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Dua, J.

rather than the Revenue, for, imposition of tax must, according to our jurisprudence, be justified by a valid piece of legislation. Of course it is not permissible either to stretch the language unreasonably or to construe it in a needlessly narrow manner. A proper balance must be struck between the essential needs and desires for revenue of a modern welfare State on the one side, and desirability that the citizen must know clearly his liability before he is called upon to contribute towards it on the other.

The argument of a workable construction of the statute in question advanced on behalf of the Revenue would appear to me really to emphasize the policy of law to ensure collection of taxes so that, if possible, taxing statutes should be so interpreted as to accomplish the result. On this premises statutes establishing procedure for collection of taxes are sometimes given liberal construction, as also legislation intended to prevent frauds upon the Revenue. But this argument does not appear to me to be of much assistance to the respondents in the case in hand. Section 34 in my view does not merely lay down a procedure for collecting a tax already imposed. In so far as the case in hand is concerned, this provision also deals with the determination of the assessees' liability to be taxed with the result that unless a case reasonably falls within its purview, the assessees cannot be lawfully taxed.

In view of the above discussion, in my opinion, the impunged notice, dated the 25th July, 1958, should be held to be barred by time and I would answer the question referred accordingly. The case will now go back to a learned Single Judge for disposing of the writ petition in accordance with law and in the light of the answer just given.

B.R.T.

REVISIONAL CIVIL

Before Prem Chand Pandit, J.

MESSRS GUJRALS Co.,—*Petitioner.*

versus

MESSRS M. A. MORRIS,—*Respondent.*

Civil Revision No. 627-D of 1957

1961

Sept. 13th

Stamp Act (I of 1899)—Section 3(c)—Foreign award directing a peron in India to pay a certain amount to a

party in England—Whether liable to be stamped before it is filed and made a rule of Court in India.

Held, that an award made out of India against a person resident in India has to be filed in a Court situate in India and has to be made a rule of the Court and thereafter the person in India will become liable to pay the amount awarded by the arbitrator, and recovery thereof will also be made in India. It is thus clear that such an award relates to a matter or to a thing to be done in India and, not being a bill of exchange or a promissory note, is required to be stamped in accordance with the provisions of the Indian Stamp Act before it is filed and made a rule of the Court in India.

Co-operative Assurance Co. Ltd., v. *Lachhman Singh Bhagat Singh* (1) distinguished.

Petition under section 115, C.P.C., for revision of the order or Shri Amar Nath Aggarwal, Sub-Judge, 1st Class, Delhi, on 28th August, 1957, holding that no stamp is required on the Award.

HARDEV SINGH, ADVOCATE, for the Petitioner.

P. K. ARORA, ADVOCATE, for the Respondent.

ORDER

Pandit, J.

PANDIT, J.—The only question for decision in this revision petition is whether a foreign award has to be stamped in accordance with the provisions of the Indian Stamp Act, 1899, before it is filed and made a rule of the Court in India.

It appears that there was some dispute between the respondent, Messrs M. A. Morris Limited, London, a Company registered under the provisions of the English Companies Act, and the petitioner, Messrs. Gujrals Company, New Delhi, with regard to the supply of certain goods by the petitioner to the respondent. Thereupon, the matter was referred to

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arbitration in England and the award was given on 25th February, 1953, according to which the respondent-Company was entitled to get £325 and 7 Shillings from the petitioner. Further £42 were assessed as costs and fees of the award, which amount was also to be paid by the petitioner. Since no payment was made to the respondent, they filed the present application in the Court of the Subordinate Judge, 1st Class, Delhi, under section 6 of the Arbitration (Protocol and Convention) Act and section 17 of the Indian Arbitration Act for the enforcement of the foreign award. The petitioner raised a preliminary objection that the award was inadmissible in evidence, having not been duly stamped. The trial Judge came to the conclusion that the award did not require any stamp and was admissible in evidence. Against this order, the present petition has been filed by Messrs. Gujrals Company.

The relevant portion of the award is in the following terms :—

> "We find the buyers are entitled to the sum of £325-7s-0d in respect of their claim and not more, and we award and direct that the sellers shall pay to the buyers the said sum of £325-7s-0d.
>
> We further award and direct that the costs and fees of this our award, which we assess at the sum of 40 guineas (forty-two pounds) shall be borne and paid by the sellers.
>
> Should the buyers take up and pay for this our award, then we direct that the sellers shall pay to the buyers the aforementioned sum of 40 guineas (forty-two pounds), the costs and fees of this our award."

It is common ground that the only charging section in the Indian Stamp Act, 1899, which governs the present case is section 3(c), which is in the following words :—

> "S. 3. Subject to the provisions of this Act and the exemptions contained in Schedule

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I, the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefor, respectively, that is to say:—

(a) ....

(b) ....

(c) every instrument (other than a bill of exchange or promissory-note) mentioned in that schedule, which, not having been previously executed by any person, is executed out of India on or after that day, relates to any property situate, or to any matter or thing done or to be done, in India and is received in India."

The question arises whether this award, which is, admittedly, not a bill of exchange or a promissory-note, and was executed out of India and is received in India, relates to any property situate in India or to any matter or thing done or to be done in India. It is undisputed that it does not relate to any property situate in India. Does it relate to any matter or thing done or to be done in India ? In my opinion, it does, because, in the first instance, it has to be filed in a Court situate in India and has to be made a rule of the Court. After that, the petitioning-Company, which is situate in India, would become liable to pay the amount awarded by the arbitrators and recovery thereof would also be made here. This would show, that this award relates to a matter or to a thing to be done in India.

The trial Judge has held that this award only declares the liability of the petitioners. That may be so. But the question is, when this award is brought in India and an effort is being made to make it a rule of the Court so that the amount specified therein is realized from the petitioner, who is in India, will it not be an instrument about which it could be said that it relates to any matter or a thing to be done in India? The trial court has not, in my opinion, approached the consideration of this question from a correct point of view, for the reason mentioned above.

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Reference was made to a decision of Chopra, J. in *Co-operative Assurance Co. Ltd.* v. *Lachhman Singh-Bhagat Singh* (1), wherein it was held as under:—

> "Where a suit for the recovery of money due for purchase of shares in a company outside Kapurthala State is instituted in the State because the defendant-purchaser was the resident of that State, the transfer of the rights and liabilities of the Company during the pendency of the suit by a deed to a third person would not relate to any property situate or anything to be done in the State. The right of the transferee to continue the suit is only a consequence of the transfer and would not render the deed of transfer relate to any property situate or thing to be done in the State."

The exact wording of the document in question in that authority is not reproduced in the judgment and, therefore, it is difficult for me to rely on the same. Moreover, the learned Judge has himself in the later part of his judgment observed as under:—

> "It may be argued that the right to sue in the State for the amount, or to be more precise, the right to continue the suit already filed in the State was transferred to the plaintiff and, therefore, it related to property situate or at least to a thing to be done in the State. The question to my mind does not seem to be free from doubt, and I have not been able to lay my hands on any direct authority on the point. The counsel for the parties also have not been able to assist me in its decision........"

In view of what I have said above, I would accept this petition, set aside the judgment of the trial Court and hold that the award in question requires to be stamped in accordance with the provisions of the Indian Stamp Act before it is filed and made a rule of

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the Court. In the circumstances of this case, however, I would leave the parties to bear their own costs in this Court.

B.R.T.

REVISIONAL CIVIL

Before A. N. Grover, J.

MANGAT RAM,—*Petitioner.*

versus

OM PARKASH,—*Respondent.*

Civil Revision No. 545 of 1960.

1961

Sept. 22nd

East Punjab Urban Rent Restriction Act (III of 1949)—Section 3—Notification, under exempting buildings constructed during certain years from the provisions of the Act—Whether applies to an addition made to an already existing building in those years—Partnership Act (IX of 1932)—Section 4—Essential elements to determine whether a partnership exists stated.

Held, that the tenant of a building, on the vacant land attached to which a room is constructed in a particular year, cannot take advantage of a notification issued under section 3 of the East Punjab Urban Rent Restriction Act, 1949, exempting the buildings constructed in that year (1956, in the present case), from the provisions of the Act and plead that the newly-constructed portion will not be governed by the provisions of the Act. The landlord is entitled to an order for the tenant's eviction from the entire building if he proves that the tenant has sublet the newly-constructed portion as the unit is the entire building which had been leased out to the tenant and not merely the portion which has been newly built.

Held, that a partnership contains three essential elements : (i) it must be the result of an agreement between several persons, (ii) the agreement must be to share the profits of a business, and (iii) the business must be carried on by all or any of them acting for all and there must be