

FULL BENCH.

Before Tek Chand, Abdul Qadir and Monroe JJ.

GHULAM MOHAMMAD—Petitioner

versus

THE CROWN—Respondent.

Civil Reference No. 32 of 1932.

Court Fees Act, VII of 1870, Schedule II, Article 6: Personal security bond—filed in pursuance of order of Civil Court—whether also liable to stamp duty under Indian Stamp Act, II of 1899, Schedule I, Article 57.

A judgment-debtor arrested in execution of a decree, having expressed his intention to apply to be declared an insolvent, was ordered to furnish security that he would within one month apply to be declared an insolvent and that he would appear in Court when called upon. He accordingly filed a personal security bond to the amount of Rs. 500 executed by G. M. as his surety. The bond bore a court-fee stamp of eight annas, and the question before the Full Bench was whether this was the only duty leviable on the bond.

Held, that the only duty leviable on the bond was the Court-fee of eight annas under Article 6 of Schedule II of the Court-fees Act, and that it did not require any stamp duty under the Indian Stamp Act.

Reference from the Munsif, Habiganj Re (1), and Mohammad Ewaz v. Haji Naneh Mian (2), referred to.

Case referred under Section 57 of the Stamp Act by Mr. Miles Irving, Financial Commissioner, Punjab, Lahore, with his U. O. No. 1234-M(ct) of the 4th October, 1932, for orders of the High Court.

Nemo, for Petitioner.

CARDEN-NOAD, Government Advocate, for Respondent.

JUDGMENT OF THE FULL BENCH.

TEK CHAND J.

TEK CHAND J.—This is a reference by the Financial Commissioner, Punjab, asking us to decide

(1) (1926) I. L. R. 53 Cal. 101 (F. B.).

(2) 1929 A. I. R. (Lah.) 205; 117 I. C. 226.

whether a certain security bond, which had been filed by one Ghulam Muhammad in the Court of the Subordinate Judge, Mianwali, in the course of proceedings in execution of a decree, obtained by firm Uttam Chand-Piara Ram against Hasham Shah, was properly stamped with a court-fee stamp of eight annas only.

It appears that several decrees had been passed by Civil Courts against Hasham Shah and in execution of some of these decrees warrants for his arrest had been issued. He was accordingly arrested, and when he was produced before the executing Court, he expressed his intention to apply to be declared an insolvent. On this the Subordinate Judge passed an order under section 55 (4), Code of Civil Procedure, requiring the judgment-debtor to furnish security, to the satisfaction of the Court, that he will within one month apply to be declared an insolvent and that he will appear, when called upon, in any proceeding upon the decree in execution of which he had been arrested. In accordance with this order one Ghulam Muhammad filed in the Court a security bond in the following terms:—

“ I, Ghulam Muhammad, son of Nur, caste Jat, resident of Wandha, S. Sher Zamanwala, Dakhli Birookhel, *Tahsil* and District Mianwali, declare as follows:—

The judgment-debtor has been brought here under warrants of arrest and has been asked to give a security for Rs. 500. I stand surety for the said judgment-debtor and hold myself responsible and hereby promise that the judgment-debtor will attend the Court on all dates of hearing till the case is decided and that he shall file within the prescribed

1932

GHULAM
MOHAMMAD
v.
THE CROWN.

TEK CHAND J.

1932

—
 GHULAM
 MOHAMMAD

v.

—
 THE CROWN.

—
 TEK CHAND J.

period a petition in the Court of the Senior Subordinate Judge, Mianwali, for being declared an insolvent. If the judgment-debtor fails to comply with any of these conditions, I shall pay without any objection the amount decreed against him. Therefore this bond has been executed as a surety-bond.

7-10-1931.

(Sd.) GHULAM MUHAMMAD.”

The bond bore a court-fee stamp of eight annas only. The Subordinate Judge accepted the bond and released the judgment-debtor so as to enable him to take appropriate proceedings for his adjudication as an insolvent.

Some time after, the execution record was examined in the Collector's office and it was thought that in addition to the court-fee stamp of eight annas, which had been affixed already on the security-bond, it was liable to additional stamp duty under Article 57 of Schedule I of the Indian Stamp Act. The matter was brought to the notice of the Subordinate Judge, who disagreed with this view, and expressed the opinion that the bond did not fall under Article 57, but had been properly stamped with a court-fee of eight annas only. The Collector referred the case, through the Commissioner, to the Financial Commissioner, who was inclined to agree with the Subordinate Judge, but having regard to certain observations in a Single Bench judgment of this Court, reported as *Mohammed Ewaz v. Haji Nanah Mian* (1), he has made a reference to this Court under section 57 of the Stamp Act.

At the hearing before us there was no appearance by or on behalf of the surety, the decree-holder,

or the judgment-debtor, but the learned Government Advocate appeared for the Crown. After hearing him and examining the terms of the security-bond, I have no hesitation in holding that it was properly stamped with a court-fee of eight annas and that no additional fee under the Stamp Act was payable.

Article 6 of Schedule II of the Court-fees Act prescribes a court-fee of eight annas on a "bail-bond or other instrument of obligation given in pursuance of an order made by a Court * * * under any section of * * * the Code of Civil Procedure 1908, and not otherwise provided for by this Act." It is conceded that there is no other provision in the Court-fees Act relating to a bond of this kind and, therefore, it clearly falls under Article 6 of the Act.

It will have been noticed that in executing the bond in question the surety incurred a *personal* obligation only, and that he did not hypothecate any moveable or immoveable property. Now a perusal of the various sections and articles of the Stamp Act would show that it does not contain any provision for levy of a stamp duty on a personal bond of this kind. Article 40 cannot possibly apply as no property was mortgaged by the surety. It seems to me that Article 57 is equally inapplicable as it prescribes the "duty payable on a 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." The learned Government Advocate admitted before us that in the present case the bond had not been executed for any of the purposes mentioned in this Article.

1932

 GHULAM
 MOHAMMAD

 v.
 THE CROWN.

 TEK CHAND J.

1932

GHULAM
MOHAMMADv.
THE CROWN.

TEK CHAND J.

The only other provision in the Stamp Act in which reference is made to bonds is the residuary Article No. 15, which prescribes the duty leviable on a "bond not being a debenture and not being otherwise provided for by this Act or by the Court-fees Act." As pointed out already, a bond of the kind before us is provided for in Article 6 of the Court-fees Act and, therefore, it is not liable to any additional duty under Article 15.

As stated above, the learned Financial Commissioner was inclined to take this view, but he felt that a contrary opinion was possible by reason of certain observations, which are to be found in *Mohammed Ewaz v. Haji Naneh Mian* (1). In that case a security-bond had been executed in pursuance of an order of a Court for stay of execution proceedings under the Code of Civil Procedure. The security offered was personal and no property moveable or immoveable, was charged. The learned Judge held, and if I may say so with all respect, correctly, that the only duty leviable on the bond was a court-fee of eight annas under Article 6, Schedule II of Act VII of 1870 and that it did not require any stamp under the Stamp Act. The decision, therefore, was correct so far as it went. The learned Judge, however, further observed that a security-bond executed under Order XXXII, Rule 6 (2), Civil Procedure Code, was liable to duty under Article 57 of the Stamp Act, as well as under Article 6, Schedule II of the Court-fees Act, even though the bond was a simple one and no property had been hypothecated. The bond which was before the learned Judge had not been executed under Order XXXII, but was one under

(1) 1929 A. I. R. (Lah.) 205.

Order XLI, and, therefore, his observations were merely *obiter*, and, as pointed out by the learned Government Advocate, they are certainly not in accord with the decision of the Full Bench of the Calcutta High Court in *Reference from the Munsif, Habiganj Re* (1), which was cited with approval in an earlier part of the judgment. I do not consider it necessary to discuss this matter at length, as the security-bond with which we are concerned was not executed under Order XXXII. Rule 6. It will suffice to say that as at present advised, I fail to see how Article 57 of the Stamp Act can apply to a personal bond executed under that Rule. In my opinion, the case reported as *Mohammad Ewaz v. Haji Naneh Mian* (2), should be taken to have decided the only point which was actually before the learned Judge and which, I have no doubt, was correctly decided, and that the observations in that judgment relating to bonds other than those executed in pursuance of an order of a Court for stay of execution-proceedings were merely *obiter* and should be treated as such.

My answer to the reference, therefore, is that the only duty leviable on the bond in question was a court-fee of eight annas only and that it did not require to be stamped under the Indian Stamp Act.

ABDUL QADIR J.—I concur.

MONROE J.—I concur.

A. N. C.

1932

GHULAM
MOHAMMAD

THE CROWN.

TEK CHAND J.

(1) (1926) I. L. R. 53 Cal. 101 (F. B.). (2) 1929 A. I. R. (Lah.) 205.