CASE NO.:
Appeal (civil) 4609 of 2006

PETITIONER:
Shyamal Kumar Roy

RESPONDENT:
Sushil Kumar Agarwal

DATE OF JUDGMENT: 31/10/2006

BENCH:
S.B. Sinha & Dalveer Bhandari

JUDGMENT:
J U D G M E N T
(Arising out of S.L.P. (C) No.13426 of 2006)

S.B. Sinha, J.

Leave granted.

Interpretation of Section 36 of the Indian Stamp Act, 1899 ('the Act'), as amended in the State of West Bengal by Indian Stamp (West Bengal Amendment) Act, 1990 (hereinafter referred to as 'the West Bengal Act'), falls for consideration in this appeal which arises out of a judgment and order dated 5th May, 2006, whereby and whereunder the Review Application filed by Appellant herein from and order dated 13.4.2005 passed by the learned 2nd Civil Judge (Senior Division), Barasat was dismissed.

The basic fact of the matter is not in dispute. The parties hereto entered into an agreement to develop the suit property. Disputes and differences having arisen between them in regard to the purported termination of the said agreement by Appellant, a Suit was filed by Respondent herein for declaration and permanent injunction in the court of the Munsif, 3rd Court, Sealdah on 10.1.1997. An interim order of injunction was passed in the suit, which although was affirmed by the Appellate Court, but has been set aside by the Revisional Court. Respondent thereafter filed a suit for specific performance of the contract on 8.1.1999, inter alia, which was marked as Title Suit No.4 of 1999, praying for the following reliefs :

"i) A decree to be passed for specific performance of Contract Agreement dated 16th day of January, 1995 directing thereby the defendant to perform his part of the contract by way of rendering the exclusive right to the plaintiff to have free access into the suit property for raising rest of the construction in respect of second and third floors of the suit premises and to execute a registered deed or deeds of conveyance in respect of flats to be completed in the second floor and third floor of the suit premises in favour of the plaintiff or in favour of his nominees on receipt of balance consideration thereof and commanding the defendant to extend all sorts of cooperation with the plaintiff as would be required for construction of the plaintiff's allocation in respect of second and third floor of the suit premises.

ii) A Decree for Permanent Injunction restraining the defendant and his authorised non and agents from interfering with the act of construction of the

plaintiff in respect of his own allocation relating to second and third floor of the suit premises and/or from parting with the possession of the super built structures of the second floor and two garages in the ground floor or any part thereof in favour of any third party till final disposal of the suit."

Respondent herein filed the aforementioned Development Agreement dated 16.1.995. The same was exhibited without any objection on the part of Appellant herein on 17.02.2003. The parties also adduced their respective evidences. 16.2.2005 was the date fixed for argument in the suit on which date Appellant filed two applications : (1) for recalling the order dated 17.2.2003; and (2) for sending the said documents to the Collector for impounding thereof in terms of Section 38 of the Indian Stamp Act.

By an order dated 13.4.2005, the learned Trial Judge rejected both the applications. A Revisional Application filed by Appellant before the High Court has been dismissed by reason of the impugned judgment dated 28.2.2006. A review petition was filed by Appellant was also dismissed by the High Court by an order dated 5.5.2006.

Mr. Ranjan Mukherjee, learned counsel appearing for Appellant, inter alia, submitted that the learned courts below committed a manifest error in relying on Section 36 of the Indian Stamp Act, which cannot be said to have any application in the instant case, in view of the amendment made by the State of West Bengal therein, which came into force on 31.1.1994. It was further submitted that in the decision of this Court in Javer Chand & Ors. vs. Pukhraj Surana [AIR 1961 SC 1655], whereupon the courts below relied upon, it had no occasion to consider the purport and object of the State Act, viz, that the statute imposes a duty upon a court to impound a document which was insufficiently stamped so as to sub-serve the interest of the revenue and, thus, the same could not have been relied upon.

As the object and purport of the West Bengal Act was to collect revenue for the State, it was argued, the learned courts below should have opined that Section 36 of the Indian Stamp Act is not applicable. Our notice was further drawn to Schedule 1A of the West Bengal Amendment Act in terms whereof stamp duty on instruments have been fixed and have undergone further amendment by the West Bengal Finance Act, 2006. It was also contended that the High Court also committed a serious error in not entertaining the review application, although many important questions were raised therein.

Mr. Rana Mukherjee, learned counsel appearing for Respondent, on the other hand, submitted that the application filed by Respondent herein was barred under the proviso appended to Sub-Section (5) of Section 33 of the West Bengal Act. It was further urged that Section 36 of the Indian Stamp Act has rightly been applied as Appellant admitted the document to be taken in evidence without any demur whatsoever.

Before embarking upon rival contentions of the parties, we may notice the provisions of the Indian Stamp Act as amended in the State of West Bengal by the Indian Stamp (West Bengal Amendment) Act, 1990 :

Indian Stamp Act was, indisputably, enacted keeping in view the revenue of the State. It defines instrument under Section 2(14) to mean :

"2.(14) "Instrument" includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or record;"

West Bengal Amendment of the said provision reads as under :

"33.1(a) Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument chargeable, in his opinion, with duty, is produced or comes in the performance in his functions shall, if it appears to him that such instrument is not duly stamped, impound the same.

(b) Notwithstanding anything contained in Sec. 31, but without prejudice to the provisions of clause (a) of this sub-section, the Collector before whom any instrument is brought under Section 31 for determining the duty with which the instrument is chargeable, shall, if it appears to him that such instrument is not duly stamped, impound the same :

Provided that nothing contained in this clause shall be deemed to authorize the Collector to impound any instrument which has not been executed but is brought to him under Sec.31 for determining the duty with which the instrument is chargeable or any instrument which he is authorized to endorse under Section 32".

Section 36 and 38 of the Act, which are relevant for the purpose of this case, read as under :

"Section 36 : Admission of instrument where not to be questioned \026 Where an instrument has been admitted in evidence, such admission shall not, except as provided in Sec. 61, be called in question at any stage of the same

suit or proceeding on the ground that the instrument has not been duly stamped.

Section 38 : Instruments impounded how dealt with \026
(1) Where the person impounding an instrument under Section 33 has by law or consent of parties authority to receive evidence and admits, such instrument in evidence upon payment of a penalty as provided by Section 35 or of duty as provided by Section 37, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.

(2) In every other case, the person so impounding an instrument shall send it in original to the Collector."

Section 61 of the Act, occurring in Chapter VI deals with Reference and Revision.

It is not in dispute that Development Agreement dated 16.1.1995 was

typed on a non-judicial stamp paper of Rs.10/-. It was also not registered. We, however, in this matter are not concerned with the effect of non-registration of the said instrument. There is no doubt or dispute that in terms of Section 33 of the Indian Stamp Act, as amended by the State of West Bengal, a duty is cast upon the authorities concerned including the Courts to impound a document where the instrument produced before it is insufficiently stamped. When a deficiency in stamp duty is brought to the notice of the Collector or it otherwise comes to his notice, he may call for the instrument for the purpose of satisfying himself as to the adequacy placed thereon and proceed to deal with the instrument in terms of Section 38 thereof.

Section 36, however, provides for a 'stand alone' clause. It categorically prohibits a court of law from reopening a matter in regard to the sufficiency or otherwise of the stamp duty paid on an instrument in the event the same has been admitted in evidence. Only one exception has been made in this behalf, viz., the provisions contained in Section 61 providing for reference and revision. In a case where Section 33 of the Act, as amended by West Bengal Act would be applicable, the proviso appended to Sub-Section (5) carves out an exception that if no action would be taken after a period of four years from the date of execution of the instrument.

The agreement, as notice hereinbefore, was executed in the year 1995. The applications purported to be under Section 151 of the Code of Civil Procedure, 1908 were filed by Appellant only on 16.2.2005. The Development Agreement, as noticed hereinbefore, was admitted in evidence on 17.2.2003. The learned Trial Judge as also the High Court relied upon a decision of this Court in Javer Chand (supra). An attempt to distinguish the said decision of this Court was made, inter alia, on the premise that therein this Court was concerned with interpretation of the provisions of Marwar Stamp Act, 1947 in respect of two mudatti hundis, which have been admitted in evidence on payment of duty and penalty, but sought to be made inadmissible in evidence in terms of the provisions contained in the 1947 Act. This Court opined that once the said document was admitted in evidence, the new Act i.e. the 1947 Act would be inapplicable, stating :

"Once a document has been marked as an exhibit in the case and the trial has proceeded all along on the footing that the document was an exhibit in the case and has been used by the parties in examination and cross-examination of their witnesses, Section 36 of the Stamp Act comes into operation. Once a document has been admitted in evidence, as aforesaid, it is not open either to the trial court itself or to a court of appeal or revision to go behind that order. Such an order is not one of those judicial orders which are liable to be reviewed or revised by the same court or a court of superior jurisdiction."

The said decision, therefore, is an authority for the proposition that Section 36 would operate even if a document has been improperly admitted in evidence. It is of little or no consequence as to whether a document has been admitted in evidence on determination of a question as regards admissibility thereof or upon dispensation of formal proof therefor. If a party to the lis intends that an instrument produced by the other party being insufficiently stamped should not be admitted in evidence, he must raise an objection thereto at the appropriate stage. He may not do so only at his peril.

Objection as regards admissibility of a document, thus, specifically required to be taken that it was not duly stamped. On such objection only the question is required to be determined judicially.

Reliance has been placed on Ram Rattan (Dead) by Legal Representatives vs. Bajrang Lal & Ors. [AIR 1978 SC 1393], which in our opinion has no application to the fact of the present case.

When there had been no determination as regards sufficiency of the stamp duty paid on an instrument and in the event the document is taken in evidence with an endorsement, that "objected, allowed subject to objection", this Court in Ram Rattan (supra) held that the objection was not judicially determined and the document was merely tentatively marked and in such a situation Section 36 would not be attracted. Ram Rattan (supra) also, therefore, is an authority for the proposition that the party objecting to the admissibility of the document must raise an objection so as to enable the trial judge to determine the issue upon application of his judicial mind at the appropriate stage.

If no objection had been made by Appellant herein in regard to the admissibility of the said document, he, at a later stage, cannot be permitted to turn round and contend that the said document is inadmissible in evidence.

Appellant having consented to the document being marked as an exhibit has lost his right to reopen the question.

What was necessary was that the document should be marked in presence of the parties and they had an opportunity to object to the marking of the document. The question of judicial determination of the matter would arise provided an objection is taken what document is tendered in evidence and before it is marked as an exhibit in the case. Before the learned Trial Judge, reliance was placed on a decision of a learned Single Judge of the Andhra Pradesh High Court in Vemi Reddy Kota Reddy vs. Vemi Reddy Prabhakar Reddy [(2004) 3 ICC 832]. In that case there was nothing on record to show that the document was marked as an exhibit after an objection has been raised. The said case, therefore, has also no application to the facts of the present case.

It may be true that the object of Indian Stamp Act is to collect revenue and the amendments carried out by the State of West Bengal provides for more stringent steps in that behalf. It may also be true that by reason of Sub-Section (4) of Section 33 of the West Bengal Act, a duty has been cast upon the court to apply its mind when an instrument having insufficient stamp duty is brought to its notice, but, only thereby Section 36 of the Indian Stamp Act cannot be made inapplicable. Section 36, as indicated hereinbefore, applies on its own force.

Appellant filed an application under Section 38 of the Indian Stamp Act. The said provisions were clearly not applicable as thereby procedure has been laid down as to what steps are required to be taken upon impounding a document. It furthermore appears that even the question in regard to the applicability of Sub-Section (4) of Section 33 of the Act had not been raised.

Our attention has also been drawn to a few decisions of the Calcutta High Court, wherewith we may now deal with.

In Tridip Das Roy vs. Chitta Ranjan Jana [1992 (2) CLJ 259], the question which arose for consideration was: ’as to whether an agreement for sale is an instrument within the meaning of Section 2(14) of the Indian Stamp Act?’ It was held to be so, inter alia, having regard to the explanation appended to Item No.5 of Schedule 1A.

There is no quarrel with the aforementioned proposition of law.

In Biswajit Chakraborty vs. Mira Sen Ray [2002 (2) CLJ 449], the Calcutta High Court was dealing with a case where an objection was raised that the document tendered was insufficiently stamped, holding :

"My reading of the provisions of Sections 33, 35, 38, 39, 40 & 61 of the Indian Stamp Act, 1899 is that when a document is tendered in evidence by a party and an objection is raised by the other side that the document

is insufficiently stamped, at that stage, the Court assumes the jurisdiction to impound the document as it was obligatory to apply the mind of the Court in accordance with the relevant provisions of the said Act. The object of Section 33 is to protect the revenue and as such the Court or such person, as referred to in the said section, must however, exercise the powers as envisaged under the said section, if necessary, suo motu, irrespective of the raising of objection by any of the party."

Again, we are not concerned such a question in this appeal.

In Mujibar Rahman Mondal v. Md. Abdulla Molla & Ors. [2005 (1) CLJ (Cal.) 249], this Court held:-

"...The Court has to judicially determine the matter as soon as the document is tendered in evidence and before it is marked as an 'exhibit' in the case. Once a document has been marked as an "exhibit" in the case and has been used by the parties in examination and cross-examination of their witnesses, Section 36 comes into operation. Once a document has been admitted in evidence, it is not open either to the trial Court itself or to a Court of Appeal or revision to go behind that order. In the case on hand, the document in question was marked exhibit with objection which leads to show that the objection as to admissibility on the ground that the instrument is not duly stamped has not been judicially determined but it was merely postponed with tentatively marking it as an "exhibit". In such circumstance, the said provision of Section 36, in my view is not attracted..."

The said decision has also no application in the facts and circumstances of this case.

For the reasons aforementioned, we are of the opinion that the High Court committed no error in dismissing the revisional application as also the review application filed by Appellant herein. The appeal is therefore, dismissed with costs. Counsel's fee quantified at Rs.5,000/-.