

CIVIL REFERENCE.

Before the Hon'ble Mr. R. F. Rampini, Acting Chief Justice, Mr. Justice Caspersz and Mr. Justice Sharfuddin.

MULCHAND LALA

v.

KASHIBULLAV BISWAS.*

1907

July 30.

*Stamp-duty—Agreement—Memorandum of agreement—Stamp Act (II of 1899)
Sch. I, Art. 5, cl. (b)—Account—Stipulation to pay interest—Acknowledgment of debt.*

An account written on a sheet of paper signed by the debtor and addressed to the creditor, and also containing a stipulation to pay interest, is not a mere acknowledgment of a debt on which a stamp duty of one anna is leviable under Art. 1, Sch. I of the Indian Stamp Act, but an agreement or memorandum of an agreement which requires a stamp of 8 annas, under cl. (b) of Art. 5, Sch. I of the Indian Stamp Act.

Laxmi Bai v. Ganesh Raghunath(1) followed.

The plaintiff brought this suit for the recovery of Rupees 302 annas 13 as principal, and Rs. 163-0-0 as interest alleged to be due from the defendants under a *dastabej* (document), which contained an entry of Rs. 346-5, dated the 30th Jyest 1310, and another entry of Rs. 302-13 dated the 13th Aswin 1310. The document in question was written on a sheet of paper and stamped with a stamp of one anna. There was, however, a stipulation to pay interest at the rate of Re. 1-8 annas per cent. per mensem, and the Munsif of Jangipore, before whom the case came on for trial, being doubtful as to whether the said document had been sufficiently stamped, made the following reference to the High Court through the District Judge of Murshidabad :—

“The plaintiff has brought this suit to recover the sum of Rs. 302-3 annas principal and Rs. 163 interest on an acknowledgment of debt signed by defendant No. 1 on 30th Jyest 1310 B. S. The acknowledgment bears a stamp of one anna and mentions interest Re. 1-8 annas per cent. per month, but contains no express stipulation to pay. The document contains this clause :—‘Interest at the rate of Re. 1-8 annas per cent. per month on this money.’ The word ‘*पूरा*’ or ‘I will pay,’ has not been written and it is therefore extremely doubtful

* Civil Reference No. 8 of 1907.

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whether the above clause amounts to a stipulation to pay interest as contemplated by the proviso in Art. I of Schedule I of the Indian Stamp Act. A sentence containing no verb (as in the above clause) cannot mean any promise or stipulation. It is a patent ambiguity, and under section 93 of the Indian Evidence Act oral evidence cannot be given to show its meaning or supply its defect. Under section 29 of the Indian Contract Act, agreements the meaning of which is not certain are void.

In the Indian Stamp Act (II of 1899) the following proviso has been inserted in Art. I, Schedule I:—'Provided that such acknowledgment does not contain any promise to pay the debt or any stipulation to pay interest or to deliver any goods or other property.' The Legislature has not said within the category of what documents an acknowledgment containing a stipulation to pay interest should be placed and has not also specified the amount of stamp duty leviable on it. It seems to me that this proviso about interest is not controlled by section 23 of the Stamp Act, for otherwise the proviso would be quite useless and inoperative.

Now, the acknowledgment sued on cannot be held to be a bond, for besides being unattested it contains no express promise to pay interest. It cannot be treated as a promissory note, for there is no promise to pay on demand. I do not know whether it can be treated as an agreement.

For the above reasons I refer the following questions for the opinion of the Hon'ble High Court:—

Whether the document sued on is sufficiently stamped with a stamp of one anna, or whether it is insufficiently stamped; if insufficiently stamped, what is the amount of stamp duty leviable on it?

My opinion on the above question is that the document is an acknowledgment of debt and sufficiently stamped since the absence of the word 'पूरा,' or I will pay, shows that there is no stipulation to pay interest in a strict sense of the word. Interest therefore cannot be allowed to plaintiff.

The interest clause is vague and unmeaning and cannot be enforced.

I am not sure of the correctness of my opinion and hence I feel the necessity for making this reference."

The Junior Government Pleader (Babu Sirish Chandra Chowdhury), for the Crown.

The judgment of the Court (RAMPINI, A.C.J., CASPERSZ AND SHARFUDDIN JJ.) was as follows:—

This is a reference made by the Munsif of Jangipur, second Court, through the District Judge of Murshidabad, on a question of stamp law.

The question referred to us is, whether the document sued upon in this case is sufficiently stamped with a stamp of one anna, or whether it is insufficiently stamped, and, if insufficiently stamped, what is the amount of stamp-duty leviable upon it?

The document in question is an account, written on a sheet of paper. It contains, first, an entry of a sum of Rs. 346-5 pie as being due to the plaintiff. This was signed on the 30th Jaisto 1310 B.S., and the account is addressed to Srijut Babu Mulchand Lala, that is, the plaintiff. Then it goes on to say—"This amount will bear interest at the rate of Re. 1-8 annas per cent. per mensem." This entry of Rs. 346-5 pie and the entry on the top of the account are said to have been written by the debtor, Kashibullav Biswas, on the 30th Jaisto 1310. Now, that is not the debt for which the plaintiff at present sues. He alleges that the Rs. 346-5 pie have been paid up; but he sues for another debt of Rs. 302-3 annas of which there is an entry made by the debtor in the same account on the 13th Aswin 1310. This entry is made on the same sheet as the former entry of Rs. 346-5 pie and under the same heading in which there is a stipulation that the amount will bear interest at Re. 1-8 annas per cent. per mensem. Now, it is the plaintiff's case that the entry of Rs. 302-3 annas dated the 13th Aswin 1310, was made subject to the condition stated in the heading of the account, namely, that this amount should bear interest at the rate of Re. 1-8 annas per cent. per mensem. It therefore seems to us that it is not a mere acknowledgment of a debt, on which a stamp duty of one anna is leviable, under Art. i, Sch. I of the Indian Stamp Act, but an agreement or memorandum of an agreement, which requires a stamp of 8 annas under cl. (b) of Art. 5 of Schedule I of the Indian Stamp Act. This is certainly so on the plaintiff's own showing. In support of our decision we may refer to the case of *Laxumi Bai v. Ganesh Raghunath*(1), in which a similar document was in dispute, and in which it was held that a stamp-duty of 8 annas was leviable.

With these observations we return the reference to the District Judge of Murshidabad for his information and that of the Munsif, second Court, Jangipur.

A copy of this decision should also be forwarded to the Secretary to the Board of Revenue, under section 60 of Act II of 1899, for his information.

(1) (1900) I. L. R. 25 Bom. 373.