

WICKREMASINGHE AND OTHERS

v.

THE GOODWILL MARINE ACADEMY (PRIVATE) LTD.

COURT OF APPEAL
EDUSSURIYA J (P/CA)
UDALAGAMA J.
C.A.L.A. 151/99
D.C. COLOMBO 19398/M
JANUARY 31, 2000

Stamp Duty Act 43 of 1982 - S.5(5), S.24, S.33(1), S.69 - Surety Bond not stamped - Could it be admitted in evidence - Could the deficiency be furnished and Bond marked in evidence.

The cause of action pleaded against the 2nd Defendant Petitioner and the 3rd Defendant Respondent was based on the security Bond, the cause of action against the 1st Defendant-Respondent was based on the agreement. When the Plaintiff Respondent sought to mark in evidence, the Security Bond, objection was taken that the Bond was not duly stamped.

The District Judge over-ruled the said objection holding inter alia that the deficiency in stamp duty could be furnished under the proviso to S.33(1) and the Bond marked in evidence thereafter. The District Court also ruled that the Bond was exempt from stamp duty in as much as the Agreement was stamped and that as the Bond had been filed as a part and parcel of the Plaintiff, the Plaintiff is entitled to mark it in evidence.

On leave being sought -

Held :

- (i) Under the proviso to S.33(1) such an unstamped bond may be admitted in evidence upon payment of the proper duty or the amount required to make up the same and a penalty not exceeding three times the proper duty. This was not done at the time the document was sought to be marked when the objection was taken.
- (ii) Neither the 2nd Defendant Petitioner nor the 3rd Defendant Respondent were parties to the agreement, hence the Bond is not exempt from stamp duty.
- (iii) The mere fact that the Bond was filed with the Plaintiff does not mean that it can be admitted in evidence.

- (iv) There was a duty cast on the Plaintiff Respondent to see that the Bond was duly stamped and valid. S.24 is not applicable.

Application for leave to Appeal.

Faizer Musthapa for 2nd Defendant Petitioner.

S. Mudalige for Plaintiff Respondent.

Cur. adv. vult.

April 28, 2000

EDUSSURIYA, J. (P/CA)

The Plaintiff-Respondent instituted action against the 1st and 3rd Defendant-Respondents and the 2nd Defendant-Petitioner to recover a sum of Rs. 600,000/- jointly and or severally.

The cause of action pleaded against the 1st Defendant-Respondent was based on the Agreement marked X1 (P1A), whilst the cause of action pleaded against the 2nd Defendant-Petitioner and the 3rd Defendant-Respondent was based on the Surety Bond X2 (P1B).

The Agreement X1 called upon the 1st Defendant-Petitioner to execute a surety bond along with two other sureties approved by the Plaintiff-Respondent to ensure the due performance of the terms and conditions. The 1st Defendant-Respondent, the 2nd Defendant-Petitioner and the 3rd Defendant-Respondent entered into the surety bond X2.

When the Plaintiff-Respondent sought to mark in evidence the bond X2, objection was taken on the basis that the bond X2 was not duly stamped in accordance with the provisions of the Stamp Duty Act No. 43 of 1982.

After written submissions relating to the said objection were tendered, the Additional District Judge had overuled the said objection on three grounds, namely, (1) that the deficiency in stamp duty could be furnished under the proviso to Section 33

(1) and the bond marked in evidence thereafter (2) that under Section 5 (5) of the Stamp Duty Act the bond was exempt from Stamp Duty in as much as the Agreement X1 was stamped and (3) that bond had been filed as a part and parcel of the Plaint and as such the Plaintiff is entitled to mark it in evidence.

Under the regulations made by the Minister of Finance under Section 69 of the Stamp Duty Act No. 43 of 1982 and published in the Government Gazette Extraordinary No. 1000/17 of 5th November 1997 where the bond is for a sum in excess of Rs. 100,000/- the stamp duty leviable is, Rs. 200/- on the first Rs. 100,000/- together with Rs. 20/- for every Rs. 1000/- in excess of Rs. 100,000/-.

Thus, on the bond X2 which is for a sum of Rs. 600,000/- the stamp duty leviable aggregates to Rs. 10,200/-.

Under the proviso to Section 33 (1) such an under stamped bond may be admitted in evidence upon payment of the proper duty or the amount required to make up the same and a penalty not exceeding three times the proper duty. This had not been done at the time the document was sought to be marked in evidence when the objection was taken. Hence the objection must necessarily be upheld.

On the other question of the applicability of Section 5 (5) it is seen that the Agreement X1 itself bears only a Rs. 10/- stamp and thus it does not cover the advalorem stamp duty in respect of a sum of Rs. 600,000/- mentioned in the bond X2. Further, neither the 2nd Defendant-Petitioner, nor the 3rd Defendant-Respondent were parties to the Agreement X1. Hence, the bond X2 is not exempt from stamp duty.

As far as the third ground is concerned, the mere fact that X2 was filed with the Plaint does not mean that it can be admitted in evidence. Thus, the objection of the Petitioner's counsel to the admissibility of the bond X in evidence must be

upheld as X2 was not duly stamped at the time it was sought to be marked in evidence.

It was contended on behalf of the Plaintiff-Respondent that in terms of Section 24 of the Stamp Duty Act No. 43 of 1982 the persons executing the bond are liable to pay the stamp duty and thus the Petitioner is estopped from taking the objection that the bond X2 is not duly stamped. This contention is not tenable for the reason that it was the duty of the Plaintiff-Respondent to see that the bond was duly stamped and valid.

For the above mentioned reasons, we set aside the order of the Additional District Judge dated 8th July 1999.

This appeal is allowed with costs fixed at Rs. 3150/-.

UDALAGAMA, J. - I agree.

Appeal allowed.