

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE VIJU ABRAHAM

WEDNESDAY, THE 13<sup>TH</sup> DAY OF OCTOBER 2021 / 21ST ASWINA, 1943

OP(C) NO. 2748 OF 2019

AGAINST THE ORDER DATED 14.10.2019 IN OS NO.126/2017 OF

I ADDITIONAL SUB COURT, KOZHIKODE

**PETITIONER:**

SAFIR, AGED 38 YEARS, S/O ABDUL KADAR,  
KURUPPARUKANDI HOUSE, EKARoor P.O, UNNIKULAM VILLAGE,  
THAMARASSERY TALUK, KOZHIKODE DISTRICT.

BY ADVS.

N.M.MADHU

C.S.RAJANI

**RESPONDENT:**

SAJID, AGED 43 YEARS, S/O KUTTYHASSAN,  
PUTHANPURAYIL HOUSE, P.O. AVILORA, KIZHAKOTH VILLAGE,  
THAMARASSERY TALUK, KOZHIKODE DISTRICT- 673 572

BY ADVS.

SRI.V.V.SURENDRAN

SRI.P.A.HARISH

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 05.10.2021, THE  
COURT ON 13.10.2021 DELIVERED THE FOLLOWING:

**C.R.**

**VIJU ABRAHAM,J.**

.....  
**O.P.(C) No.2748 of 2019**  
.....

**Dated this the 13<sup>th</sup> day of October, 2021**

**JUDGMENT**

The issue that arises for consideration in this original petition is as to whether Ext.P3 is a bond as defined under Section 2(a) of the Kerala Stamp Act, 1959 (hereinafter referred to as “the Act”) or an agreement.

2. This original petition is filed by the plaintiff in O.S. No.126 of 2017 on the files of the Additional Sub Court-I, Kozhikode and the respondent herein is the defendant. The suit is one for realisation of a sum of Rs.54,15,120/-. It is contended in the said suit that the plaintiff and defendant have long-standing acquaintance and they had done several business transactions in India and abroad including a business in mobile phones and its accessories and that they decided to stop the same and on settlement of accounts, it was found that a sum of Rs.53,57,000/- is payable by the defendant to the plaintiff. Based on that Ext.A1 agreement and Ext.A2 promissory note were executed on 16.01.2017, copies of which

are produced as Exts.P3 and P4.

3. During the course of the trial of the suit, the court below as per Ext.P5 order dated 14.10.2019 impounded Ext.P3 document upon entering a finding that the obligation to pay money is created by Ext. P3 itself and therefore the document has the character of a bond and directed the petitioner to pay stamp duty and penalty. It is challenging Ext.P5 order of the court below that the present original petition is filed.

4. The learned counsel for the petitioner would contend that a reading of Ext.P3 would clearly show that no liability was created by the said document and the same was executed only to acknowledge and admit a liability which already existed and therefore he contended that a document whereby the executor undertakes to clear a pre-existing liability within the period provided is only an agreement and not a bond. It is also contended that no transaction was done nor any passing of consideration took place on the date of execution of Ext.P3 and that no liability has been created by the said document. Therefore, Ext.P5 order directing to pay stamp duty and penalty treating it as a bond is unsustainable and liable to be set aside by this Court. Since sufficient stamp duty applicable for execution of an agreement is already paid, Ext.P3 is not liable for impounding and no penalty can be imposed. In support of the contention, the learned counsel relies on the decision in **Mathai Mathew v. Thampi**

**(1989 (1) KLT 138); Krishnan Kutty v. Jayakrishnan (2005 (2) KLT SN. 26 Case No.32) and Radha v. Sankaranarayanan (2007 (1) KLT 20).**

5. On the contrary, the learned counsel for the respondent would contend that the account has been settled as per the said agreement and the amount liable to be paid to the petitioner as per the settlement of accounts is clearly stated in Clause (3) of Ext.P3. Based on the same, he would contend that as the account has been settled as per Ext P3 and an obligation to pay money has been created by the said document itself, Ext P3 will come within the definition of a bond as defined in Section 2(a) of the Act. Therefore, it is submitted that Ext.P5 order of the trial court treating Ext.P3 document as having the characters of a bond and the direction to pay stamp duty and penalty is perfectly legal and valid and therefore no interference is called for.

6. I have considered the rival contentions of the parties.

7. The term "bond" is defined as per Section 2(a) of the Act and it reads as follows:

*"(a) "bond" includes-*

*(i) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;*

*(ii) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and*

*(iii) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another"*

8. For an instrument to partake the character of a bond an obligation must have been created in the instrument itself. On such an understanding of the definition of bond, as given in the Act, the contents of Ext.P3 document need to be analysed. Clause (2) of Ext.P3 only states that both parties today settled the accounts involved in the said business transaction carried out during the last three years by mutual consent in full satisfaction. A reading of Clause (2) of the agreement will only show that the parties have settled the accounts involved in the business transaction on that day and not by the said agreement and the liability is not created by the same. Further in Clause (3) of Ext. P3 agreement it is admitted by the respondent that he owes Rs.53,57,000/- to the petitioner and that he admits and acknowledges that Rs.53,57,000/- is outstanding to be paid to the petitioner. The wording in Clause (3) of the said document makes it explicitly clear that it is only an acknowledgment of an amount that is outstanding to be paid to the petitioner as on the date of execution of the

Ext P3 document. As per the said agreement, the respondent only undertook to repay the existing liability within a time frame.

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 in 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.

10. As there is a specific acknowledgment in the agreement of an amount that is outstanding to be paid to the petitioner as on the date of execution of Ext P3 document, the same can only be construed as an

agreement and it does not partake the character of a bond as defined in Section 2(a) of the Act. The decisions referred to above are squarely applicable in the facts of the present case since Ext.P3 document only acknowledges a pre-existing liability of an amount to be paid by the respondent to the petitioner.

In the facts and circumstances of this case, Ext.P3 can only be construed as an agreement and not as a bond. Therefore this original petition (civil) is allowed by setting aside Ext.P5 order dated 14.10.2019 in O.S.No.126 of 2017 on the file of the Additional Sub Court-I, Kozhikode holding that Ext P3 is only an agreement and not a bond.

Sd/-

**VIJU ABRAHAM  
JUDGE**

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**APPENDIX OF OP(C) 2748/2019**

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE PLAINT IN O.S  
NO.126/2017 ON THE FILES OF THE 1ST  
ADDITIONAL SUB COURT, KOZHIKKODE
- EXHIBIT P2 TRUE COPY OF THE WRITTEN STATEMENT DATED  
29.01.2018
- EXHIBIT P3 TRUE COPY OF THE AGREEMENT DATED  
16.01.2017
- EXHIBIT P4 TRUE COPY OF THE PROMISSORY NOTE DATED  
16.01.2017
- EXHIBIT P5 TRUE COPY OF THE ORDER DATED 14.10.2019  
IN O.S NO. 126/2017 PASSED BY THE 1ST  
ADDITIONAL SUB COURT, KOZHIKODE.

RESPONDENTS' EXHIBITS: NIL