INSURANCE POLICIES AND STAMP DUTY

THE STAMP Act in India prescribes stamp duties on separate basis for marine insurance policies and other policies. The Act[1] charges, on sea insurance policies, stamp duty according to the sum insured. Thus, for a policy for twelve months, the duty is 25 for each one thousand rupees insurance. In contrast, for fire insurance policies and other insurances policies and covering goods, merchandise, personal effects and other property against loss or damage, the maximum duty is one rupee. By section 2(20) of the Stamp Act, the expression "sea policy" or "policy of sea insurance" has been defined in an elaborate manner. The gist of the definition of 'sea policy' is, that it means an insurance made upon any ship or vessel (whether for marine or inland navigation) or upon the machinery or furniture of any ship or upon goods, *etc.*, on board a ship or on freight. It also includes insurance against transit risk, incidental to the sea risk mentioned above. The essence of the definition lies in its requirement that the insurance must be against *a sea risk*. Risks arising by events on land are not covered, except in so far as they are incidental to a transit involving sea risk.

Now, in a Bombay case *Indian Dyestuff Industries Ltd.* v. *Mehta Transport Co.*[2] the question arose as to how the stamp duty on an insurance policy covering transit risk for goods carried by rail, tanker or lorry, is to be calculated. In the Bombay case, the policy did not cover any risk *on sea voyage* at all. In fact, the parties did not contemplate any sea voyage or marine adventure. For convenience the parties used a sea insurance policy form. But the intention was only to cover risk arising on transport on land. That transport was not even incidental to, or connected with, any sea voyage. The column with the words, "in the ship or vessel called" did occur in the printed form of policy, because it was designed for use as a sea insurance policy. However, against that column, in this particular case the words "Lorry/Tanker, Rail" were inserted, by typing. Hence, obviously what was intended to be covered, was only a mode of transport *on land by lorry, etc.*

Interpreting the policy framed as above, the Bombay High Court (Justice B.P.Saraf) held that the stamp duty was to be calculated, not on the basis of sea policy but on the basis that the policy fell in the residuary category, carrying only a fixed duty. It was true that the policy referred to "ship, vessel etc." But that was not material, in view of the insertion of certain words in type, as mentioned above.

In the above case, the High Court took judicial notice of the fact that there was a common practice of using printed form of policy which was originally intended to cover the carriage of goods by sea, with modifications made to cover risk to goods carried by road or rail. While doing so, some of the clauses applicable only to sea risk were sometimes not struck off. Arnould[3] had made a

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1. Art. 47, pt. A.
2. A.I.R. 1994 Bom. 209.
3. *Law of Marine Insurance and Average*, vol. 1 (16th ed.).

reference to this practice, and had dealt with the problems that arose, when care was not taken to strike off those words which were rendered otiose, by the insertion of fresh or additional matter which was incorporated to convert or adapt the original form (of sea policy) to cover a land risk. In such cases, then, what they wrote, rather than the printed clause, was regarded as reflecting their intention.

The problem had also been taken note of, by the House of Lords, in *Dudgeon* v. *Pambroke*[4] where the House had held that it is the written words that must be given preference for ascertaining the intention of the parties. This was a case where a form of policy, intended for use in voyage policy, was adapted to, and used to effect, a time policy. In doing so, certain words, which were appropriate only for voyage policies had been left unmodified. It was held that those words could be disregarded in the circumstances of the case, and the court could give priority to the written words.

McGillvary and Parkington[5] (quoted in the Bombay High Court judgment) state the position still more emphatically. The propositions which these authors have put forth can be summarised as under:

(*i*) Where a policy contains printed clauses and also certain clauses in type then the court will endeavour to give effect to both.

(*ii*) But if it appears that a written clause manifestly cannot be reconciled with one or more printed conditions, then the written clause overrides the printed one, because the written words are the immediate language and terms, selected by the parties themselves for the expression of their meaning, with reference to the particular risk and the printed words are a general formula, applied equally to all insurance in the same class of risk.

(*iii*) Standard printed clauses which cannot be reconciled with the expressed objects and subject matter of the contract can be ignored by the court.

This is frequently the case with commercial contracts of insurance and charter parties. For example, if a policy of insurance meant for marine risks is used to cover risks on land or *vice versa*, the (printed) conditions may not be enforced, in so far as they are not inconsistent with the contract to which they are applied.

(*iv*) A condition which is not in terms applicable to the risk, may be modified, *i.e.*, applied with necessary or suitable modifications.

Thus, the view taken by the Bombay High Court in the instant case is in conformity with the opinion of distinguished writers. It is also faithful to the scheme of the Stamp Act. It is worth pointing out, that the law has a broad principle of general application namely it looks to the substance of the transaction

4. (1877) 36 L.T. 382.

5. *Insurance Law* (8th ed.).

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Finally, there is the paramount doctrine of interpretation of statutes, the facts of the Bombay case, though the judgment of the case does not lay emphasis on this particular rule of statutory interpretation.

It is suggested that the Stamp Act should be amended suitably to clarify the position. Such clarification is necessary for avoiding controversies. We have to remember that with increase in trade within the country insurance of goods carried in various modes of transport will expand. Taxation laws relating to business should be simple, certain and intelligible.

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