

## VOLUME 1 | ISSUE 1 2020

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**INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH**

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**“PRO-NOTE EXECUTED IN NON JUDICIAL STAMPIS VALID”**- R. RAM PRAKASH<sup>1</sup>

**ABSTRACT.** – The object of this paper is to critically analysis the validity of promissory note executed in a Non-Judicial Stamp Paper or impressed stamp paper not less than the proper value payable, duly signed by the promisor and witnessed by witnesses,would suffer from any legal infirmity or not?. Since, section 11 of the Indian stamp Act, 1899read withRule 13 of TN Stamp Ruleslays down that, "*the promissory note may be stamped with adhesive stamps with a requisite value*".

**INTRODUCTION.** –It is *Res-Integra* that every instrument should be duly stamped with a stamp not only of the amount required by law, but also in the manner prescribed by law. Therefore, An instrument to be duly stamped;

- (i) must bear the proper description of stamp,
- (ii) the stamp must be of the proper amount; and
- (iii) the stamp must be affixed or used according to the law or rules for the time being in force in India, and properly cancelled.

Now, it is necessary to define pro-note. According to Section 4 of the Negotiable Instruments Act, 1881, defines a promissory note as follows:-

*A "promissory note" is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, or to the bearer of the instrument."*<sup>2</sup>

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<sup>2</sup>Section 4 of the Negotiable Instruments Act, 1881.

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Normally, in a promissory note, a revenue stamp is affixed, signature of promisor would be obtained on the revenue stamps and that would authenticate the execution of the promissory note since the signature of promisor would run over the stamp and also proceed on to the paper. If a promissory note executed in a non-judicial stamp paper or impressed stamp paper, signature of promisor would not run over the stamp. In such case, question arising to the validity of pro-note executed in an impressed stamp paper is admissible in evidence or not?

**ISSUES.** -If a promissory note executed in a non-judicial stamp paper or impressed stamp paper, signature of promisor would not run over the stamp, then following question may arise;

1. Whether a promissory note executed in a non-judicial stamp paper or impressed stamp paper is duly stamped or not?
2. Whether a promissory note executed in a non-judicial stamp paper or impressed stamp paper, is not valid and inadmissible in evidence due to that signature of promisor would not run over the stamp?

**INDIAN STAMP ACT, 1899.**- It is necessary to define the word Duly Stamped. The term "*Duly stamped*" has been defined in Sec.2(11) of the Indian Stamp Act as follows:

*"Duly stamped" as applied to an instrument, means that 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 law for time being in force in India."*

Section 11 of the Indian stamp Act, 1899 read with Rule 13 of TN Stamp Rules lays down that, "*the promissory note may be stamped with adhesive stamps with a requisite value*".

According to Article 53 of the Indian Stamp Act, 1899 thus:

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Description of Instruments	Proper stamp duty
53. Receipt as defined by Section 2(23) for any money or other property the amount or value of which exceeds five hundred rupees.	One rupee

From the above proviso, it is clear that these provision are permissive not mandatory. The word ‘*may*’ is used in the above stated provision. Which indicates that, it is indicative of the choice for the executant of the document either with impressed or adhesive stamps to be used in the documents.

**JUDICIAL PRECEDENTS.** – The above stated two issues were discussed by various high Courts are extracted herein;

- a. The apposite observations of the Hon’ble High Court of Madras in this regard in the case of **R. AmuthavsJeyachitra**, is extracted herein;

*“36. I therefore hold that Promissory Note[Ex.A.1], which has been executed on a Rs.100/- (Rupees One Hundred only) Non-Judicial Stamp paper has been sufficiently stamped and does not suffer from legal infirmity on that ground”.*<sup>3</sup>

- b. Hon’ble High Court of Rajasthan has held in the case, **Kalyan Singh v. BanwarLal**;

*"The rule is merely a permissive one, permitting the use of an adhesive stamp on promissory notes payable on demand when the amount or value exceeds Rs. 250/-. The rule does not lay down that such a promissory note shall be stamped with adhesive stamp of the requisite value. The result is that a promissory note exceeding Rs. 250/- in value can be written on a paper having an impressed stamp or it can be stamped with adhesive stamps of the requisite value."*<sup>4</sup>

- c. Hon’ble High Court of Rajasthan has held in the case, **Somdatta v. Abdul Rashid**, is extracted herein.–

<sup>3</sup>2017 (3) CTC 499.

<sup>4</sup>1965-II-ILR (Rajasthan) 231.

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*“It had been further stated that in view of the word 'may' used in the provisions the promissory notes of any value can also be written on impressed stamps”.<sup>5</sup>*

- d. Hon’ble High Court of Madras has held in the case, ***P. Moorthyvs A.R. Kothandaraman***, is extracted herein;

*“6. I am inclined to follow the ratio of the learned Judge of the Rajasthan. High Court because I find the expression used in the provision is 'may'. In my view, a promissory note can be stamped either with adhesive stamps or engrossed on a stamp paper of proper value. In this view. I find that the trial court is correct in holding the document as a properly stamped promissory note and giving reliefs to the plaintiff. Hence while setting aside the finding of the new trial Bench of the Court of Small Causes with reference to the character of the document in question”.<sup>6</sup>*

- e. Hon’ble High Court of Andra Pradesh held in the case of ***GuranaAsirinaiduvLenkaSuryanarayana*** is extracted herein;

*“11. In view of the above position of the rules as well as the decisions referred, to, there is no prohibition as to the execution of a promissory note on an impressed stamp paper. What is required for a valid promissory note is that it should be stamped properly, as provided under the Act and the Rules. Section 10 of the Act refers the mode of duties to be paid. As per this provision, except as otherwise expressly provided in the Act, all duties with which any instrument chargeable shall be payable and such payment shall be indicated on such instruments by means of stamps. Further, as already referred to Section 11, where the word 'may' used, is indicative of the choice for the executant of the document. A promissory note executed using*

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<sup>5</sup>MANU/RH/0012/1968.

<sup>6</sup> AIR (1978) Mad 412.

*impressed stamp paper or adhesive stamps are equally valid and admissible in evidence, provided that they are stamped with requisite value.<sup>7</sup>”*

**CONCLUSION.** –In my opinion, in determining whether an instrument is sufficiently stamped for the purpose of deciding upon its admissibility in evidence, the Court will look at the instrument as it stands and not at any collateral circumstances which may be shown in evidence. When the question is, whether an instrument bears a sufficient stamp, the instrument must be looked at as it stands. Therefore, every instrument which is required to be stamped is said to be duly stamped if the instrument bears adhesive or impressed stamp of not less than the proper amount. An instrument written or embossed or engrossed on stamp paper, that is 'impressed stamp' and which is '*duly stamped*' and which satisfies the definition of 'receipt' under Sec.2 (23) of the Act and stamped in accordance with Article 53 of the Act, would satisfy the requirements of the Act. Hence, when a promissory note executed using impressed stamp or adhesive stamp and stamped with requisite value, are equally valid and admissible in evidence and does not suffer from any legal infirmity.

**REFERENCE. -**

1. Negotiable Instrument Act, 1881 – BARACT.
2. Indian Stamp Act, 1899 – BARACT.
3. *R. AmuthavsJeyachitra*, 2017 (3) CTC 499.
4. *Kalyan Singh v. BanwarLal*, 1965-II-ILR (Rajasthan) 231.
5. *Somdatta v. Abdul Rashid*, MANU/RH/0012/1968.
6. *P. Moorthyvs A.R. Kothandaraman*, AIR (1978) Mad 412.
7. *GuranaAsirinaiduvLenkaSuryanarayana*, 2005 (1) ALD 713, 2005 (1) ALT 659.

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