

thing as a promissory note. But it appears to us that the word "bond" is not used in Section 2(f) in the special sense in which it has been denned in the Indian Stamp Act. It appears to have been used in its general sense that is as deed by which one person binds himself to pay a sum to another person.

18. The Supreme Court has referred to the Federal Court's decision in Surendra Prasad v. Sri Gajadhar Prasad, AIR 1940 FC 10.

19. Learned counsel for the applicant before us has drawn our attention to these observations of the Supreme Court in support of his contention that the definition of 'bond' in the Indian Stamp Act, 1899, must be given a restricted meaning rather than the wider meaning in Section 2 (f) of the Bihar Act.

20. It appears to us that these are casual observations by learned Judges of the Supreme Court while construing a different statute altogether. We have to examine in depth the language used in Section 2(5) of the Indian Stamp Act, 1899, to appreciate the impact and amplitude thereof.

21. We were then referred to the Hitwardhak Cotton Mills Co. Limited v. Sorabji, (1909) ILR 33 Bom 426. In this case the transactions comprised in a document consisted of a transfer of a mortgage secured on a cotton mill and an agreement that the transferee should lend money at the request of the transferor to the mortgaged mill for making improvements, additions and repairs and for working the mill. The question arose whether the document was a bond within the meaning of Section 2(5)(b) of the Indian Stamp Act, 1899. The Court held that an agreement to lend money does not create an obligation to pay money and, as such, the document is not a bond.

22. In the ease before us, there was an agreement to lend money; the agreement was fulfilled and money was advanced, receipt of the money is acknowledged in the document itself; and then there is a covenant to repay. The Bombay High Court's decision, therefore, is of no relevance to us.

23. Our attention was next invited to Mahabir Prasad v. Peer Bux, (FB), where the document stated that 'P' promised to sell a certain quantity of rab to 'M' at fixed rate, that 'P' received certain amount as an advance, and he agreed that he would supply rab by a certain date on default of which he would pay 50 per cent, of the profits by way of damages. The question arose whether the document was a 'bond' under Section 2(5)(a) of the Indian Stamp Act. The Allahabad High Court held that it was not a 'bond' for the following reasons:--

"(i) The obligation to pay money (50 per cent, of profits) was to arise if 'P' defaulted in supplying the agreed quantity of rab. The term providing for the consequence of default was not the principal covenant between the parties. It was a penalty clause which would come into operation if the principal obligation was violated. The intention of the parties was not that if rab was supplied the obligation to pay money would, as its consequence, become void; in that event the obligation would not accrue or arise at all.

(ii) A bond requires an obligation to pay an ascertained sum of money. In the instant case 50% of the profits was not an ascertained sum.

(iii) The obligation to pay money as penalty for breach of a covenant is not within the purview of the definition of 'bond' in clause (a) of Section 2(5) of the Stamp Act."

24. This decision also is of no assistance to the applicant. In the case before us, there is an obligation to pay specified sums within specified dates. The Allahabad case was mainly concerned with payment of unascertained compensation for breach of contract.

25. Before we proceed to make our comments on the nature of the document in the present case, it Would be appropriate to refer to a few relevant portions thereof- In clause 9 of the recitals, it is stated:

"The Corporation has now decided to lend and advance to the Borrower (i.e, Bengal Paper Mills Co. Ltd.) the sum of Rs. 15,00,000/- only as the first instalment of the said loan."

26. Immediately after this clause the operative portion of the document begins thus:

"Now these presents witness and it is hereby agreed as follows:

In consideration of the premises aforesaid and of the sum of Rs. 15,00,000/-only to the Borrower paid by the Corporation as the first instalment of the said loan on the execution of these presents the receipt whereof is hereby and by the receipt hereunder written admitted and acknowledged the Borrower doth hereby covenant with the Corporation that the Borrower shall pay to the Corporation the said sum of Rs. 15,00,000/- only (hereinafter called the "principal sum") by three equal instalments of Rs. 5,00,000/- each of which the first instalment shall be paid on the 31st day of May, 1991 and the second instalment shall be paid on the 31st day of May, 1992 and the third instalment shall be paid on the 31st day of May, 1993 without interest except as hereinafter provided."

27. This clause is followed by further covenants of the borrower with the Corporation. In clause (i) of the further covenants by the borrower it is stated:

"If it appears to the Corporation at any time that the Borrower is in involved circumstances and the interest of the Corporation may be in jeopardy if delay is made in the recovery of the said loan or the balance for the time being remaining unpaid in respect of the said loan, then and in any of the aforesaid cases notwithstanding anything to the contrary herein contained the entire loan of Rupees 15,00,000/- or the balance thereof for the time being remaining outstanding shall forthwith become due and payable together with interest at the rate of 12% per annum from the date of the default of the annual instalment of the said principal sum or from the date of

happening of any of the aforesaid events, as the case may be, and the Borrower shall on demand forthwith pay to the Corporation the entire loan amount or the balance thereof then remaining due together with interest as aforesaid."

28. Reading the document as a whole it appears that the principal covenant between the parties was with respect to the borrower's obligation to pay Rs. 15,00,000/- by three annual instalments of Rs. 5,00,000/- each on the 31st May, 1991, 31st May, 1992 and 31st May, 1993. In other words, the dominant purpose of the document is to ensure an obligation on the part of the borrower to pay to the Corporation the aforesaid sums of money on the aforesaid dates.

29. It is, in this context, that we have to examine the legal propositions involved in this case-

30. A 'bond' in common parlance has a definite meaning. In the Shorter Oxford Dictionary 3rd Edition, p. 200 at page 201 it is stated that a bond "is a deed by which A (the obligor) binds himself, his heirs, executors and assigns to pay a certain sum to 'B' (the obligee) or his heirs etc." In Donogh's Commentary on Stamp Law, 4th Edn., at page 54 or 8th Edn. at page 68, it is stated;

"A bond is an instrument under his seal whereby one person becomes bound to another for the payment of a sum of money, or for the performance of any other act or thing."

31. In Halsbury's Laws of England, 3rd Edn., Vol. 3, Article 618 at page 329 also a similar statement has been made with respect to the nature of a bond. The definition of 'bond', according to Halsbury, is that it is "an instrument under seal, usually a deed poll, whereby one person binds himself to another for the payment of a specified sum of money either immediately or at a fixed future date. A person who so binds himself is called the obligor, and the person to whom he is bound the obligee; and the instrument itself is sometimes called an obligation."

32. For our purposes in this case it would be enough to say that the ordinary meaning of a bond is that it is document or instrument whereby the obligor binds himself to pay to the obligee specified sum or sums of money at a fixed date or dates. If we apply this meaning to the document which is the subject-matter of this reference there is no doubt that the document is a bond.

33. We may, however, examine the legislative history of the definition of 'bond' in different Stamp Acts that were in force in our country.

34. In the Stamp Act of 1869 the definition of a 'bond' was the same as could be found in the Limitation Acts of 1877 and 1908. The definition was as follows:--

" 'Bond' includes 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."

35. In the Stamp Act of 1879 the definition of 'bond' run thus:

" 'Bond' means:-- (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."

36. It is to be noted that, so far as clause (a) is concerned, the definition in 1869 was wider than the definition in 1879.

37. In the present Stamp Act of 1899 the definition of the 'bond' is the same as in the Act of 1879 with the exception that the word 'means' has been discarded and the word 'includes' has been restored as in the earlier Act of 1869.

38. From the legislative history it is clear that the definition of the term 'bond' in the present Stamp Act is not an exhaustive definition at all. It includes not only the three types of instruments mentioned in Section 2(5) but also other instruments as well.

39. Reference may be made in this connection to Item No. 15 in Schedule 1-A to the Act. In this item the proper stamp duty payable for different amounts or values of bond have been set out. The opening words of this item are as follows:--

"15. Bond (as defined by Section 2(5)), not being a debenture (No. 27), and not being otherwise provided for by this Act, or by the Court-fees Act, 1870 (VII of 1870).
....."

40. This is a clear indication that a 'bond' within the meaning of the Indian Stamp Act of 1899 includes the types of instruments mentioned in Section 2(5) of the Act as well as those which are not otherwise provided for either in the Stamp Act or in the Court-fees Act,

41. From what we have said above, it is reasonable to conclude that the word 'bond' has to be given the widest meaning for the purposes of the Indian Stamp Act 1899.

42. We may, incidentally, refer to a few other decisions.

43. In the matter of Hamdard Dawakhana, (FB), a Full Bench of the Delhi High Court, on the basis of the Calcutta High Court's judgment, reported in (1862) ILR 8 Cal 284 which we have cited above, has explained the difference between a 'bond' under Section 2(5) and an 'agreement'. In the case of a bond, in the event of breach, the party to the instrument who had obliged to pay money to the other is liable to pay the sums stipulated in the instrument. In the latter case the quantum of damages has to be fixed by the Court.

44. One of the recent decisions on this subject is the decision of the Bombay High Court, in Patel Stone Trading Co., Nagpur v. Ram Singh, . In an attested document in this case there was no mention of a pre-existing right or liability between the parties and for the first time a liability was created by the document whereby a person agreed to pay an ascertained sum to another and an express covenant about repayment was incorporated in the document. The Bombay High Court held that the document was a 'bond' within the meaning of Section 2(c)(ii) of the Bombay Stamp Act. The Bombay High Court has said that the real test to decide whether a particular document is a 'bond' or not is to find out, after reading the document as a whole whether an obligation is created by the document itself or whether it is merely acknowledgment of a pre-existing liability. If there is merely acknowledgment of a pre-existing liability which could have been enforced apart from the document itself then the matter stands on a different footing.

45. But if the document creates an obligation in itself with an express promise for payment of an amount, such a document will have to be termed as a bond within the meaning of Section 2(c)(ii) of the Bombay Stamp Act. The Bombay High Court has observed further that in every case the dominant purpose of the document has to be ascertained before pronouncing upon its nature.

46. We will advert to one other decision only. Hiralal Sircar v. Queen Empress, (1895) ILR 22 Cal 757 is a decision under the Stamp Act, 1879. It has been held that documents which are in the form of acknowledgments only are not converted into bonds, as defined in Section 3, clause 4 (b) of the Stamp Act, 1879, merely because they contain memoranda as to the rate of interest on which the loan is made and are attested by witnesses. No document can be a bond within the above section, unless it is one which by itself creates an obligation to pay the money.

47. Upon considering the plain' meaning of the word 'bond'; the legislative history of the definition of 'bond'; and the above authorities, we are of opinion that the document or the instrument in the instant case is a bond for the following reasons:--

(1) It is an instrument by which the Bengal Paper Mills Co. Ltd., has obliged itself to pay the sum of Rs. 15,00,000/- in three equal annual instalments of Rupees 5,00,000/- each on May 31, 1991, May 31, 1992 and May 31, 1993;

(2) It is not payable to order or bearer; and

(3) It is not an agreement because

the enforcement of this document does not involve quantification of damages by Court.

(4) In default the obligation under the Agreement can be enforced independent of any damages.

48. For all the reasons aforesaid, we are of the opinion with reference to Question No. 2 that the Collector in the instant case was justified in assessing the duty of Rs. 18,000.10 P. on the document under reference under Article 15 of Schedule 1-A to the Indian Stamp Act, 1899. Our answers to the other two questions do not arise. There will be no order as to costs.

Sabyasachi Mukharji, J.

49. I agree.

S.K. Datta, J.

50. I agree.