



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH
DATED THIS THE 18TH DAY OF MARCH, 2024
BEFORE
THE HON'BLE MR JUSTICE RAVI V.HOSMANI
WRIT PETITION NO. 101064 OF 2024 (GM-CPC)

BETWEEN:

SHRI VEERANNA S/O. GANGAPPA SAMBARGI,
AGE: 66 YEARS, OCC: ADVOCATE CLERK,
R/O. H.NO.4656/B, BHADKAL GALLI,
TQ: & DIST: BELAGAVI – 590001.

...PETITIONER

(BY SRI SANTOSH B. RAWOOT, ADVOCATE)

AND:

1. SHRI NANDKUMAR S/O. ISHWAR SANKESHWAR,
AGE: 63 YEARS, OCC: RETIRED,
R/O. H.NO.31, MAHATMA GALLI,
KANABARGI VILLAGE,
TQ: & DIST: BELAGAVI – 590001.
2. SHRI MOHAN S/O. ISHWAR SANKESHWAR,
AGE: 59 YEARS, OCC: POST MASTER,
R/O. H.NO.31, MAHATMA GALLI,
KANABARGI VILLAGE,
TQ: & DIST: BELAGAVI – 590001.

...RESPONDENTS

(BY SRI SHRIKANT T.PATIL, AND
SRI ROHIT S. PATIL, ADVOCATES)



THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI OR ANY OTHER WRIT OR DIRECTION, ORDER PASSED BY THE PRINCIPAL SENIOR CIVIL JUDGE AND CJM BELAGAVI IN O.S.NO.408/2021 DATED: 08/11/2023 VIDE ANNEXURE-J, INTEREST OF JUSTICE AND EQUITY; THE TRIAL COURT MAY KINDLY BE DIRECTED TO SEND THE DISPUTED DOCUMENT TO DISTRICT REGISTER BELAGAVI FOR PROPER CALCULATION OF STAMP DUTY.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:



ORDER

This writ petition is filed seeking for following reliefs:

- a. Issue a writ in the nature of certiorari or any other writ or direction, order passed by the Principal Senior Civil Judge and CJM, Belagavi in O.S.no.408/2021 dated: 08/11/2023 vide Annexure-J, interest of justice and equity;
- b. The trial Court may kindly be directed to send the disputed document to District Register Belagavi for proper calculation of stamp duty.

2. Sri Santosh B.Rawoot, learned counsel for petitioner submitted that petitioner was plaintiff in O.S.no.407/2021 on file of Principal Senior Civil Judge, Belagavi filed for recovery of amount of Rs.27,24,942/-. It was submitted that claim was on basis of agreement dated 20.11.2016 whereunder respondent had agreed to pay 40% of enhancement of compensation, refund of TDS amount and 40% of value of allotment of sites. It was submitted property of respondent was acquired by Belgaum Urban Development Authority. In reference petition, respondent had secured enhancement of compensation. Enhanced compensation was



paid to respondent and certain amount of TDS was deducted on it.

3. It was submitted that plaintiff and defendant had entered into an agreement whereunder plaintiff had offered to file appeal bear expenses of filing appeal and writ petition before this Court for securing refund of TDS amount for getting enhancement of compensation and securing directions for allotment of incentive sites. And if plaintiff succeeded in getting reliefs, defendant had agreed to pay 40% of same to plaintiff. It was submitted, thereafter though there was enhancement defendant refused to pay agreed share, plaintiff had filed suit. In suit, plaintiff had produced agreement dated 20.11.2016. An objection was raised by defendant about instrument being improperly stamped and trial Court had passed impugned order treating it as a bond and assessing stamp duty and penalty at Rs.1,49,325/-. Aggrieved thereby petitioner has preferred this writ petition.

4. It was submitted that agreement could not be treated as a bond as there was no stipulation of total benefits receivable, except for stipulation of percentage of



benefits since benefits were contingent 40% payable to plaintiff was also contingent. While passing impugned order, trial Court had referred to Article 5(j) of Karnataka Stamp Act and definition of bond in Section 2(ab). It was submitted that by confusing Court fee payable on suit reliefs with conditions in agreement, trial Court mislead itself into holding same as a 'bond'.

5. On other hand, Sri Rohit S.Patil, Advocate appearing for Sri Shrikant T.Patil, learned counsel for respondents sought to oppose writ petition. It was submitted there was a definite condition in agreement to pay 40% of amount therefore, assessment by trial Court was justified. In support of his submission, he sought to rely upon full bench decision of High Court of Delhi in matter of ***Hamdard Dawakhana (Wakf) Delhi*** reported in ***AIR 1968 Del 1***, wherein in para no.26 and 27, it is held as follows:

26. *The distinction between an "agreement" and a "bond" is well brought out by the decision of the Calcutta High Court in Gishorne & Co. v. Subal Bowri [I.L.R. 8 Cal 284.] . Therein Garth, C.J. observed:—*



"I am of opinion that the instrument in question is not a bond within the meaning of the Stamp Act of 1869; and that it requires (so far as I can see) an eight-anna stamp only.

The definition of a bond in s. 5 of the Act is precisely what we understand by a bond in England, and it is an obligation of a different character from a covenant to do a particular act, the breach of which must be compensated in damages.

Whether a penal clause is attached to such a covenant or not, the remedy for the breach of it is in form and substance a suit for damages; and by s. 74 of the Indian Contract Act, the English rule with regard to liquidated damages is abolished, and the plaintiff in such a suit has no right under any circumstances to claim the penalty itself as such. He can only recover such compensation, not exceeding the amount of the penalty as the Judge at the trial considers reasonable; but he is entitled to that compensation whether he proves any actual damages or not.

"The remedy upon a bond is very different. The plaintiff in the the case of a simple money-bond recovers the sum named in the bond, or in the case of a bond conditioned for the performance of covenants he recovers the actual damage which he can prove that he has sustained. In either case not only is the bond a contract of a different form and nature from a covenant with a penal clause, but the remedy upon it,



and the amount recoverable for the breach of it, is also different.”

27. *The test laid down by the learned Chief Justice, for distinguishing a “bond” from an “agreement”, is: In the former case in the event of breach, the party to the instrument, who had obliged to pay money to the other, is liable to pay the sum stipulated, in the instrument. In the latter case, the quantum of damages has to be fixed by the Court. If we apply that test to the facts of the present case, it is clear that the liability of Hamdard Dawakhana is fixed. Its liability is to pay the same stipulated. There is no question of damages in this case.*

6. Said submission was followed by reliance upon decision of High Court of Kerala in ***Safir V/s Sajid in OP (C) NO.2748 OF 2019*** disposed of on 13.10.2021, wherein in para no.9, it is held as follows:

“9. In Mathai Mathew’s case (supra) this Court held that the distinguishing feature of a bond is that the obligation must have been created in the instrument itself and that if the obligation was a pre-existing one, it does not partake the character of a bond. This Court further held that one of the principles to be followed in interpreting a taxing statute is that if two interpretations are possible effect should be given to that which favours the



citizen and not that which imposed a greater burden on them and that the said principle can be followed I construing the provisions of the Act where a citizen has to pay stamp duty on the instruments defined therein. In Krishnan Kutty's case (supra) this Court held that where an obligation is a pre-existing one, the subsequent document giving the nature of the obligation or the terms and conditions of the contract shall be a mere agreement. In Radha's case (supra) it is held that the distinguishing feature of a bond is that the obligation must have been created in the instrument itself and if the obligation was a pre-existing one, it does not partake the character of a bond."

7. It was submitted trial Court had rightly applied law and held instrument as a bond and assessment was justified.

8. Heard learned counsel and perused writ petition records.

9. From above, it is not in dispute that petitioner is plaintiff in suit filed for recovery of amount. Said suit claim is based on instrument between parties dated 20.11.2016. As per instrument, defendant had agreed to pay 40% of



enhanced amount, refund of TDS and site value in case plaintiff secured same to defendant. Admittedly in case, there was no enhancement, then defendant would not be liable to pay anything. Therefore, though a certain percentage of enhancement or value of relief was agreed to be paid, payment was contingent and not fixed in instrument.

10. Perusal of full bench decision of High Court of Delhi would clarify position that in case liability to pay certain amount was fixed under instrument, it may be read as a bond. If same was required to be determined by Court, then it would have to be considered as an agreement. Observations of High Court of Kerala in decision referred to are also to same effect. While passing impugned order trial Court appears to have misconstrued Court fee payable on suit as stamp duty payable on instrument. As there was no fixed amount mentioned in instrument, it cannot be read as a bond, but only as an 'agreement'. Therefore, valuation would have to be as per residuary provision of Article 5 namely 5(j) of Karnataka Stamp Act.



11. In view of above, following:

ORDER

- i. Writ petition is allowed.
- ii. Since instrument at Annexure-A bears stamp duty payable of Rs.50/-, balance would be Rs.150/-. Therefore, stamp duty payable would be as per memo of calculation filed by plaintiff at Annexure-G i.e. at Rs.1,950/-. Plaintiff is directed to same pay within a period of one week from today or next date of hearing of suit, whichever is later.
- iii. In view of disposal of writ petition, pending application would be unnecessary.

Sd/-
JUDGE

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List No.: 1 Sl No.: 21