
**SEYLAN MERCHANT BANK LTD.,
VS.
SAVOY DEVELOPERS (PVT.) LTD., AND OTHERS**

COURT OF APPEAL.

IMAM, J.,
SRISKANDARAJA, J.
CA 119/2003.
DC COLOMBO 20336/MR.
AUGUST 2, 8, 2005.

Stamp Duty Act, No. 43 of 1982, sections 5(5) and 33(1) – Stamping of documents – Lease agreement stamped – Should the Guarantee Bond be stamped ?

The plaintiff petitioner entered into a lease agreement with the 1st defendant respondent with regard to certain vehicles and the 2nd and 3rd defendants guaranteed the lease agreement by a guarantee bond. Action was instituted by the plaintiff petitioner to recover the amount due. When the case was taken up for trial the petitioner marked the lease agreement and attempted to mark the guarantee bond. Objection was taken that, the guarantee bond was not duly stamped to the same value as the lease agreement. This objection was upheld.

On leave being sought,

HELD:

- (1) Section 5 provides that if a bond or mortgage has been made in pursuance of another agreement or instrument and if such instrument has been stamped with *ad valorem* stamp duty the bond or mortgage is exempt from stamp duty.
- (2) The guarantee has been clearly made pursuant to the lease bond, and is directly connected with the lease Bond and was executed during the course of the same transection. In the circumstances, the guarantee is exempt from stamp duty.

Per. Imam, J.

“When a party moves to mark a document in evidence which has not been properly marked, the Court could make an order that the document could be admitted in evidence on the payment of a penalty in order to protect revenue. Nowhere does the proviso say that at the time a party seeks to mark a document

it shall be properly stamped, however when the document is admitted in evidence, the document must bear the stamps to the proper value together with a penalty if necessary; however in this case the lease agreement was properly stamped."

APPLICATION for leave to appeal from the order of the District Court of Colombo.

Cases referred to :

1. *Rupawardane Somapala Wickremasinghe vs. Goodwill Marine Academy (Pvt.) Ltd. and two Others* – 2001 2Sri LR - 284 (distinguished).
2. *Kistnappa vs. Ratnam* – District Court of Colombo 37084 Reports of Ceylon Tax Cases Vol. II – pages 37.

I. S. de Silva with Ms. Iresha Fernando for plaintiff petitioner
Hussain Ahamed with Ms. T. K. Jaleel for defendant respondent.

Cur.adv. vult.

February 09, 2006.

IMAM, J.

This is an application by the Plaintiff-Petitioner (hereinafter referred to as the 'Petitioner') to set aside the order of the learned Additional District Judge of Colombo dated 24.03.2003, to permit that the Guarantee Bond sought to be marked as P2 in the District Court be received in evidence, for costs and *inter-alia* for other reliefs as prayed for in the Petition. Leave to Appeal was granted on 25.06.2004 with regard to the District Judge's order refusing to admit the Guarantee Bond in evidence on the basis that it has been insufficiently stamped.

The facts of the case are briefly as follows : The Plaintiff-Petitioner entered into a Lease Agreement (X1) on 06.07.1995 with the 1st Defendant Respondent (hereinafter referred to as the 1st Respondent) with regard to the vehicles morefully described in the schedule to the aforesaid Agreement (X1). The 2nd and 3rd Defendants-Respondents (hereinafter referred to as the '2nd and 3rd Respondents' respectively) guaranteed the aforesaid Lease Agreement (X1) by Guarantee dated 06.07.1995 (X2) to the extent of Rs. 10,485,000 and the interest thereon. The Respondents having failed

to pay the money due to the Petitioner in accordance with the Lease Agreement (X1) and the Guarante Bond (X2) respectively, the petitioner instituted action (20336/MR) against the 1st Respondent on X1 and the 2nd and 3rd Respondents on X2 respectively for the recovery of the money as set out in the schedule to the plaint, but nevertheless restricted the claim to a sum of Rs. 8,872,643.54 (X3). The Respondents filed Answer (X4) denying the sum claimed, moved for a dismissal of the action and also sought Rs. 10,000,000 as a Claim in Reconvention. When the case was taken up for trial, counsel for the Petitioner marked the Lease Agreement (X1) as P1 and attempted to mark the Guarantee Bond (X2) and P2 when Counsel for the Respondents objected to the aforesaid Bond (X2) being marked on the basis that it was not duly stamped to the same value as the Lease Agreement (X1). Subsequently both parties tendered their written submissions (X6 and X7 respectively), consequent to which the learned Additional District Judge of Colombo made order dated 24.03.2003 (X8) in which he upheld the Objection of the Respondents and held that the Guarantee Bond (X2) was not duly stamped and should have had stamps affixed to the value of the main lease Agreement (X1).

The contention of the Petitioner was that the learned Trial Judge erred in law, since the Lease Agreement (X1) was duly stamped and that there is no provision in law that a Guarantee Bond should have affixed on it the same value of stamps as the main Agreement. The Petitioner submitted that although the learned trial Judge relied on the decision in **Rupawardene Somapala Wickramasinghe Vs. The Good Will Marine Academy (Pvt.) Ltd. and two others**⁽¹⁾ the aforesaid decision has no application to the facts of this case, since in the aforementioned case neither the Agreement nor the Surety Bond was duly stamped. The petitioner contended that the facts in this case are completely different as in this case the Lease Agreement (X1) was duly stamped and hence there is no legal requirement that the Guarantee Bond (X2) should bear stamps to the same value as X1. It was further averred by the Petitioner that section 5(5) of the Stamp Duty Act, No. 43 of 1982 refers to documents which are exempt from Stamp Duty and that in accordance with this section the Guarantee (X2) being pursuant to the Lease Bond (X1) is directly connected with the Lease Agreement and that the Lease is with the 1st Respondent in this case. It is submitted by the Petitioner that the Guarantee (X2) reads as follows : "For the purpose of this guarantee it is hereby agreed that the term 'Debtor' shall mean Savoy Developers Private Limited of No. 12,

Galle Road, Colombo 06". At page 3 of (X2) the Guarantors referred to therein have guaranteed upto a sum of Rs. 10,485,000 of the moneys payable to the Bank and hence as the Guarantee (X2) was given pursuant to the Lease Agreement (X1), is thus exempt from Stamp Duty.

The Respondents in their written submissions referred to section 33(1) of the Stamp Duty Act, No. 43 of 1982, which reads as follows :

"No instrument chargeable with stamp duty shall be received or admitted in evidence by any person having by law or consent of parties authority to receive evidence or registered or authenticated or acted upon by any person or by any officer in a Public Office or Corporation or bank or approved credit agency unless such instrument is duly stamped." provided that any such instrument may-

- (a) be admitted in evidence by any person having by law or consent of parties authority to receive evidence ; or
- (b) if the stamp duty chargeable on such instrument is one thousand five hundred rupees or less, be acted upon by the Registrar-General, upon payment of proper duty with which it is chargeable or the amount required to make up the same and a penalty not exceeding 3 times the proper duty.

It is contended by the Respondents that the Guarantee was signed on 06.07.1995 and that the relevant Gazette notification is by Gazette Extra Ordinary No. 224/3 of 20.12.1982 with regard to the said transaction which reads as follows :

Item No. 7. (b) "Bond or Mortgage whereby any sum of money is hypothecated as security for the due performance of any act or acts or for fulfilling any obligation under any contract or otherwise or indemnifying any person in respect of any damage, loss or expenses for every Rs. 1,000 or part thereof."

The Respondents contend that in view of the fact that the Guarantee bond has been valued at Rs. 10,485,000 the stamp duty payable on the said bond in terms of the said gazette Notification is Rs. 10 for every Rs. 1,000 which amounts to Rs. 104,850 and as the Guarantee Bond has

been stamped for only Rs. 10 it is not admissible in law in terms of section 33(1) of the Stamp Duty Act and for that reason cannot be led in evidence.

I have examined the submissions and documents tendered by both sides.

Section 5 of the Stamp Duty Act, No. 43 of 1982 states as follows :
"The following instruments and documents shall be exempt from the payment of Stamp Duty." Sub-section (5) states that 'Bond or Mortgage made in pursuance of covenant or other Agreements in that behalf contained in some other instrument and without additional money consideration, if such other instrument had been stamped with an '*ad valorem*' stamp duty on the amount of the consideration for such Bond or Mortgage". Hence this sub-section 5 provides that if a Bond or Mortgage has been made in pursuance of another Agreement or Instrument and if such other Instrument has been stamped with an '*ad valorem*' stamp duty the Bond or Mortgage is exempt from Stamp Duty. The Guarantee (X2) has been clearly made pursuant to the lease Bond (1), is directly connected with the Lease Agreement (X1) and is during the course of the same transaction both having been signed on 06.07.1995. Furthermore the Guarantee X2 refers to the 1st Respondent as "Debtor". The 2nd and 3rd Respondents have guaranteed upto a sum of Rs. 10,485,000 of the moneys payable by the 'debtor' to the bank. Thus as the guarantee X2 was given pursuant to the Lease Agreement (X1), in accordance with section 5(5), the Guarantee (X2) is exempt from Stamp Duty.

The general practice is for the principal Borrower and the Guarantors to sign one Agreement and the stamps are affixed only to the value of the said Agreement. However in this case there are two separate Agreements, namely the Lease Agreement (X1) with regard to the 1st Respondent the Lessee and a Guarantee Bond (X2) for the Guarantors. Thus it is my view that the result is the same whether the parties have signed one document or two separate documents. Once the main document is duly stamped there is no requirement that the Guarantee Bond should also be stamped to the value of the main Agreement.

However the proviso to section 33 of the Stamp Duty Act, No. 43 of 1982 says that "Any such instrument may be admitted in evidence upon payment of proper duty which is chargeable for the amount required

to make up the same and the penalty not exceeding three times the proper duty.”

In *Rupawardena Somapala Wickremasinghe Vs. Goodwill Marine Academy (Pvt.) Ltd.* and two others⁽¹⁾ the main agreement itself was not properly stamped with an *ad valorem* duty but a Rs. 10 stamp and thus the surety Bond could not be led in evidence as it did not carry with it the appropriate stamp duty. In that case Edussuriya, J held that at the time the surety Bond was sought to be marked in evidence it should be duly stamped and if not must be rejected. Furthermore, Edussuriya, J in his judgment held as follows :

“Under the proviso to section 33(1) such an under stamped Bond may be admitted in evidence upon payment of the proper duty or the amount required to make up the same and a penalty not exceeding three times the proper duty ; this had not been done at the time the document was sought to be marked in evidence when the objection was taken. Hence the objection must be upheld.”

The purpose of revenue is to contribute to the revenue of the State. In *Kistnappa Vs. Rutnam*⁽²⁾ - at 37, De Sampayo, J stated that the matter of stamp concerns the revenue principally and if the interests of revenue are conserved by an order of the Court to which a document is first tendered, there is no object in allowing the parties to continue the contentions over the matter of stamp.

Thus where a document is not properly stamped at the time of tendering the penalty must be paid, if the said document is to be relied on and admitted as evidence. Thus when a party moves to mark a document in evidence which has not been properly stamped, the Court could make an order that the document could be admitted in evidence on the payment of a penalty in order to protect revenue. Nowhere does the proviso say that at the time a party seeks to mark a document it should be properly stamped. However when the document is admitted in evidence, the document must bear the stamps to the proper value together with a penalty if necessary. The facts of this case are different to *Wickremasinghe Vs. The Good will Marine Academy*(supra) where the Lease Agreement itself was not properly stamped. However in this case the Lease Agreement (X1) was duly stamped. Hence the decision in *Wickremasinghe* case(supra) will not be applicable

to this case. The purpose of section 33 of the Stamp Duty Act, No. 43 of 1982 is to ensure that revenue is properly protected. Hence I hold that in terms of section 5(5) of the Stamp Duty Act, No. 43 of 1982 the Guarantee (X2) need not be duly stamped as the Lease Agreement (X1) which forms part of the same transaction has been duly stamped. For the aforesaid reasons, I permit the appeal of the petitioner and set aside the order of the learned Additional District Judge of Colombo dated 24.03.2003 (X8). I make no order with regard to costs.

SRISKANDARAJAH, J. – *I agree.*

Appeal allowed.
