

ERGO

Analysing developments impacting business

ONLY HIGH COURT JUDGES HAVE THE POWER TO DELEGATE THE DUTY OF EXAMINING AND IMPOUNDING ANY INSTRUMENT UNDER THE KARNATAKA STAMP ACT 1957

28 November 2018

In a recent decision, the Karnataka High Court considered whether a Judge, other than the Judge of a High Court, is empowered to delegate the duty of examining and impounding any instrument under Section 33 of the Karnataka Stamp Act, 1957 (Act) to any other officer. The High Court answered the question in the negative.

Facts of the matter

In a suit filed before the City Civil Court, Bengaluru (Court), the defendant had produced an insufficiently stamped document as evidence. The Court passed an interlocutory order impounding the document produced and directed the office to compute the stamp duty and penalty on the document. The defendant, however, did not subsequently deposit the stamp duty and penalty computed by the office. Therefore, the Court ordered that the case be proceeded without relying on the insufficiently stamped document. This order of the City Civil Judge was challenged by the defendant before the Karnataka High Court in a writ petition.

Interpretation of the section and decision

The question essentially involved interpretation of Section 33 of the Karnataka Stamp Act, 1957. The Karnataka High Court held that as per Section 33 of the Act, impounding of an instrument by the person referred to in Section 33(1) of the Act shall be preceded by a reasoned order on adequacy of stamping of the instrument, failing which, impounding of the document shall be unsustainable in law. The Karnataka High Court further held that the power to delegate the duty of examining and impounding an insufficiently stamped instrument is provided only to the Judge of a High Court and, in the absence of a similar provision, no judge other than a judge of the High Court is empowered to delegate the duty of examining and impounding any instrument under Section 33 of the Act to any other person or officer. Accordingly, the order of the City Civil Judge was set aside.

Comment

By the instant order, the High Court has made impounding of an instrument without a reasoned order unsustainable in law. Further, the delegation of the duty to examine and calculate stamp duty and penalty often resulted in errors and miscalculation, thereby giving rise to further disputes. This judgment will hopefully reduce such errors and miscalculations.

ERGO | ONLY HIGH COURT JUDGES HAVE THE POWER TO DELEGATE THE DUTY OF EXAMINING AND IMPOUNDING ANY INSTRUMENT UNDER THE KARNATAKA STAMP ACT 1957

- Udayarkar Rangarajan (Partner) and Avinash Balakrishna (Associate)

For any queries please contact: editors@khaitanco.com

We have updated our [Privacy Policy](#), which provides details of how we process your personal data and apply security measures. We will continue to communicate with you based on the information available with us. You may choose to unsubscribe from our communications at any time by clicking [here](#).

For private circulation only

The contents of this email are for informational purposes only and for the reader's personal non-commercial use. The views expressed are not the professional views of Khaitan & Co and do not constitute legal advice. The contents are intended, but not guaranteed, to be correct, complete, or up to date. Khaitan & Co disclaims all liability to any person for any loss or damage caused by errors or omissions, whether arising from negligence, accident or any other cause.

© 2018 Khaitan & Co. All rights reserved.

Mumbai

One Indiabulls Centre, 13th Floor
Tower 1 841, Senapati Bapat Marg
Mumbai 400 013, India

T: +91 22 6636 5000
E: mumbai@khaitanco.com

New Delhi

Ashoka Estate, 12th Floor
24 Barakhamba Road
New Delhi 110 001, India

T: +91 11 4151 5454
E: delhi@khaitanco.com

Bengaluru

Simal, 2nd Floor
7/1, Ulsoor Road
Bengaluru 560 042, India

T: +91 80 4339 7000
E: bengaluru@khaitanco.com

Kolkata

Emerald House
1 B Old Post Office Street
Kolkata 700 001, India

T: +91 33 2248 7000
E: kolkata@khaitanco.com