

FULL BENCH.

Before Addison, Jai Lal and Abdul Rashid JJ.
**IN re STAMP DUTY ON SECURITY BOND
 UNDER PROVINCIAL INSOLVENCY
 ACT, SECTION 21.**

Civil Reference No. 51 of 1935.

Indian Stamp Act, II of 1899, Sch. I, Article 57: Applicability of — to a security bond under section 21 of the Provincial Insolvency Act, V of 1920.

Held, that a security bond under the provisions of section 21 of the Provincial Insolvency Act is a bond executed to secure the due performance of a contract made by the insolvent to appear, and the surety to produce him in Court, and is, therefore, governed by Article 57 of Schedule I of the Indian Stamp Act and the stamp duty leviable on such a bond is that prescribed by that Article, as amended by Punjab Act VIII of 1922.

Tullah Shah-Ram Saran Shah v. Ghulam Hussain (1), relied upon.

Case referred, under section 57 of the Indian Stamp Act, 1899, by Mr. A. Latifi, Financial Commissioner, Revenue, Punjab, Lahore, with his U. O. No. 1302-St., dated 23rd April, 1935, for orders of the High Court.

ANANT RAM KHOSLA, Assistant Legal Remembrancer, for Secretary of State.

JAI LAL J.

JAI LAL J.—This reference under section 57 of the Indian Stamp Act has been made by the Financial Commissioner, Punjab, under the following circumstances:—

An application was made under the Provincial Insolvency Act for adjudicating one Pir Bakhsh, an insolvent. The Senior Subordinate Judge, Rawalpindi, in whose Court the application was made, acting under section 21 of the Provincial Insolvency Act.

directed the alleged insolvent to execute a security bond in the sum of Rs.500 with one surety to appear in Court till the case was finally decided, and in accordance with this order a bond was given by Pir Bakhsh with Murad Ali as his surety. It was stamped only with a court-fee stamp of one rupee and, a question having arisen whether it was sufficiently and properly stamped, the Financial Commissioner has referred the matter for decision by this Court.

The Financial Commissioner is inclined to the view that the article applicable to the bond in question is Article 15 of Schedule I of the Indian Stamp Act. That Article provides for stamp duty on a bond which is not a debenture and has not been otherwise provided for by the Indian Stamp Act or by the Indian Court-fees Act. It is clear that, as the learned Financial Commissioner has remarked, this is a residuary article and we have, therefore, to see whether there is any other article of the Indian Stamp Act or any provision of the Court-fees Act which is applicable to the bond in question. The only article in the Indian Court-fees Act applicable to bonds is Article 6 of Schedule II, which applies to a 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 and is not otherwise provided for in the Act. Now, it is obvious that the bond in this case was not given under any of the provisions either of the Criminal Procedure Code or of the Civil Procedure Code. Therefore, Article 6 of the Indian Court-fees Act is not applicable to it and no other provision of the Act has been brought to our notice which could be made applicable.

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Coming to the Indian Stamp Act, besides Article 15 there are two articles, which need consideration, viz. Articles 40 and 57. Article 40, which regulates stamp on a mortgage deed, expressly excludes a security bond from its operation. Moreover, it is to be noted that no immovable property was mortgaged in the bond in question. Article 57 governs the case of 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 duty to be levied is the same as the duty on a bond under Article 15, if the amount secured does not exceed Rs.1,000, and in any other case it is Rs.5. which has been increased to Rs.7-8-0 in this Province by an amendment of the Indian Stamp Act by a local Act. The question then is whether the security bond in question can be held to have been executed to secure the due performance of a contract, as obviously it was not executed by way of security for the due execution of an office, or to account for money or other property.

In *Tullah Shah - Ram Saran Shah v. Ghulam Hussain* (1) a Division Bench of this Court held that a bond given for refund of the money realised by a decree-holder in case of success of the appeal by the judgment-debtor was governed by Article 57 of the 1st Schedule of the Indian Stamp Act, as amended by the Punjab Act VIII of 1922. The bond in that case was given under the provisions of the Civil Procedure Code and, though the question was not directly decided, it appears that the learned Judges held that it was executed to secure the due performance of a contract.

In my opinion, the bond in the present instance also is of a similar nature, that is to say, it has been executed to secure the due performance of a contract made by the insolvent to appear, and the surety to produce him in Court, under the provisions of section 21 of the Provincial Insolvency Act. My opinion, therefore, is that Article 57 of the Indian Stamp Act is applicable to bonds of this description. The learned Assistant Legal Remembrancer, who appeared for the Crown, also supported this view.

I would, therefore, hold that Article 15 of the 1st Schedule of the Indian Stamp Act is not applicable and that a maximum duty of Rs.7-8-0 under Article 57 of the 1st Schedule of the Indian Stamp Act, as amended by the Punjab Act VIII of 1922, is leviable on a bond given under the provisions of section 21 of the Provincial Insolvency Act and I would answer the reference accordingly. As in the present case the bond was for a sum of Rs.500 the duty would be Rs.3-2-0 in this Province.

ADDISON J.—I agree.

ABDUL RASHID J.—I agree.

P. S.

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Reference answered.