PETITIONER:
HINDUSTAN STEEL LTD.

Vs.

RESPONDENT:
M/S. DALIP CONSTRUCTION COMPANY

DATE OF JUDGMENT:
18/02/1969

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
RAMASWAMI, V.
GROVER, A.N.
RAMASWAMI, V.
GROVER, A.N.

CITATION:
1969 AIR 1241 1969 SCR (3) 796
1969 SCC (1) 616

ACT:
Indian Stamp Act, ss. 35, 36 and 42-Unstamped document filed in Court-Impounded-Whether can be acted upon after payment of duty and penalty.

HEADNOTE:
The dispute between the appellant and the respondents in relation to a contract were referred in accordance with their contract to arbitration. The award was filed in the District Court and notice of filing was given to the parties. The appellant applied to the Court under ss. 30 and 33 of the Indian Arbitration Act, 1940 to have the award set aside on the ground inter alia that it was unstamped. The District Judge ordered the document to be impounded and directed that an authenticated copy of the instrument be sent to the Collector together with a certificate in writing stating the receipt of the amount of duty and penalty. Against that order the appellant moved the High Court of Madhya Pradesh in exercise of its revisional jurisdiction. The High Court rejected the petition. By special leave appeal was filed in this Court. Relying on the difference in the phraseology between ss. 35 and 36 it was urged that an instrument which is not duly stamped may be admitted in evidence on payment of duty and penalty, but it cannot be acted upon because s. 35 operates as a bar to the admission in evidence of an instrument not duly stamped as well as to its being acted upon, and the Legislature has by s. 36 in the conditions set out therein removed the bar only against admission in evidence of the instrument.
HELD : The appellant's argument ignored the true import of s. 36. By that section an instrument once admitted in evidence shall not be called in question at any stage of the same suit or proceedings on the ground that it has not been duly stamped. Section 36 does not, prohibit a challenge against an instrument that it shall not be acted upon because it is not duly stamped, but on that account there is no bar against an instrument not duly 'stamped being acted upon after payment of the stamp duty and penalty according

to the procedure prescribed by the Act. The doubt if any is resolved by the terms of s. 42(2) which enact in terms unmistakable, that every instrument endorsed by the Collector under s. 42(1) shall be admissible in evidence and may be acted upon as if it had been duly stamped. [740 C-E]
The Stamp Act is a fiscal measure enacted to secure revenue for the State on certain classes of instruments : it is not enacted to arm a litigant with a weapon of technicality to meet the case of his opponents The stringent provisions of the Act are conceived in the interest of the revenue. Once that object is secured according to law, the party staking his claim on the instrument will not be defeated on the ground of the initial defect in the instrument. Viewed in that light the scheme is clear. Section 35 of the Stamp Act operates as a bar to an unstamped instrument being admitted in evidence or being acted upon, s. 40 provides the procedure for the instrument being impounded, sub-s. (1) of s. 42 provides for certifying that an instrument is duly stamped, and sub-s. (2) of s. 42 enacts the consequences resulting from such certification. [740 F--G]

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Observations of Desai, J. in Mst. Bittan Bibi and Anr. v. Kantu Lal and Anr., I.L.R. [1952] 2 All, 984, disapproved.

JUDGMENT:
CIVIL APPELLATE JURISDICTION : Civil Appeal, 'No, 2425 of 1968.
Appeal by special leave from the judgment and order dated August 30, 1968 of the Madhya Pradesh High Court in Civil Revision No. 764 of 1967.
C. K. Daphtary, and I. N. Shroff for the appellant.
Rameshwar Nath and Mahinder Narain for the respondents
The Judgment of the Court was delivered by
Shah, J. The respondents entered into a contract with Hindustan Steel Ltd. for 'raising, stacking, carting and loading into wagons limestone at Nandini Mines". Dispute which arose between the parties was referred to arbitration, pursuant to cl. 61 of the agreement. The arbitrators differed, and the dispute was referred to an umpire who made and published his award on April 19, 1967. The umpire filed the award in the Court of the District Judge, Rajnandgaon in the State of Madhya Pradesh and gave notice of the filing of the award to the parties to the dispute. On July 14, 1967 the appellant filed an application for setting aside the ward under ss. 30 and 33 of the Indian Arbitration Act, 1940. One of the contentions raised by the appellants was that the award was unstamped and on that account "invalid and illegal and liable to be set aside". The respondents then applied to the District Court that the award be impounded and validated by levy of stamp duty and penalty. By order dated September 29, 1967, the District Judge directed that the award be impounded. He then called upon the respondents to pay the appropriate stamp duty on the award and penalty and directed that an authenticated copy of the instrument be sent to the Collector, Durg, together with a certificate in writing stating the receipt of the amount of duty and penalty., Against that order the appellant moved the High Court of Madhya Pradesh in exercise of its revisional jurisdiction. The High Court rejected the petition and the appellant appeals to this Court with special leave.
It is urged by Counsel for the appellant that an instrument which is not stamped as. required by the Indian Stamp Act,

may, on payment of stampduty and penalty, be admitted in evidence, but cannot be acted upon, for, "the instrument has no existence in the eye of law". Therefore, counsel urged, in proceeding to entertain the application for filing the award, the District Judge, Rajnandgaon, acted without jurisdiction.

The relevant provisions of the Stamp Act may be summarised. Section 3 of the Act provides

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"Subject to the provisions of this Act the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefore, respectively, that is to say--

(a) every instrument mentioned in that Schedule which, not having been previously executed by any person, is executed in India on or after the first day of July, 1899;

"Instrument" is defined in s. 2(14) as including: "every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded". An instrument is said to be "duly stamped" within the meaning of the Stamp Act when the instrument bears an adhesive or impressed stamp of not less than the proper amount and that such stamp has been affixed or used in accordance with the law for the time being in force in India : s. 2 (11). Item 12 of Sch. 2 prescribes the stamp duty payable in respect of an award. Section 33(1) provides, insofar as it is relevant :

"(1) Every person having by law or consent of whom any instrument, chargeable with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same."

Section 35 of the Stamp Act provides, insofar as it is relevant

"No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:

Provided that....."

Section 36 provides :

"Where an instrument has been admitted in evi-dence, such admission shall not, except as provided in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped."

Section 38 deals with the impounding of the instruments: provides :

"(1) When the person impounding an instrument under section 33 has authority to receive evi-dence and admits such instrument in evidence upon payment of a penalty as provided by section 35 or

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.....he shall send to the Collector an authenticated copy of such instrument,

> together with a certificate in writing, stating the amount of duty and penalty levied in respect thereof....."
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> By S. 39 the Collector is authorised to adjudge proper penalty and to refund any portion of the penalty which has been paid in respect of the instrument, sent to him. Section 40 prescribes the procedure to be followed by the Collector in respect of an instrument impounded by him or sent to him under s. 38. If the Collector is of the opinion that the 'instrument is chargeable with duty and is not duly stamped, he shall require the payment of proper duty or the amount required to make up the same together with a penalty of five rupees; or, if he thinks fit, an amount not exceeding ten times the 'amount of the proper duty or of the deficient portion thereof. Section 42 provides :
>
> " (1) When the duty and penalty (if any), leviable in respect of any instrument have been paid under section 35, section 40 or the person admitting such instrument in evidence or the Collector, as the case may be, shall certify by endorsement thereon that the proper duty or, as the case may be, the proper duty and penalty (stating the amount of each) have been levied in respect thereof
>
> (2)Every instrument so endorsed shall thereupon be admissible in evidence, and may be registered and acted upon and authenticated as if it had been duly stamped, and shall be delivered on his application in this behalf to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct:
>
> Provided that--

The award, which is an "instrument" within the meaning of the Stamp Act was required to be stamped. Being unstamped, the award could not be received in evidence by the Court, nor could it be acted upon. But the Court was competent to impound it and to send it to the Collector with a certificate in writing Stating the amount of duty and penalty levied thereon. On the Instrument so received the Collector may adjudge whether it is duly stamped and he may require penalty to be paid thereon, if in his view it has not been duly stamped. If the duty and. penalty are paid, the Collector will certify by endorsement on the instrument that the proper duty and penalty have been paid.

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An instrument which is not duly stamped cannot be received in evidence by any person who has authority to receive evidence, and it cannot be acted upon by that person or by any public officer. Section 35 provides that the admissibility of an instrument once admitted in evidence shall not, except as provided in s. 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped. Relying upon the difference in the phraseology between ss. 35 and 36 it was urged that an instrument which is not duly stamped may be admitted in evidence on payment of duty and penalty, but it cannot be acted upon because s. 35 operates as a bar to the admission in evidence of the instrument not duly stamped as well as to its being acted upon, and the Legislature has by

S. 36 in the conditions set out therein removed the bar only against admission in evidence of the instrument. The argument ignores the true import of S. 36. By that section an instrument once admitted in evidence shall not be called in question at any stage of the same suit or proceeding on the ground that it has not been duly stamped. Section 36 does not prohibit a challenge against an instrument that it shall not be acted upon because it is not duly stamped, but on that account there is no bar against an instrument not duly stamped being acted upon after payment of the stamp duty and penalty according to the procedure prescribed by the Act. The doubt, if any, is removed by the terms of s. 42(2) which enact, in terms unmistakable, that every instrument endorsed by the Collector under S. 42(1) shall be admissible in evidence and may be acted upon as if it had been duly stamped.

The Stamp Act is a fiscal measure enacted to secure revenue for the State on certain classes of instruments : it is not enacted to arm a litigant with a weapon of technicality to meet the case of his opponent. The stringent provisions of the Act are conceived in the interest of the revenue. Once that object is secured according to law, the party staking his claim on the instrument will not be defeated on the ground of the initial defect in the instrument. Viewed in that light the Scheme is clear : s. 35 of the Stamp Act operates as a bar to an unstamped instrument being admitted in evidence or being acted upon section 40 provides the procedure for instruments 'being impounded, sub-s. (1) of S. 42 provides for certifying that an instrument is duly stamped, and sub-s. (2) of s. 42 enacts the consequences resulting from such certification.

Our attention was invited to the statement of law by M.C. Desai J., in Mst. Bittan Bibi and Another v. Kuntu Lal and Another(1) that :

(1) I.L.R.[1952] 2 All. 984.

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> "A court is prohibited from admitting an 'instrument in evidence and a Court and a public officer both are prohibited from acting upon it. Thus a Court is prohibited from both admitting it in evidence and acting upon it. It follows that the acting upon is not included in the admission and that a document can be admitted in evidence but not be acted upon. Of course it cannot be acted upon without its being admitted, but it can be admitted and yet be not acted upon. It every document, upon admission, became automatically liable to be acted upon, the provision in S. 35 that an instrument chargeable with duty but not duly stamped, shall not be acted upon by the Court, would be rendered redundant by the provision that it shall not be admitted in evidence for any purpose. To act upon an instrument is to give effect to it or to enforce it."

In our judgment, the learned Judge attributed to S. 36 a meaning which the Legislature did not intend. Attention of the learned Judge was apparently not invited to S. 42(2) of the Act which expressly renders an instrument, when certified by endorsement that proper duty and penalty have been levied in respect thereof, capable of being acted upon as if it had 'been duly stamped.

The appeal fails and is dismissed with costs.

G.C. Appeal dismissed.

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