

to unfair labour practices. It says, "Any person who commits any unfair labour practice shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to six months or with fine which may extend to one thousand rupees or with both."

**XVII- Closure of an Undertaking:** Under the provisions of Section 25-o of the Industrial Disputes Act, 1947 an employer has to follow a long-drawn procedure for closing down an industrial establishment. By

following the procedure he has to obtain prior permission of the appropriate Government atleast ninety days before the intended closure of the establishment. Section 25-R penalizes the employer who closes down an undertaking without complying with the procedure laid down in sub-section (1) of Section 25-O of the Act. An employer, according to this provision, is liable to punishment of imprisonment for a term which may extend to six months or with fine which may extend to five thousand rupees or with both.

## INSUFFICIENTLY STAMPED DOCUMENTS - A BRIEF NOTE

*By*

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The Presiding Officers of the Trial Courts often come across serious issues concerning (1) impounding of insufficiently stamped documents (2) Permissibility of using such documents before evidence-collecting stage (3) legal effect of such insufficiently stamped documents which are admitted in evidence by inadvertence.

If there is any error or inadvertence in dealing with such issues, the *lis* may proceed in a wrong track. In fact in a decision 2001 (2) A.L.D. SC 114, *Chilamakuri Gangulappa v. R.D.O.Madanapally*, the Hon'ble Supreme Court has made the following observations:

"When a document was found to be insufficiently stamped, further proceedings were unwittingly diverted through a wrong track. After it covered a long distance, everybody concerned realized that the *lis* was proceeding through a wrong course."

In a recent decision, AIR 2001 SC 1158, *Bipin Shanthilal Panchal v. State of Gujarath* it is

laid down that whenever an objection is raised during the evidence-taking stage regarding the admissibility of any material or item of oral evidence the Trial Court can make note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. However, it has been made clear that if the objection relates to deficiency of stamp duty of a document, the Court has to decide the objection before proceeding further. Therefore, in respect of any objection relating to insufficiency of stamp duty, the Court has to decide the objection then and there without postponing the issue until the date of judgment. In a decision reported in 2000 (4) A.L.D. 203, *P.Lakshmi Surya Subramanyam v. P.Somaraju*, it is laid down that the Presiding Officer has to independently decide the stamp duty and penalty leviable on an instrument filed in Court and that the Presiding Officer cannot simply act on the

note put up by the office. The instruments not duly stamped can be rejected to be admitted in evidence whether the Counsel objects to it or not (1968 (1) An.W.R. 221, *P.Ramana Reddy v. K. Rukminamma*). Therefore, it is necessary for the Presiding Officers of Trial Courts as well as Trial Court Advocates to be well acquainted with these issues.

In this connection I would propose to highlight certain controversies with regard to the above-mentioned three aspects of insufficiently stamped documents. At the outset, it is to be made clear that this article is not an exhaustive study of the subject. Rather it is mainly intended to initiate a meaningful discussion to arrive at uniform opinion on this topic of day-to-day importance.

As per Section 33 of Stamp Act, a Presiding Officer of a Civil Court shall necessarily impound an insufficiently stamped document, which is produced before him. The Presiding Officer of a Criminal Court is also duty bound to impound such insufficiently stamped document, which he comes across during the course of a proceeding under Chapter XII or Chapter XXXVI of Cr.P.C. He is however given an option to impound or not to impound such documents produced in the course of any other criminal proceedings. There is a misconception that the stamp duty and penalty has to be collected the moment the instrument is impounded. In other words, the term "impound" is equated with the power/duty to collect necessary stamp duty and penalty. Neither the ordinary dictionary meaning of the word "impound" nor the scheme of Stamp Act suggest such a course. The Oxford Dictionary defines the term "impound" as "take possession of by law or authority." It is laid down in 1983 (1) An. WR. 342, *Smt. Manthana Ramanamma v. Ushodaya Publications*, that the word "impounding" is used in the sense of "seizure" of document. The provisions of Sections 35 and 38 of Stamp Act that stipulate the

procedure to deal with such impounded instruments also suggest that collection of stamp duty and penalty by the Court need not be the only mode of dealing with impounded documents. As per Section 35, the Presiding Officer may admit the instruments in evidence upon payment of requisite duty and penalty, which is equal to 10 times the duty. In other words, the party has an option to pay the requisite stamp duty and penalty in the Court itself and urge that the document may be admitted in evidence. The party has also an option to request the Court to forward the impounded instrument to the Collector to levy and collect necessary stamp duty and penalty. Generally, a party makes use of this option since the Collector is not under a statutory obligation to impose 10 times penalty. Thus, under Section 40 the Collector can impose a penalty of Rs.5/- only. It is also laid down in AIR 1975 A.P. 96, *B.V.R.Reddy v. Adoni Co-operative Central Stores Ltd. and another*, that when the party makes an application to send the document to Collector, the Court is bound to accede to his request. In case the party does not pay the duty and penalty in the Court and he also does not apply to send it to Collector, the Presiding Officer is bound to send the instrument to Collector as laid down in Section 38 of Stamp Act. It is for the Collector to take further action in the matter. The Court is not expected to return such document to the party. Order 13 Rule 8 C.P.C. lays down that such impounded documents shall not be returned to party. This in fact explains the scope of "impounding." The entire scheme of the Stamp Act and the dictionary meaning of the term "impounding" would therefore make it explicitly clear that an insufficiently stamped document shall be retained in the custody of the Court till the party makes use of it by paying necessary stamp duty and penalty or he applies to the Court to send the same to Collector. It is only as a last resort that the Presiding Officer is required to send it to Collector *suo motu* under Section 38(2) of Stamp Act.

This situation would sometimes raise a doubt whether any such insufficiently stamped document can be taken note of by the Court even though not admitted in evidence. In other words, the crucial question is whether such a document can be looked into for a collateral purpose and whether it can be acted upon. This question forms the subject-matter of Point No.(2) formulated above

As regards the second issue there are two decisions A.I.R. 1961 A.P.424, *K.Shantha Kumari v. Suseela Devi*, 1997 (2) APLJ 80, *Linkwell Electronic Ltd. v. A.P.* wherein it is laid down that the payment of deficit stamp duty cannot be insisted upon at the stage of numbering the plaint and that the stage of collecting deficit stamp duty arises only when the document is sought to be tendered in evidence.

In this connection, it is necessary to refer to Section 35 of Indian Stamp Act. Section 35 lays down that no instrument chargeable with duty shall be admitted in evidence or shall be acted upon, registered or authenticated by any person having by law or consent of parties authority to receive evidence or by any Public Officer. Thus, Section 35 consists of two prohibitions, one of which relates to admission of such document in evidence. Therefore, it is often stated that the proper time to raise the objection with regard to insufficiency of stamp duty is when the party proposes to let in such document as evidence. However, Section 35 consists of the other limb that such document shall not be acted upon by such Public Officer. Section 42 lays down that after the collection of necessary stamp duty and penalty, the instrument may be acted upon as if it had been duly stamped. All these provisions read together would suggest that any such insufficiently stamped document shall not be acted upon by any such Public Officer. Therefore, it is necessary to determine whether registering the suit on the basis of such insufficiently stamped document by a Public Officer would

not amount to acting upon an insufficiently stamped document by a Public Officer. Similarly, it is to be considered whether such documents could be looked into and marked as exhibits while deciding interlocutory applications. It is a well-known proposition of law that under Section 49 of Registration Act, a compulsorily registrable document, may be looked into for a collateral purpose, even though it is not registered. As regards insufficiently stamped documents it is laid down in AIR 1972 AP 373, *Sanjeeva Reddy v. Johamputra* that the words “any purpose” in Section 35 would include collateral purpose and that no part of a document—be it a single sentence, a word or a signature can be received in evidence. Therefore, the reference to such insufficiently documents may not be permissible under law.

The third aspect relates to the consequences of admission of such insufficiently stamped document in evidence. Section 35 consists of two distinct prohibitions one of which relates to admission of such document in evidence and the other relating to acting upon such documents. Section 36 of the Stamp Act provides that where an instrument has been admitted in evidence, such admission shall not be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped. Relying upon Section 36, it has been held in several decisions that once a document has been admitted in evidence, rightly or wrongly, with or without objection, it is not permissible for the Court including appellate or revisional Court to reject the same on the ground that it has not been duly stamped. The prohibition regarding the document being “acted upon” is not covered by Section 36 of the Stamp Act. Relying upon the difference in the phraseology between Sections 35 and 36, it has been contended before the Apex Court that an insufficiently stamped document, though admitted in evidence cannot be acted upon even after the payment of duty and penalty. In that

context, it has been laid down in A.I.R. 1969 SC 1238, *M.S. Limited v. Dilip Constructions*, that Section 36 does not prohibit a challenge against an instrument that it shall not be acted upon because it is not duly stamped. However, it is stated that 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. Thus, the decision in AIR 1969 SC 1238 lays down that the document may be acted upon if the deficit stamp duty and penalty is paid. In fact, this is the purpose of Section 42 of Stamp Act. In a decision A.I.R. 1982 A.P. 240, *P.Narasimhaswamy Patrudu v. Bank of Baroda*, wherein the Hon'ble Justice *Seetharama Reddy*, has laid down that even where an insufficiently stamped document has been admitted in evidence, the question whether it should be acted upon or not is still *res integra*, and therefore it is open to the Court to decide whether it should be acted upon or given effect to and that to hold otherwise would be rendering the provision enacted in Section 42(2) of the Stamp Act, *otiose*.

However, in the case of a promissory note, admittedly, the subsequent collection of stamp duty and penalty does not arise.

In fact in a decision 1997 (6) ALT 9 *K. Seethamma v. N.Nageswara Rao*, it is laid down that the proposition of law that once a document is marked in evidence, no objection can be raised later on about insufficiency of stamp duty on document, is not applicable in case of pronotes. Yet, in some of the decisions, it is laid down that once a pronote is marked, the admissibility cannot be questioned. It is respectfully submitted that while laying down the said proposition no reference has been made to the second limb of Section 35 pertaining to "acting upon."

Hence, it is necessary to decide whether a pronote which is not duly stamped and which defect cannot be cured under law, can be acted upon even though such admission cannot be questioned under law. It is also essential to decide whether any other insufficiently stamped document, admitted in evidence by the inadvertence of the party, can be acted upon by the Court in ignorance of the provisions of Section 35 of Stamp Act. I am of the humble opinion that a party who has not been alert while marking the document, is not entitled to challenge such admission, while a Public Officer has every right to refuse to act upon such insufficiently stamped document.

### ELECTORAL REFORMS IN INDIA - A COMMENT ON SOME RECENT JUDICIAL DECISIONS

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India has been characterized as the largest democracy in the world because of the colossal nature of the elections held in the country. At every general election, an electorate of millions of people goes to polls to elect members of Lok Sabha, State Legislative Assemblies and the Legislatures of

the Union territories, apart from the local Self-Government bodies like Municipal Corporations and Panchayats. Republican and Democratic form of Government and Parliamentary form of Government has been recognized as the basic features of our Constitution. [See *Keshavananda Bharathi v.*