

VOLANKA LIMITED
v.
ATTORNEY-GENERAL

COURT OF APPEAL.

H. A. G. DE SILVA, J., AND T. D. G. DE ALWIS, J.

C.A APPLICATION No. 78/84 -D.C. COLOMBO NO. 87092.

FEBRUARY 9, 1984.

Stamp Duty Act No. 43 of 1982, sections 2 (a), (b), 5, 72 (2) - Stamps Ordinance (Cap. 247), Schedule A, Part 11 - Are the judgment and decree entered in a case liable to stamp duty ?

Where the question was whether the judgment and decree entered in a case were liable to stamp duty.

Held-

The documents that attract stamp duty are those that are filed and presented in a civil proceeding by the parties in support of their cause and not those which the Court is enjoined to make in the performance of its functions.

The judgment and decree in a particular civil proceeding pronounced, delivered or drawn up by the Court in such a proceeding do not attract stamp duty.

APPLICATION for revision of an order of the Additional District Judge of Colombo.

H. W. Jayewardene, Q.C., with Lakshman Perera for the petitioner.

Sarath Silva, D.S.G. for Attorney-General.

Cur. adv. vult.

February 22, 1984.

H. A. G. DE SILVA, J.

This is an application to have set aside the Order of the learned Additional District Judge, dated 5th January, 1984, in which he held that stamps to the value of the appropriate class should be tendered in respect of judgments and decrees made by a Court.

On 31st August, 1982, the plaintiff instituted action D.C Colombo 87092/M praying for judgment against the defendant in a sum of Rs. 20,100. On the summons returnable date 31st January, 1983, the defendant not being present, the case was fixed for ex parte trial on 4th April, 1983. On 4th April, 1983; the ex parte trial was held and judgment was entered for the plaintiff in a sum of Rs. 12,200 with legal interest. Order was also made to enter decree in terms of the judgment.

On 18th June, 1983, the Attorneys-at-Law for the plaintiff tendered in prescribed form the decree for the signature of the learned Judge but the Court, on this application made Order that stamps should be tendered by the plaintiff in respect of the judgment and decree.

On 9th November, 1983, the Attorneys-at-Law for the plaintiff filed a motion seeking to have the Order of 18th June, 1983, vacated for the reasons stated therein and on 6th December, 1983, oral submissions were made in support of the motion and on 5th January, 1984, the learned District Judge made the Order sought to be set aside.

A perusal of the Order of the learned Judge shows that the reasons for his Order are as follows :-

- (1) Section 2 of Act No. 43 of 1982 refers to documents where stamps should be fixed and these are said to be " every instrument executed, drawn or presented in Sri Lanka " ; stamps should be affixed to those documents that are not exempted from stamp duty under section 5 of the Act. Further section 2 (b) of the Act refers inter alia to documents presented or filed in the District Court.
- (2) The Documents and Instruments referred to in section 2 are interpreted in section 71 (2) of the Act. The documents referred to in the said section include judgments and decrees among other documents and also orders and awards etc. Therefore judgments are subject to stamp duty.
- (3) The interpretation given to the word " instrument " in the same Act is that it includes inter alia " every document by which any right or liability is or purports to be created, transferred, limited, extended, extinguished or recorded. "

Therefore it is necessary to fix stamps upon documents recording any right or liability. In the circumstances, a document in the nature of a judgment or decree requires the affixing of stamps.

- (4) Reference should be made to the Stamps Ordinance (Cap :247) Schedule A Part II. The Table contains the duties on law proceedings in the Supreme Court. Item 9 of this Table refers to stamp duties required in respect of judgment, decree, or order of any description. It is therefore seen by this, that stamps are required in respect of a judgment and decree of Court prior to this. These stamps should be supplied not by the Court or the Judge but by the party praying for the execution of such judgment or decree.
- (5) Further page 751 of the said Legislative Enactments, Vol : VIII, refers to the value of stamps necessary for documents in the District Court. Item 8 of that table refers to copies of decree nisi, order nisi or interlocutory orders. Therefore it is very clear that stamps had to be provided in terms of the Stamp Ordinance to the District Court, on documents like the judgment or decree, but that requirement has been deleted in the present Act though it has stated that stamps should be fixed to the judgment and decree.

Section 2 of the Stamp Duty Act, No. 43 of 1982, enacts inter alia that—

“There shall be charged on—

- (a) every instrument which is executed, drawn or presented in Sri Lanka ;
- (b) every document *presented* or *filed* in civil proceedings instituted in the Supreme Court or the Court of Appeal or a District Court or in Admiralty proceedings instituted in the High Court ;
- (c)
- (d)

a stamp duty at the prescribed rate. Different rates may be prescribed in respect of different classes or categories of instruments”.

Section 71 defines a "document" in relation to legal proceedings in any Court to include inter alia, judgment, decree or order of any description.

Mr. Jayewardene contends that when section 2(b) is read with section 71, the judgment or decree that has to be stamped is the judgment or decree presented or filed in civil proceedings instituted in the District Court. He further adverts to section 11 of the Act which refers to "every document filed in any legal proceedings and chargeable with stamp duty shall be treated as duly stamped if the proper duty payable on every such document is affixed to the list of such documents and cancelled in the manner provided for in this Act". This too, he submits, indicates that the judgments and decrees which attract stamp duty are those that are filed in Court, i.e., by the parties, e.g., like a judgment that is relied on by a party in a plea of res judicata and which would be included in the list of documents filed.

Section 184 of the Civil Procedure Code (Cap. : 101) in chapter XX makes it the duty of the Court to pronounce judgment and similarly section 188 thereof, requires that "as soon as may be after the judgment is pronounced, a formal decree. . . . shall be drawn up by the Court in the Form No. 41 in the First Schedule or to the like effect." It also says that the decree shall be signed by the Judge. In section 5 of the Civil Procedure Code "judgment" is defined to mean the statement given by the Judge of the grounds of a decree or order.

Mr. Jayewardene submits that from all these statutory provisions it is abundantly clear that the documents that attract stamp duty are those that are filed or presented in a civil proceeding by the parties in support of their cause and not those which the Court is enjoined to make in the performance of its functions.

The learned Deputy Solicitor-General who appeared for the Attorney-General is in complete agreement with the submissions of Mr. Jayewardene and is of the view that the order of the learned Additional District Judge is in error. He submitted that where the learned Judge had erred was in relying on section 2 (a) of the Act and not on section 2 (b) which would be applicable in regard to proceedings in Court. He submits that "judgment" referred to in section 2 (b) does not fall within the categories of documents referred in section 2 (a).

Section 14 (1) of the Act gives the method of determining the value of a proceeding in Court for the purposes of determining the stamp duty payable on documents presented or filed in, inter alia, a District Court while sub-section (2) thereof states that " the total stamp duty chargeable in respect of the documents filed in any proceedings in any Court shall not exceed the aggregate of the stamp duty chargeable on the first ten documents by each party to the proceedings "

It will be seen therefore that section 2 (b), and section 14 of the Stamp Duty Act speak of documents filed or presented in or to Court as attracting stamp duty and not documents which are made by the Court itself in performance of its functions and duties in a particular civil proceeding. Reference has been made by the learned District Judge to the Schedule to the Stamps Ordinance (Cap :247) but this Ordinance does not apply to instruments executed on or after the appointed date. The Regulation made by the Minister of Finance and Planning under section 69 of the Stamp Duty Act and published in Government Gazette Extraordinary No. 224/3 of 20th December, 1982, in Part II of the Schedule to that Regulation gives the rate of stamp duty chargeable for documents filed in Civil proceedings instituted in the Supreme Court, in the Court of Appeal, in the High Court when exercising Admiralty jurisdiction and in the District Court.

I am of the view that the submissions of both counsel are entitled to succeed and that the judgment and decree in a particular civil proceeding which is pronounced, delivered or drawn up by that Court in those proceedings do not attract stamp duty. I accordingly set aside the order of the learned Additional District Judge dated 5th January, 1984.

T. D. G. DE ALWIS, J. – I agree.

Application allowed.

Order set aside.