

**SAMPATH BANK LTD.
VS.
WEERASENA**

COURT OF APPEAL,
SOMAWANSA J (P/CA),
WIMALACHANDRA J,
CALA 368/2004 (LG),
DC KURUNEGALA 7964/M,
MARCH 21, 2005.

Environmental Statute No.8 of 1990 of North- Western Provincial Council - S.37-S.47 (2) and S. 106, Stamp duty on documents - should the documents annexed to a plaint and pleaded as part and parcel of the plaint be stamped?

The trial Judge held that documents annexed to the plaint should be stamped separately.

HELD

- (1) Where documents annexed to the plaint are pleaded as part and parcel of the plaint, the document so pleaded becomes part of the plaint and therefore need not be separately stamped.
- (2) The Statutory Provisions Act No. 8 of 1990 do not require the documents annexed to a plaint- should be stamped for the reason that the definition of a document does not include the documents annexed to the plaint.

Chandaka Jayasundara with Dushantha de Silva for plaintiff - petitioner.
Respondent defendant absent and unrepresented.

cur. adv. vult

October 7, 2005

Andrew Somawansa, J. (P/CA)

This is an application for leave to appeal from the order of the learned District Judge of Kurunegala dated 06.09.2004 refusing the application of the plaintiff- petitioner to exempt levy of stamp duty on the documents annexed to the plaint as part and parcel thereof and if leave is granted to set aside the order of the learned District Judge dated 06.09.2004.

Though on several occasions notices have been issued on the defendant-respondent he was absent and unrepresented. Counsel for the plaintiff-petitioner having made oral submission has tendered written submissions as well.

The relevant facts appears to be that upon institution of the instant action the plaintiff - petitioner had paid the necessary stamp fees. As summons had not been issued the registered Attorney-at-Law for the plaintiff - petitioner had made inquiries and had come to know that summons were not issued as stamp duty had not been paid separately in respect of the documents annexed to the plaint. Thereafter counsel for the plaintiff - petitioner moved Court by way of a motion seeking an order of Court to accept the documents annexed to the plaint and pleaded as part and parcel thereof and that summons be re-issued without the levy of stamp duty on documents pleaded as part and parcel of the plaint. The learned District Judge by her order dated 06.09.2004 rejected the application of the plaintiff - petitioner and held that annexed documents to the plaint although pleaded as part and parcel of the plaint also has to be stamped separately.

At this point, it would be useful to consider the law relating to stamp duty on documents filed in Court. In terms of Section 37 of Financial Statute No.8 of 1990 of the North Western Provincial Council which reads as follows :

“සහන දැක්වෙන පරිදි එනම්,

- (අ) වයම් පළාතේ නිෂ්චල දේපළ විකිණීමකට අදාළ සෑම සාධක පත්‍රයක් සඳහා
- (ආ) ශ්‍රී ලංකාවේ වයම් පළාත තුළ නීතියෙන් පිහිටුවන ලද යම් අධිකරණයක පවරනු ලබන නළු කටයුතුවලදී ඉදිරිපත් කරනු ලබන හෝ නොනුගත කරනු ලබන සෑම ලේඛනයක් සඳහා
- (ඇ) වයම් පළාත තුළදී මෝටර් රථයක අයිතිය පිළිබඳව කරනු ලබන සෑම පැවරීමක් සඳහා නියමිත අනු ප්‍රමාණවලට අනුකූලව මුද්දර ගාස්තුවක් අයකරනු ලැබිය යුතු ය. විවිධ පන්තියකට හෝ වර්ගවල සාධක පත්‍ර සඳහා වෙනස් වෙනස් ගාස්තු අනු ප්‍රමාණ නියම කරනු ලැබිය හැකිය.”

Thus under in terms of Section 37 of the aforesaid statute No. 8 of 1990 every document presented or filed in proceedings in any Court of law established by law in the North Western Province, stamp duty at the

prescribed rate will be charged. Section 47(2) of the aforesaid Statute provides that the total stamp duty chargeable in respect of documents filed in any proceedings in any Court shall not exceed the aggregate stamp duty chargeable on the first ten documents filed by each party to the proceedings.

In Section 106 of the said Statute a document is defined as follows :

"Document" in relation to legal proceedings in any Court means an appointment of attorney, plaint, answer, replication or other pleading; petition, application, affidavit, appointment, summons, judgment, decree, order of any description, award, writ, warrant, inventory, account, mandate, bond recognizance ; citation, application other than motion, interrogations, answer to interrogations, notice of appeal, bill of costs, commission injunction or notice ".

It is to be noted that the aforesaid statutory provisions do not require that documents annexed to a plaint should be stamped for the reason that the definition of a document does not include the documents annexed to the plaint. In any event where documents annexed to the plaint are pleaded as part and parcel of the plaint the document so pleaded becomes part of the plaint and therefore need not be separately stamped.

On an examination of the impugned order of the learned District Judge it is obvious that she had not considered the aforesaid relevant provisions of the aforesaid Financial Statutes No.8 of 1990 in the proper perspective and has misdirected herself on the law.

For the foregoing reasons, I would grant leave to appeal from the order of the learned District Judge and set aside the order of the learned District Judge dated 06.09.2004. As the defendant - respondent did not take part in the proceedings had in this Court, I make no order as to costs.

Wimalachandra, J. - I agree.

Appeal Allowed.