

FULL BENCH.

Before Walmsley, Greaves, C. C. Ghose, B. B. Ghose and Mukerji JJ.

REFERENCE FROM THE MUNSIF, 4TH COURT, HABIGANJ,
*Re.**

1925

June 29.

Court-fee—Stamp—Security bond executed in pursuance of an order of Court under the Civil Procedure Code, how stamped—Court-fees Act (VII of 1870), Schedule II; Article 6—Stamp Act (II of 1899), Schedule I, Articles 15, 40, 57.

A security bond executed in pursuance of an order of a Court under the Code of Civil Procedure must bear a Court-fee stamp as required by Article 6 of Schedule II of the Court-fees Act, 1870, and it will also be chargeable under the Stamp Act, if it is of the kind described in Article 40 or Article 57, but it will not be chargeable under the Stamp Act if it falls under the residuary Article 15.

Dwarkanath Dey v. Sailaja Kanta Mallik (1) and Sarbo Musalmani v. Safar Mandal (2) referred to.

FULL BENCH REFERENCE.

Decretal amount in a Money Execution Case was deposited in the Court of the Munsif, 4th Court, Habiganj, to the credit of the minor decree-holder. The next friend of the minor applied for payment order and was required by the Court under Order XXXII, rule 6 (2) of the Code of Civil Procedure to furnish security. A security bond was therefore filed, stamped with a court-fee stamp of 8 annas under Article 6, Schedule II of the Court-fees Act. The point then arose whether this document should be stamped under the Court-fees Act or under the Stamp Act (Schedule I, Article 15). Originally the practice

* Full Bench Reference No. 4 of 1924, in Reference No. 7 of 1924.

(1) (1916) 21 C. W. N. 1150.

(2) (1922) I. L. R. 49 Calc. 997.

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at Habiganj was to accept such security bonds stamped under the Court-fees Act. Some years ago, the practice was altered in the Court of the Munsiff, 4th Court, in accordance with the decision in *Dwarkanath Dey v. Sailaja Kanta Mallik* (1), in which it was held that security bonds given in pursuance of the order of the Court for stay of execution require stamp duty under the Stamp Act. In the other three Munsiffs' Courts at Habiganj, the old practice continued.

When the present case came up before the Munsiff, 4th Court, he relied on the later case of *Sarbo Musalmani v. Safar Mandal* (2) and the two decisions being inconsistent, referred the matter to the High Court on the 20th August, 1924, under section 115 read with Order XLVI, rule 1 of the Code of Civil Procedure.

The Reference was heard by Greaves and Chakravarti JJ. on the 15th December, 1924. Their lordships referred the case to the Full Bench, the Order of Reference being as follows :—

GREAVES AND CHAKRAVARTI JJ. The Munsiff of the 4th Court, Habiganj, district Sylhet, has under the provisions of the above section and order referred to the Court the question whether a security bond executed under the order of the Court passed under Order XXXII, rule 6(2) or under any other section or rule of the Civil Procedure Code should be stamped under the Court-fees Act or under the Stamp Act. Holmwood and Tuenon JJ. held in the case of *Dwarkanath Dey v. Sailaja Kanta Mallik* (1) that security bonds given in pursuance of an order of the Court for stay of execution should be stamped under the Stamp Act. Newbould and Panton JJ. have recently held in *Sarbo Musalmani v. Safar Mandal* (2) that a security bond executed by a person for the release of attached animals should be stamped under Article 3, Schedule II of the Court-fees Act.

It would, therefore, appear that there is a conflict between the decisions of two Division Benches of this Court on the question which arises on this Reference. Under these circumstances we refer for the decision of a Full

(1) (1916) 21 C. W. N. 1150.

(2) (1922) I. L. R. 49 Calc. 997.

Bench of the Court the question whether a security bond executed under the order of the Court passed under Order XXXII, rule 6(2) or under any other order or section of the Code of Civil Procedure should be stamped under the Court-fees Act or under the Stamp Act.

There was no appearance before us on the Reference.

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The Senior Government Pleader (Babu Surendra Nath Guha), for the Government. I venture to submit that the reasons given by Holmwood and Teunon JJ. in *Dwarkanath Dey v. Sailaja Kanta Mallik* (1) will not appeal to you. The Court cannot compel any one to execute a security-bond and in every case the person interested furnishes such a bond in order to get a relief which he wants. The Court grants him the relief conditionally on the execution of a security bond and the party has always the right to decline to furnish the security bond if he does not want the relief any longer. In this case, there is no option to be exercised. See *Amirthammal v. Ramalinga Goundan* (2) on this point.

I submit that such security bonds should be stamped under Article 6, Schedule II of the Court-fees Act, unless they are of such a nature as to attract the operation of Article 40 or Article 57 of the Stamp Act.

WALMSLEY J. The circumstances which have given rise to this Reference are as follows :—In an execution case at Habiganj, the next friend of a minor decree-holder was directed to furnish security under Order XXXII, rule 6 (2) of the Civil Procedure Code before receiving certain money on behalf of the minor. He filed a security bond, and then a question arose as to whether the bond was to be stamped under the Court-fees Act, or under the Stamp Act. The learned

(1) (1916) 21 C. W. N. 1150.

(2) (1920) I. L. R. 43 Mad. 363.

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Munsif found that there were two conflicting decisions on the point, viz., the case of *Dwarkanath Dey v. Sailaja Kanta Mallik* (1) and that of *Sarbo Musalmani v. Safar Mandal* (2) and he referred the question to this Court under the provisions of Order XLVI, rule 1 of the Civil Procedure Code.

A Division Bench finding the two decisions to be directly opposed to one another has referred for the decision of a Full Bench the question whether a security bond executed under the order of the Court passed under Order XXXII, rule 6 (2) or under any other order or section of the Civil Procedure Code should be stamped under the Court-fees Act or under the Stamp Act.

The learned Government Pleader has appeared before us, and has suggested that our answer should be to this effect, that such security bonds should be stamped under Article 6, Schedule II of the Court-fees Act, unless they are of such a nature as to attract the operation of Article 40 or Article 57 of the Stamp Act.

Article 6 of Schedule II of the Court-fees Act now runs: "Bail-bond or other instrument of obligation given in pursuance of an order made by a Court or Magistrate under any section of the Code of Criminal Procedure or the Code of Civil Procedure."

I feel no hesitation in holding that a security bond of the kind mentioned in the Munsif's letter comes within this description. With all deference to the learned Judges who decided the case of *Dwarkanath Dey v. Sailaja Kanta Mallik* (1), I think they placed too narrow a meaning on the words "in pursuance of". Compliance with a condition imposed by a Court is, in my opinion, an act done in pursuance of the Court's order: and I think that the narrow construction

(1) (1916) 21 C. W. N. 1150.

(2) (1922) I. L. R. 49 Calc. 997.

proposed in the judgment mentioned would render Article 6 nugatory.

It does not follow, however, that because a security bond falls within the scope of Article 6, Schedule II of the Court-fees Act, it is free from the provisions of the Stamp Act. This Act contains a clause—section 2(5)—which enumerates three kinds of instruments which are to be regarded as bonds. Then in Schedule I there are three articles which have a bearing on the question before us, viz., Articles 15, 40 and 57. They are as follows :—

Article 15. Bond [as defined by section 2 (5)] not being a Debenture (No. 27) and not being otherwise provided for by this Act or by the Court-fees Act, 1870.

Article 40. Mortgage-deed, not being [an Agreement relating to Deposit of Title-Deeds, Pawn or Pledge (No. 6)] Bottomry Bond (No. 16), Mortgage of a Crop (No. 41), Respondentia Bond (No. 56), or Security-Bond (No. 57).

Article 57. Security-bond or Mortgage-deed executed by way of security for the due execution of an office, or to account for money or other property received by virtue thereof or executed by a surety to secure the due performance of a contract.

A comparison of these articles shows that Article 15 is of a residuary character intended for bonds which cannot be assigned to any other of the articles of the Stamp Act and are not provided for by the Court-fees Act. It is the only article in which reference is made to the Court-fees Act. It follows therefore that a bond which finds its proper place in one of the other articles is not exempt from duty under the Stamp Act, and, at the same time, as being given in pursuance of the Court's order, it is liable under Article 6, Schedule II of the Court-fees Act.

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The answer that I propose to the Reference is that the security bonds executed in pursuance of an order of the Court under Order XXXII, rule 6(2) or any other rule or section of the Civil Procedure Code must bear a Court-fee stamp as required by Article 6 of Schedule II of the Court-fees Act, 1870; and they will also be chargeable under the Stamp Act if they are of the kind described in Article 40 or Article 57, but they will not be chargeable under the Stamp Act if they fall under the residuary Article 15.

GREAVES J. I agree.

C. C. GHOSE J. I agree.

B. B. GHOSE J. I agree.

MUKERJI J. I agree.

S. M.

ORIGINAL CIVIL.

Before C. C. Ghose J.

BHAGAT BROTHERS, LTD., *In re.**

1925
 June 11.

Jurisdiction—Company—Voluntary liquidation—Resolution by creditors for appointment of a joint liquidator—No application made to Court for such appointment—Liquidation proceedings carried on jointly—Joint liquidator acts as such and draws remuneration—Application made to Court to confirm and ratify with retrospective effect—Indian Companies Act (VII of 1913) s. 209.

The Court has no jurisdiction to confirm and ratify the appointment of a person under section 209 of the Indian Companies Act (VII of 1913) as a joint liquidator with retrospective effect.

APPLICATION IN CHAMBERS.

This was an application made by Khardah Company, Limited, a creditor of Bhagat Bros. Ltd.

* Application in Original Civil.