

the petitioner in the English and Hindi Tribunes and Haryana Government Gazette. The Official Liquidator is directed to take charge of the Company.

N.K.S.

Before R. N. Mittal, J.

NATHI,—Appellant.

versus

GHANSI,—Respondent.

Civil Revision No. 1512 of 1977

April 12, 1985.

Stamp Act (II of 1899)—Sections 35 and 36—Suit for recovery of money on the basis of pronote—Pronote exhibited with an objection regarding its admissibility—Objection left open to be decided at the time of arguments—Section 36—Whether debars courts from deciding objection at a later stage—Meaning of the word ‘admission’ in Section 36—Explained.

Held, that section 35 of the Stamp Act, 1899 provides that no instruments chargeable with duty shall be admitted in evidence for any purpose unless such instrument is duly stamped. Section 36 says that where an instrument has been admitted in evidence such admission shall not be called in question at any stage of the same suit on the ground that it had not been duly stamped. The admission contemplated therein should be the result of determining the question of admissibility of the document judicially. If the document is admitted subject to the objection to be decided at the time of arguments, it cannot be said that the provisions of section 36 are attracted and the court is debarred from deciding the point later on. However, if no objection about admissibility on the ground of insufficiency of stamps or proper cancellation of stamps is raised at the stage of evidence and the document is exhibited, it is not open to any of the parties to raise the objection later on. As such the court is competent to go into the question of admissibility of a document even at a later stage. (Paras 7 and 8)

Petition under Section 115 C.P.C. for revision from the order of the Court of Shri Shiv Dass Tyagi, District Judge, Gurgaon, dated the 15th day of June, 1977 affirming that of Shri C. R. Goel, HCS, Sub-Judge 1st Class, Palwal, dated the 13th day of August, 1976

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dismissing the suit of the plaintiff and leaving the parties to bear their own costs.

O. P. Goyal, Advocate, for the Petitioner.

G. C. Garg, Advocate, for the Respondent.

JUDGMENT

Rajendra Nath Mittal, J.

(1) This judgment will dispose of Civil Revisions Nos. 1512 and 1513 of 1977, which contain common questions of law. The facts in the judgment are being given from Civil Revision No. 1512 of 1977.

(2) The case of the plaintiff is that the defendant took on loan an amount of Rs. 2,000 from him on 12th July, 1970 and executed a pronote and a receipt in his favour. He agreed to return the amount on demand with interest at the rate of 2 per cent per mensem. It is alleged that the defendant did not pay the amount in spite of repeated requests. An amount of Rs. 1,400 was due from him as interest up to 11th June, 1973. Out of the said amount he gave up his claim to the extent of Rs. 700. Consequently he filed a suit for recovery of Rs. 2,700 (Rs. 2,000 as principal and Rs. 700 on account of interest).

(3) The suit was contested by the defendant who controverted the allegations of the plaintiff and *inter alia* pleaded that he never borrowed any amount from the plaintiff and never executed any pronote. In case the pronote was proved to have been executed by him, it was without consideration. He also raised an objection that the pronote was not properly stamped.

(4) The trial Court held that the defendant took an amount of Rs. 2,000 from the plaintiff and executed the pronote in his favour. It further held that the stamps on the pronote had not been properly cancelled and, therefore, it could not be read into evidence. In view of this finding it dismissed the suit of the plaintiff. He went up in appeal before the District Judge, Gurgaon who affirmed the judgment and decree of the trial Court and dismissed the same. He has come up in revision to this Court.

(5) The question for determination in this revision petition is, that if a pronote is exhibited with a note that the objection of a party that it was not admissible into evidence as the stamps thereon

were not properly cancelled would be determined subsequently, whether the Court is debarred from deciding the same at the time of arguments. In order to determine the question it will be proper to give a few more facts. The pronote in dispute bears two stamps out of which only one has been cancelled. It was sought to be proved by the plaintiff from Manohar Lal (P.W. 2), an attesting witness of the receipt attached to the pronote. While he was being examined the counsel for the defendant raised an objection that the pronote was not admissible into evidence as one of the revenue stamps affixed thereon had not been properly cancelled. The trial Court exhibited the document but left the matter open to be decided at the time of arguments in the suit.

(6) It is contended by the learned counsel for the petitioner that once the pronote was exhibited by the trial Court rightly or wrongly, in view of section 36 of the Stamp Act no objection regarding its admissibility could be taken at a later stage. According to him, the question of admissibility on this ground could be decided by the Court at the time when the pronote was exhibited and as soon as it was exhibited, the matter stood decided. In support of his contention he places reliance on *Javer Chand and others v. Pukhraj Surana*, (1), *Ramchandra Tewary v. Gajadhar Das and others*, (2) *J. M. A. Raju v. Krishnamurthy Bhatt*, (3) and *B. K. Thapar and another v. Vijay Kumar and another*, (4). On the other hand Mr. Garg, learned counsel for the respondent, has urged that the document was exhibited subject to the objection of the defendant and the question regarding the admissibility was to be determined by the Court later. In such circumstances even if the document was given an exhibit mark, it cannot be said that the Court had decided the matter conscientiously and the provisions of section 36 of the Stamp Act are not attracted.

(7) I have duly considered the argument of the learned counsel for the parties. Section 35 of the Stamp Act provides that no instrument chargeable with duty shall be admitted into evidence for any purpose unless such instrument is duly stamped. The proviso to the section says that insufficiently stamped instrument except an instrument chargeable with duty of 10 paise or a bill of exchange or

(1) AIR 1961 S.C. 1655.

(2) AIR 1967 Patna 276.

(3) AIR 1976 Gujrat 72.

(4) AIR 1976 J. & K. 1.

promissory note or acknowledgement or delivery order, can be admitted in evidence on payment of certain duty along with the penalty prescribed therein. From the aforesaid section it is evident that an insufficiently stamped promissory note cannot be admitted into evidence even on payment of the duty and the penalty. Section 36 says that where an instrument has been admitted in evidence such admission shall not be called in question at any stage of the same suit on the ground that it had not been duly stamped. The question to be seen is as to what the word "admission" means. The matter has been judicially examined. A similar question came up before a Division Bench of Lahore High Court in *Khazan Shah v. Atta Ullah*, (5). The plaintiff in that case claimed the amount on the basis of a promissory note. When the document was produced with a view to its being exhibited, the defendant's counsel took an objection regarding its admissibility and pointed out that one of the four stamps affixed to it had not been cancelled. The trial Court postponed the decision of the objection and proceeded to record the evidence in the case. However, the document was marked as exhibit. While deciding the case, the trial Court held that the promissory note was not admissible into evidence and consequently dismissed the suit. The High Court affirmed the judgment of the trial Court. The Madras High Court also dealt with a similar matter in *Kuppammal v. Mu. Ve. Pathanna Chetty*, (6). Interpreting section 36 it was observed that though it was evident from the language of the section that where an instrument had been admitted in evidence, it cannot be called in question at any stage of the same suit. The admission contemplated under it must have been the result of a judicial determination as to its admissibility when an objection is raised and the mere stamping on the endorsement on the instrument in question under Order 13, rule 4 of the Code of Civil Procedure prior to the determination as to admissibility can only be a mechanical act which would not constitute admission under the said section. Same view was taken by the Allahabad High Court in *Ram Narain Singh v. Batuk Bhairon Pandey*, (7), and Andhra Pradesh High Court in *Kolli Eranna and others v. Bellamkonda Thimmaiah and others*, (8).

(8) From the ratio in the aforesaid cases it emerges that the admission contemplated under section 36 should be the result of

(5) A.I.R. 1933 Lahore 148 (2).

(6) AIR 1956 Madras 250.

(7) 1965 Allahabad Law Journal 850.

(8) A.I.R. 1966 A.P. 184.

determining the question of admissibility of the document judicially. "If the document is admitted subject to the objection to be decided at the time of arguments, it cannot be said that the provisions of section 36 are attracted and the Court is debarred from deciding the point later on. However, if no objection about admissibility on the ground of insufficiency of stamps or proper cancellation of stamps is raised at the stage of evidence and the document is exhibited, it is not open to any of the parties to raise the objection later on."

(9) The cases referred to by the learned counsel for the petitioner are all distinguishable. In *Javer Chand's case* (supra) no objection was taken at the time of evidence that the document could not be admitted as it was not properly stamped. In *Ramchandra Tewary's case* (supra) the objection was taken that the document required impounding as it was insufficiently stamped. In view of the objection the penalty was paid and the document was admitted into evidence. In *J.M.A. Raju's case* (supra) the trial Court had exhibited the insufficiently stamped document after applying its mind and in *B. K. Thapar's case* (supra) an application was filed by the defendant that the document be impounded as it was insufficiently stamped and be declared in admissible into evidence. The Court observed that when the occasion arose, the document would be admitted tentatively and that admission would not amount to an admission within the meaning of section 36. The application was, therefore, dismissed with the observations that it was not necessary to decide the question forthwith. Against the dismissal of the application the defendant went up in Letters Patent Appeal. In my view, therefore, the observations in the above cases to which my attention had been drawn by Mr. Goyal, were made in the peculiar circumstances of those cases and they are of no assistance to decide the present revision petitions. In the present case, as already mentioned, it was ordered by the Court that the objection regarding admissibility of the pronote would be decided at the time of final arguments. For the reasons already recorded, I am of the opinion that the Court could determine the objection at the time of final arguments. Consequently I reject the submission of the learned counsel.

(10) The facts of Civil Revision No. 1513 of 1977 are similar and no additional argument was advanced therein. For the aforesaid reasons I do not find any merit in the revision petitions and dismiss the same with no order as to costs.

N.K.S.