

Impounding of documents during court's proceeding

Before dealing with the subject, it is significant to know the meaning and object of "impounding". In Watson's Law Lexicon, impounding is defined as "**to keep in the custody of law**". In Oxford dictionary meaning of impounding has been given as "**to take legal or formal possession of.**"

In court's proceeding sometimes parties to the proceeding files such documents, which are either forged or insufficiently stamped. To prevent induction of such documents into evidence, provision to impound the same by the court in judicial proceeding has been incorporated by the Legislatures in both the Procedural Laws (Civil Procedure Code and Criminal Procedure Code).

Object and purpose of impounding

To prohibit the party to litigation from escaping the liability of payment of the stamp duty under law, which he had not paid earlier and wants to reply on the document in court's proceeding to prove his case (Utthappan Abraham Vs The State of Kerala – AIR 1997 Kerala 345, 347.)

Impounding of documents in civil proceedings

Section 30 and order XIII rule 8 of the CPC deal with the subject relating to impounding of documents, where

- the document is forged one, or
- It is one, that does not bear the adequate stamp, or
- it otherwise appears to be suspicious one.

Section 33 of the Indian Stamp Act empowers the court or any other authority authorized to receive the evidence, to impound the document, when in course of tendering the document, it is found to be insufficiently stamped. In a recent judgment in case of Avinash Kumar Chouhan vs Vijay Krishna Mishra, reported in (2009)2 SCC, 352 Hon'ble Supreme Court has held

that:-

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“Section 33 cast a statutory obligation on all the authorities to impound a document, insufficiently stamped which is ought to be taken into evidence and is bound to effect thereto”. (para- 22)

Section 35 of the Indian stamp Act with **certain exceptions** under Section 35 (a) to (e), puts a clog on receiving an insufficiently stamped document in evidence, but at the same time **section 33** gives a scope and a way, empowering the court to impound the same at the time of tendering it into evidence and to realize the deficient stamp. Mere production of any such document does not give reasons to the court to impound the same. Law mandates that the process of impounding can only be evoked, when the document is produced and comes in the performance of the function of the court at the time of its inclusion into evidence.

The conjoint effect of **Section 33 and 35**, points out some restrictions with regard to the impounding of document, which are the fundamentals for a Court, while passing the order for impounding any document filed in the court. Therefore the Presiding Officer must be very cautious while passing the order as such.

When court cannot impound

- (a) On mere production of any document in compliance with an illegal demand,
- (b) Only on information about insufficiency of the stamp, the party cannot be compelled to produce the original,
- (c) When only presented with the plaint (till tendered into evidence)
- (d) When court has become *functious officio*,
- (e) When document admitted into evidence (section 36) (exception detailed further)

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The procedure of impounding

Section 35 of the Indian Stamp Act is the only provision authorizing the civil court to realize the deficient stamp duty before relying on such instrument. Though the role of the court comes into play with regard to the impounding the document, when such document is tendered into evidence and not before that.

In case where the document with deficient stamp is filed with plaint as foundation of the case, the safe recourse on the part of the Court is to return the plaint and it may receive the same after having been satisfied that the sufficient stamp and the required penalty on the instrument has been realized.

Court on its own motion or on petition of the party tendering the document, or on behalf of the other side, can impound the document

- by putting an endorsement on the back of the instrument mentioning the grounds/ reasons for impounding under its signature.
- The Court or the officer impounding the document, then has to sent that original document to the Collector under section 38 (2) and it is only then the Collector can adopt the procedure laid down in **Section 40**.
- The court has not to give its opinion as to proper stamp duty and to assess penalty. This part comes under the domain of Collector alone, to assess the penalty and to determine the deficit stamp.

Section 40 of the Indian Stamp Act empowers the Collector with regard to the insufficiently stamped document referred to him under section 38 (2) to realize th deficit stamp as well as penalty up to Rs. Five (05/-) or an amount not exceeding to 10 times, the amount of the proper

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duty or of the deficit portion thereof, irrespective of the fact, whether such amount exceeds or fall short of Rs. Five. (05/-)

The section also empowers the Collector to remit whole penalty when the document has been impounded on the reason that the same are executed in contravention of section 13 and 14 of the Indian Stamp Act. To elaborate such documents, the relevant ingredients of section 13 and 14 are mentioned below:-

Section 13 requires-

- (a) The stamp must appear on the face of the instrument.
- (b) When two or more stamp papers are necessary to complete the instrument, a portion of it must also be scribed on each paper used.

Section 14 requires:-

- i. There should be one instrument only, on one Stamp Paper.
 - (a) Transferring any right created or evidenced thereby, or
 - (b) Acknowledgement of receipt or payment of money or delivery of goods, secured thereby.

Section 15 of the Indian Stamp Act says, that the instrument written in contravention of the above referred sections shall be deemed to be unstamped but under Section 40, the Collector as mentioned above, may exempt the penalty with regard to such document.

Whether original instrument be sent after order of impounding

Earlier it has been mentioned that under **section 38 (2)**, the court after impounding the document will send the original document to the Collector but to safeguard the risk of the original being lost, destroyed or damaged during transmission, it is proper for the court to get an authenticated copy of such instrument prepared at the cost of the party producing the same and to

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send such copy to the collector under section 38 (1). If the party does not choose this procedure, Court will send the original instrument to the Collector on the risk of the party under section 38 (2) and leave it to the Collector to impose such penalty as the Collector think fit under section 40 (1) (b).

From whom penalty and the duty to be recovered

As a general rule, the penalty and the duty can be recovered from the person to whom they are due, but when an insufficiently stamped document has been impounded, the requisite due can be claimed against the Estate of the deceased claimant. It is the party who files the document in court and wants to rely on the same by tendering it into evidence, and therefore he is liable to pay the deficit stamp and the penalty.

To whom the impounded document be returned

Such instrument has to be returned to the impounding officer after having been paid / realizing the required deficient stamp and penalty imposed. Either the Collector or the impounding official shall make an endorsement on such document along with name and residence of the person depositing/ paying the fine and penalty. As soon as the requirement after impounding is fulfilled, the Court shall release the document from impounding making endorsement as such on the document impounded and the same shall be taken into evidence after following the regular procedure for its admission.

From which date stamp and duty/ penalty will be realized

The date of execution of the instrument shall be the period for assessment or the deficit duty. The rate applicable on such date shall be the guiding factor for realizing the stamp duty (AIR 1954 HP 51, AIR 1972 Delhi 131, AIR 1992 A.P. 183 (186)).

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When document insufficiently stamped has been admitted into evidence

The question whether the document is admissible or not regarding sufficiency of stamp duty, has to be decided before admission i.e. before it was marked and proved and not at the time of rendering the judgment taking into account the evidence adduced by the parties. Once a document is admitted into evidence rightly or wrongly; whether with or without objection from any party, the same cannot be rejected latter on, on the plea that the same is under stamped either by the trial court or by the court of appeal or revision. **(A I R 1929 P.C. 279, AIR 1956 Supreme Court 12, AIR 1961 Supreme Court 1655)**. It cannot be re-agitated even in revision and the instrument cannot be treated as not admitted in evidence only because of stamp question. **(AIR 1982 Patna 65; 1982 BLJ 141)**. Section 35 of the stamp act shuts out from evidence any document / instrument chargeable with duty unless it is duly stamped.

Section -36 is an exception thereto, and allows the reception of an insufficiently stamped instrument in evidence when it has been admitted without the objection at the initial stage. In other words, although the objection is based on insufficiency of the stamp affixed to the document, the party who has the right to object to the reception of it must do so, when the document is first tendered. Once the time for raising objection of the documentary evidence is passed, no objection based on the same ground can be raised at the later stage **(AIR 1971 Supreme Court 1070)**.

Impounding after document having been admitted into evidence.

As discussed above, once a document is admitted into evidence no question with regard to insufficiency of the stamp can be raised before the

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same court or before the appellate or revisional Court by the parties to the proceeding and no impounding of such document though insufficiently stamped can be made by the court.

But Section 61 of the Indian Stamp Act comes as an exception to this general rule which says that the court of Appeal or Reference may on its own motion or on the application of the Collector or when reference has been made by the court admitting the deficient document in evidence can take into consideration the order of the sub-ordinate court. By doing so, the Appellate or the Reference court may pass an order for production of the instrument and may impound the same on its production. Thereafter the same procedure shall be followed by sending the same to the Collector along with the declaration to that effect by the court impounding the same.

Impounding of document in criminal proceedings

Section 104 of the Criminal Procedure Code empowers any court to impound any document or thing produced before it, if the court thinks fit.

Section 33(a) (proviso) contemplates that a Magistrate or Judge of the criminal court may not impound an instrument before him in criminal proceedings, if he does not think fit to do so except the document coming before him in course of the proceedings under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure (Chapter X-D and Chapter IX of the new code).

Section 35 (d) of the Indian stamp act also postulates that the documents/instruments which are insufficiently stamped, cannot be taken into evidence in criminal proceedings under chapter XII or Chapter XXXVI of the Code of Criminal Procedure (Chapter X-D) relating to the dispute involving immovable properties and Chapter IX relating to the maintenance of the new Code).

Impounding of documents during court's proceedings

Thus we see that all precautionary measure have been provided under law to prevent the admission of those documents which do not fulfill the requirement of law for becoming a complete document and to safeguard the loss of revenue to the Government. As such the presiding Officer of a court should be very careful while admitting the document in evidence and to pass an appropriate order for impounding the same, if any objection is raised in this regard, and also for the documents, which on the face of it appear to be fishy, spurious and something lacking. By experience, careful and frequent examination of various documents filed in court, one can gather sufficient expertise in recognizing such kind of documents.

Some other decisions on the subject for reference are summarized below:-

1. **AIR 1990 S.C. 485**

Once the order of impounding having been passed, it can't challenged on the point of limitation on account of taking further steps belatedly.

2. **AIR 1996 S.C. 616**

In spite of the stamp duty having been paid, the document can be impounded to realize the increase duty under the local Act and also the penalty thereof.

3. **AIR 1989 Kerala 248**

Impounding cannot be made after the court has become functious officio.

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