

ADMISSIBILITY OF INSUFFICIENT STAMPED SECONDARY DOCUMENTS



Evidences have always been an issue with regards to solving the quest of truth while discovering the overlong voyage of trials. The admissibility of the evidences in the court of law is one such step that the parties to a suit has to adhere to, to reach to a conclusive decision. Such evidences have to fulfill certain parameters under the Indian Evidence Act, 1872 as well as the Stamp Duty Act, 1899 in order to be admitted. This law of evidence being of utmost importance have recently come in the highlights of the judiciary in a division bench trial. The doubt regarding admission of evidenced document arises when there is question on its stamp duty especially in case of a secondary evidence. Therefore, the Madhya Pradesh High Court in the case of “Vijay V. Union of India” recently burst the bubble around the validity of section 35 of the Stamp Duty Act and clearly demarcated a line between primary evidence and secondary evidence.

It finally upheld the validity of the said Act while barring evidences that are not sufficiently stamped and copies of documents that are insufficiently stamped. It is pertinent to note here is that belittling the significance of secondary evidence can be a drawback in proving certain facts. Therefore, in absence of primary evidence, secondary evidence becomes relevant.

PRINCIPLES EXAMINING ADMISSION OF SECONDARY EVIDENCE

In the realm of legal proceedings, the admission of secondary evidence is circumscribed by a rigorous set of principles meticulously delineated by the Indian Evidence Act under its legal provision of Section 63.

It is very well aware fact that Secondary evidence encompasses a spectrum of substitutes for the original document, including certified copies, mechanically reproduced copies, counterparts, oral accounts from individuals who have witnessed the document, as well as photographs and Photostats.

But, the legal landscape under scores a fundamental tenet of Section 62 which calls for imperative presentation of primary evidence, being the highest stratum of proof.

Whereas, for secondary evidence to find acceptance as per section 65(a), it is incumbent upon the presenting party to establish the unavailability of the primary evidence and veracity of secondary evidence's contents, due to various reasons enumerated into the requisite legal provision of the Stamp Act. The courts, in their discernment, have emphasized the necessity of proving the absence of primary evidence conclusively for better admissibility of the secondary documents. This underscores the overarching principle that the submission of secondary evidence, as enumerated in Section 63, comes into play only when primary evidence is conspicuously absent. This interplay of Sections 62, 63, and 65(a) of the Indian Evidence Act elucidates a meticulous framework allowing for flexibility in the presentation of evidence while navigating through the legal intricacies of Evidence Act.

WHAT DOES SECTION 35 OF STAMP DUTY ACT SAY?

It prohibits admission of evidences that are chargeable with duty unless they are not duly stamped. The phrase duly stamped as defined under section 2(11) of the act means an instrument bearing a stamp which shall be affixed or used in accordance with the law in India. But here is a catch that when such document becomes chargeable with duty? The answer for which has been aptly stated that such stamp duty is required during the execution and not adjudication or registration of the document.



Because the word chargeable defined under section 2(6) means chargeable under the act in force at the date of execution of the document.

Therefore, to impose the bar of section 35 over a document, twin conditions are required to be fulfilled:

- Instrument must be chargeable with duty
- Such instrument, not duly stamped

This has provided a nuanced approach that if a certain document is insufficiently stamped than there is no use to submit its secondary counterpart which being derived from an unstamped document becomes inadmissible in its whole facet.

ANALYSIS OF THE CASE

While upholding the validity of section 35 for imposing bar on documents to be submitted without an insufficient stamp, the division bench of Justice Abhay S. Oka and Sanjay Karol held that if a document that is required to be stamped is not sufficiently stamped, then a copy of such document as secondary evidence can also be not adduced.

Since, the document in question in this case is not chargeable with stamp duty, it does not attract the applicability of Section 35 as it is not fulfilling its essential criteria. The court while creating distinction between primary and secondary evidence have tried to uphold the integrity of the legal process and have suggested that only after exhausting all the available avenues to obtain primary evidence, one must resort to the secondary one. Over and all these firm interpretations of both the sections i.e. section 35 and section 68 of both stamp duty and evidence act respectively have contributed in creating a robust judicial system.

CONCLUDING REMARKS

If the aforementioned case and the rulings of the court were to be correctly applied and construed, then the confusion regarding Whether, When and How of admissibility of evidences can be solved and restrictions may be applied wherever necessary. This has provided for securing highest standards of evidences for a fair and just trial by preventing manipulation of evidentiary materials.

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DELHI HIGH COURT UPHOLDS BOOKING.COM'S POSITION IN THE TRADEMARK DISPUTE

On December 14, 2023, the Delhi High Court issued a landmark judgment favouring Google LLC and Booking.com in a high-profile trademark dispute against MakeMyTrip (MIPL). This complex legal battle involved serious allegations, including trademark infringement, passing off, dilution of goodwill, and unfair competition, primarily revolving around Booking.com's use of MIPL's registered trademarks, notably "MakeMyTrip" and "MMT," as keywords in Google Ads. This judgment was delivered by Hon'ble Justice Vibhu Bakharu and Hon'ble Justice Amit Mahajan which made significant implications on the intellectual property's landscape and the ever-evolving domain of online advertising.

THE LEGAL RIFT: MIPL vs. GOOGLE AND BOOKING.COM

In a legal showdown, MIPL, a significant player in India's online travel agency sector, initiated legal action against Google and Booking.com. The claims covered a range of issues about using trademarks in online ads. MIPL argued that Booking.com using their trademarks as keywords in Google Ads did not just infringe on their rights but also confuse consumers and weaken MIPL's brand. This legal battle was not just a clash between big players; it also laid the groundwork for figuring out digital advertising rules.



JUDICIAL ELUCIDATION: VERDICT BY JUSTICES BAKHARU AND MAHAJAN

Justice Vibhu Bakharu and Hon'ble Justice Amit Mahajan after overseeing the case, made a decision that had a significant impact on legal and business circles. Their decision involved a meticulous examination of the provisions encapsulated within the Trade Marks Act, 1999. The court emphasized that using trademarks as keywords in Google Ads does not automatically confuse or deceive consumers. They pointed out that people generally understand the difference between regular search results and paid ads.

COURT RULES USING TRADEMARKS IN GOOGLE ADS IS NOT DECEPTIVE

The court emphasized that using trademarks as keywords in Google Ads doesn't automatically confuse or deceive consumers.

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The court clarified that using another company's brand terms as triggers for advertisements is not necessarily confusing for consumers. In simpler terms, Booking.com using MIPL's brand terms to trigger their ads was not considered to be against the rules.

IMPLICATIONS FOR THE LANDSCAPE OF ONLINE ADVERTISING

The ruling allows companies to use competitors' trademarks in Google ads, potentially leading to increased competition and lower advertising costs. However, businesses must be vigilant to ensure their practices are legal and ethical. This highlights the evolving nature of intellectual property law in the digital age, requiring legal frameworks to adapt to digital marketing complexities while upholding fair competition and intellectual property protection. The decision prompts a reevaluation of advertising tactics and legal considerations in the online marketing landscape, emphasizing the need for businesses to stay informed and exercise prudence in their advertising endeavors.

EXPERTS' RESPONSE TO THE RECENT RULING

The recent ruling on the use of competitors' trademarks in Google ads has sparked a debate within legal and business communities. Some experts praise the decision for promoting healthy competition, while others express concerns about potential trademark infringement and unfair business practices.



In light of this, businesses should revisit their advertising tactics and consult legal experts to ensure compliance with the law. They should also prioritize ethical considerations and strive to maintain fair competition in the digital marketing space. Overall, the ruling underscores the need for businesses to navigate intellectual property law while upholding ethical and legal standards. It serves as a reminder to stay vigilant and proactive in advertising endeavours.

INTELLECTUAL PROPERTY AND DIGITAL COMMERCE

Experts believe that this decision will have far-reaching effects on how businesses approach their online advertising strategies and the use of competitors' trademarks in keyword targeting. As the digital landscape continues to evolve, this judgment highlights the importance of understanding online consumer behaviour and the difference between paid advertisements and organic search results.

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It emphasizes the need for businesses to navigate this dynamic environment with a clear understanding of intellectual property rights and the balance between protecting brands and promoting competition.

INTELLECTUAL PROPERTY IN THE DIGITAL AGE

It highlights the importance of finding a balance between protecting brands and promoting competition in online advertising. Experts believe this decision recognizes the changing nature of intellectual property rights and calls for aligning IP protection with modern business demands. The ruling has significant implications for e-commerce and online advertising in India, influencing how businesses approach their strategies and use competitors' trademarks. It emphasizes the importance of understanding online consumer behaviour and distinguishing between paid ads and organic search results. This case demonstrates the ongoing challenges of safeguarding creative works while supporting digital industry growth.

CONCLUSION: THE REDIFINITION OF NORMS IN THE DIGITAL ARENA

The recent court ruling by the Delhi High Court has redefined the norms in the digital advertising industry. The court's decision emphasizes the importance for businesses to navigate the digital landscape with a clear understanding of the balance between competition and protecting intellectual property.

This landmark judgment has far-reaching implications for online advertising in India, prompting businesses to reconsider their strategies and the use of competitors' trademarks. It highlights the need to comprehend online consumer behavior and differentiate between paid advertisements and organic search results. This ruling sets the stage for a transformative shift in how digital advertising is approached and regulated in India.



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***UNSTAMPED ARBITRATION AGREEMENT IS JUST UNSTAMPED BUT NOT VOID:
AN INTERPLAY BETWEEN STAMP AND ARBITRATION***

The Supreme Court, in a recent ground-breaking unanimous judgement delivered by a seven-judge bench comprising Chief Justice of India (CJI) DY Chandrachud and Justices Sanjay Kishan Kaul, Sanjiv Khanna, BR Gavai, Surya Kant, JB Pardiwala, and Manoj Misra on December 13th, 2023, overruled two major judgements delivered in the cases “NN Global Mercantile Pvt Ltd v. Indo Unique Flame Ltd & Ors” and “SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd.” that have not only clarified the legal status of an unstamped arbitration agreement but also successfully safeguarded the very purpose of arbitration. The complex intersection of the Indian Stamp Act, 1899, and the Arbitration and Conciliation Act, 1996, navigated during the entire proceedings, has emphasised the different aspects of both laws and provided a balanced approach while applying them. This interplay has been a subject of legal scrutiny since the genesis of legal discourse in the Global Mercantile case in 2021, especially concerning the validity of arbitration agreements that remain unstamped. The Stamp Act, enacted to ensure the proper levying of stamp duties on various legal instruments, including agreements, came into conflict with the Arbitration Act when the question regarding arbitration agreements' non-admissibility due to not being stamped was raised.



While the general principle according to the Stamp Act is that an unstamped agreement is inadmissible as evidence, the Arbitration Act introduces nuances in the context of arbitration agreements, rendering them not void but just inadmissible.

THE ISSUE IN THE 5-JUDGE BENCH JUDGMENT

The previous judgement that have held that unstamped arbitration agreements are invalid in law have undermined the legal provisions of the Arbitration Act and its major objective of minimising supervisory roles by increasing the judicial scrutiny of the arbitration Act. Therefore, a subsequent curative petition was indeed required for a prompt referral to a bigger bench for significant ramifications and the need for comprehensive reconsideration.

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Stamp Act Being a fiscal statute mandates the payment of stamp duty on certain documents to make them legally valid and admissible as evidence in a court of law. Section 35 of the Stamp Act, 1899, talks about the consequences in case a document chargeable with duty has not been stamped, and this legal provision is a general rule that holds true for various documents, including arbitration agreements as well. On the other hand, the Arbitration and Conciliation Act, being a special law governing arbitration proceedings in India, does not explicitly address or provide for stamping requirements for arbitration agreements in its sections 8 and 11. The court, while giving an interpretation of the applicability of the Stamp Act, has rightly pointed out that the interpretation given to the Stamp Act does not permit flouting of the law; rather, it says that it should work in harmony with the Arbitration Act.

CURABILITY OF NON-PAYMENT

The court illuminated that the non-payment of stamp duty is remedial in nature, and parties failing to fulfil the stamping requirements earlier can now rectify their omissions by paying the requisite stamp duty without facing any potential nullification. This major highlight of the case is pertinent to note here as it gave new life to arbitration agreements. This aspect has created an extra layer of flexibility and practicality on both ends of dispute resolutions through arbitration arising from unstamped agreements.



It is for this reason that the arbitration act takes a unique approach and is distinguishable from other contractual documents.

APPLICATION OF THE DOCTRINE OF COMPETENCE

The pivotal aspect of the entire judgement has revolved around the adoption of the competence-competence doctrine. The doctrine, in its literal sense, means the arbitration tribunal has competence or authority to rule on its own competency, i.e., jurisdiction. This doctrine has provided for broader autonomy of the arbitration tribunals in determining whether an arbitration agreement has been stamped or not. The question is eligible to be determined by the tribunal itself, and the Stamp Act has no right to intervene in it for the simple reason that the whole purpose of the Stamp Act is just to generate revenue and not to nullify the arbitration agreement. Therefore, there is a thin line between agreements being inadmissible due to a lack of stamp, and such inadmissibility does not render the underlying arbitration procedure void ab initio.

This is so as the whole agreement is separable in nature due to the separability provision. Moreover, an unstamped arbitration agreement does not affect the substantive rights of parties to arbitration. Because as soon as the parties sign an arbitration agreement, they confer their jurisdiction on the arbitration tribunal.

CONCLUSION

The back-and-forth between both acts was quite a disputable matter for the concerned bench. The overruling of the impugned judgement that is coming between the teeth of India's objective of becoming an arbitration-friendly nation was a prominent step taken by the judges for safeguarding the notions and principles of the Arbitration Act and the need for speedy and quick disposal of matters. As our Indian legal landscape is evolving, this approach of balancing fiscal interests and policies favouring resolutions through arbitration should be in the microscopic view of the concerned in order to ensure an effective and efficient dispute resolution.

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