the second point raised by Mr. Anoop Singh that there is nothing new, original, or novel about the design of the respondent as I am inclined to agree with him that the registration did not relate to designs as defined in the Act. In this view of the matter, this petition must succeed and the registered design of the first respondent would stand cancelled. It is not for me to cancel the registered design of the petitioner also as I am not called upon to do so in these proceedings. This could be done in appropriate proceedings. I would leave the parties to bear their own costs.

B.R.T.

REVISIONAL CIVIL

Before Inder Dev Dua and Daya Krishan Mahajan, JJ.

CHANDER BHAN,—*Petitioner.*

versus

MAHA SINGH AND ANOTHER,—*Respondents.*

Civil Revision No. 393-D of 1957

1964

May, 4th.

Part C States (Laws) Act (XXX of 1950)—S. 2—Power to extend laws prevailing in other States—Whether empowers Central Government to extend other State laws amending Central Acts to Part C States—Extension of the Indian Stamp (East Punjab Amendment) Act (XXVII of 1949) to Delhi State by notification of the Central Government—Whether valid.

Held, that the scheme of section 2 of the Part C States (Laws) Act, 1950, is that Central Acts applicable to Part C States have to be left alone. The Central Government is not given the power by the Parliament, in any way, to amend or modify the Central Acts applicable to Part C States. Parliament is the legislature for Part C States and is competent to make laws for such States. For this reason, no power was conferred on the Central Government, either to amend or alter a Central Act. That

power was with the Parliament and it remained with it. If the Central Government cannot amend or modify a Central Act, which is applicable to a Part C State, it cannot achieve that result by an indirect method, that is by extending a law prevailing in a Part A State which has modified or amended the Central Act. The extension of the Indian Stamp (East Punjab Amendment) Act, 1949, to the Delhi State by the Central Government by notification No. SRO-422, dated the 21st March, 1951, so far as it amends section 35 of the Indian Stamp Act is invalid. The Central Government could not extend the provisions of the Indian Stamp (East Punjab Amendment) Act, 1949, to Delhi by recourse to section 2 of the Part C States (Laws) Act, because section 35 of the Indian Stamp Act was applicable to Delhi and no amendment or modification of this provision could be made by recourse to the powers conferred on the Central Government by section 2 of the Part C States (Laws) Act, 1950.

Revision Petition under Section 25 of Act XV of 1887, Small Cause Court, from the order of Shri Om Parkash Saini, Additional Judge, Small Cause Court, Delhi, dated the 24th April, 1957, dismissing the suit and leaving the parties to bear theri own costs.

D. K. KAPOOR AND PREM PARKASH BATRA, ADVOCATES, for the Petitioner.

A. N. BAJAJ, S. P. AGGARWALL AND BISHAMBAR DAYAL, ADVOCATES, for the Respondents.

JUDGMENT

Mahajan, J.

MAHAJAN, J.—This petition for revision is directed against the decision of Shri O. P. Saini, Additional Judge, Small Cause Court, Delhi.

A suit for recovery of Rs. 961 on account of principal and interest was filed by the plaintiff against the defendants Mahan Singh and Deep Chand sons of Kirpa Ram on the basis of the balance struck by them in his *bahi* on the 20th December, 1953. The defendants contested the suit, It was pleaded that the *bahi*

was not admissible in evidence because the acknowledgement was not properly stamped. It was also pleaded that the plaintiff was money-lender and that he could not bring the suit without getting the Money-lenders' Licence. The liability to pay the amount in question was also denied. It is common ground that if the acknowledgement is not admissible in evidence, the plaintiff's suit must fail.

The trial Court held that the plaintiff was a money-lender and that he had a Money-lender's Licence. The defendants admitted the execution of the balance in *bahi* but they pleaded that the entry regarding balance amounted to an acknowledgement and not an agreement, and, therefore, it being not properly stamped, was not admissible in evidence. The trial Court also held that the entry in dispute amounted to an acknowledgement and was, therefore, not admissible inevidence, and that the amount in question had not been paid back by the defendants. The suit was accordingly dismissed. Against the decision, the present petition for revision was preferred to this Court, which came up for hearing before Capoor J. on the 28th February, 1961, who passed the following order:—

> "One of the points raised in this case by Mr. D. K. Kapoor on behalf of the petitioner is that the extension of the Indian Stamp (East Punjab Amendment) Act, 1949 (East Punjab Act No. XXVII of 1949), to Delhi State by a notification in the official Gazette No. SRO-422, dated the 21st March, 1951, was *ultra vires* of the powers conferred on the Legislature of the Delhi State by section 2 of the Part C States (Laws) Act, 1950 (Act No. XXX of 1950) inasmuch as by that extension it was a

Chander Bhan
v.
Maha Singh
and another

Mahajan, J.

Central Act, that is the Indian Stamp Act, which was sought to be amended, *Prima facie*, there is some force in the contention and I would, therefore, direct that notice be issued to the Advocate-General, who may make any submission he desires on this point."

The matter was then placed before me on the 3rd Decmeber, 1962, and in view of the constitutional question involved in the case I directed that the matter be decided by a Division Bench. That is how the matter has been placed before us.

It is common ground that the acknowledgment is stamped with one anna stamp. Up to the 21st March, 1951, acknowledgements requires only one anna stamp. After this date, the requisite stamp has been raised to annas two. This has been done in the following manner: In the year 1949 the Indian Stamp (East Punjab Amendment) Act, 1949 (No. XXVII of 1949) was passed. This Act brought about various amendments in the Indian Stamp Act. This Act was extended to Delhi by a notification No. SRO-422, dated the 21st March, 1951, published in the Gazette of India, Part II Section 3, dated the 31st March, 1951. The power to extend laws prevailing in other States has been conferred on the Central Government under section 2 of the Part C States (Laws) Act, 1950 (No. XXX of 1950). Section 2 of this Act is in these terms :—

"The Central Government, may, by notification in the Official Gazette, extend to any Part C State (other than Coorg and the Andaman and Nicobar Islands) or to any part of such State, with such restrictions and modifications as it thinks fit, any enactment which is in force in a Part A

State at the date of notification; and provision may be made in any enactment so extended for the repeal or amendment of any corresponding law (other than a Central Act) which is for the time being applicable to that part C State."

It is in view of the change brought about in the Stamp Act applicable to Delhi, i.e. the Central Act, that enhanced stamp of two annas was required on acknowledgement instead of the original stamp of one anna. If the enhanced stamp of two annas is not justified, then the document is properly stamped and could not have been ruled out of evidence. The learned counsel for the petitioner has raised three contentions before us :

1. that the Indian Stamp Act was applicable to Delhi and that it could not have been amended by recourse to section 2 of the part C States (Laws) Act, 1950;

2. that even if it be held that the necessary amendment could have been made by recourse to section 2 of the Part C States (Laws) Act, 1950, the amendment having not been made in accordance with Article 254 of the Constitution of India, is of no effect and

3. that in view of the decision of the Supreme Court in *re*: *Art.* 143. *Constitution of India and Delhi Laws Act* (1912) etc. (1), half of section 2 of the Part C States Laws Act, 1950, being *ultra vires*, no recourse to this section can be made to amend the Central Act.

(1) A.I.R. 1951 S.C. 332.

Chander Bhan
v.
Maha Singh
and another

Mahajan, J.

As some of the considerations are common to the first and the third contention, I have deemed it proper to deal with both these contentions together in the first instance. The earlier provisions before section 2 of the Part C States (Laws) Act, 1950, was enacted was section 7 of the Delhi Laws Act, 1912, which is in these terms :—

> "7. The Provincial Government may, by notification in the Official Gazette, extend with such restrictions and modifications as it thinks fit to the Province of Delhi or any part thereof, any enactment which is in force in any part of the provinces at the date of such notification."

This provision was repealed by the Part C States (Laws) Act, 1950, and its place was taken by section 2 of that Act. Section 2 was considered by the Supreme Court in *Delhi Laws Act case* (1), Special Reference No. 1 of 1951. This was a decision by a Bench of seven Judges presided over by Kania, C.J. Fazl Ali, Patanjali Sastri and S.R. Dass JJ. held section 17 of the Delhi Laws Act and section 2 of the Part C States (Laws) Act to be valid in entirety. Kania C.J. and M. C. Mahajan J., held both these provisions to be invalid. Mukherjea and Bose JJ. held the following part of section 2 of the Part C States (Laws) Act as invalid :—

> " * * * provisions may be made in any enactment so extended for the repeal or amendment of any corresponding law (other than a Central Act) which is for the time being applicable to that Part C State."

It will, therefore, be apparent that the majority held part of section 2 of the aforesaid Act as invalid. It

will, therefore, be appropriate at this stage to set out the ratio of the Supreme Court decision with regard to this part of section 2 of the Act. I may, with great respect, quote the observations of Mukherjea J. They occur at page 408 of the report and are set out below in extenso :—

> "It will be noticed that the powers conferred by this section upon the Central Government are far in excess of those conferred by the other two legislative provisions, at least in accordance with the interpretation which I have attempted to put upon them. As has been stated already, it is quite an intelligible policy that so long as a proper legislative machinery is not set up in a particular area, the parliament might empower an executive authority to introduce laws validly passed by a competent legislature and actually in force in other parts of the country to such area, with such modifications and restrictions as the authority thinks proper, the modifications being limited to local adjustments or changes of a minor character. But this pre-supposes that there is no existing law on that particular subject actually in force in that territory. If any such law exists and power is given to repeal or abrogate such laws either in whole or in part and substitute in place of the same other laws which are in force in other areas, it would certainly amount to an unwarrantable delegation of legislative powers. To repeal or abrogate an existing law is the exercise of an essential legislative power and the policy behind such acts must be the policy of the legislature itself. If the legislature invests

Chander Bhan
v.
Maha Singh
and another

Mahajan J.

the executive with the power to determine as to which of the laws in force in a particular territory are useful or proper and if it is given to that authority to replace any of them by laws brought from other provinces with such modifications as it thinks proper, that would be to invest the executive with the determination of the entire legislative policy and not merely of carrying out a policy which the legislature has already laid down. Thus the power of extension, which is contemplated by section 2 of the Part C States (Laws) Act, includes the power of introducing laws which may be in actual conflict with the laws validly established and already in operation in that territory. This shows, how the practice, which was adopted during the early British period as an expedient and possibly harmless measure with the object of providing laws for a newly acquired territory or backward area till it grew up into full-fledged administrative and political unit, is being resorted to in later times for no other purposes than that of vesting almost unrestricted legislative powers with regard to certain areas in the executive government. The executive government is given the authority to alter, repeal or amend any laws in existence in that area under the guise of bringing in laws there which are valid in other parts of India. This, in my opinion, is an unwarrantable delegation of legislative duties and cannot be permitted. The last portion of section 2 of Part C States (Laws) Act is, therefore, *ultra vires* the powers of Parliament as being a delegation of essential legislative powers in favour of a body

not competent to exercise it and to that extent the legislation must be held to be void. This portion is, however, severable; and so the entire section need not be declared invalid.

The result is that, in my opinion, the answer to the three questions referred to us would be as follows: (1) Section 7 of the Delhi Laws Act, 1912, is in its entirety *intra vires* the legislature which passed it and no portion of it is invalid. (2) The Ajmer-Marwara (Extention of Laws) Act, 1947, or any of its provisions are not *ultra vires* the legislature which passed the Act. (3) Section 2 of Part C States (Laws) Act, 1950, is *ultra vires* to the extent that it empowers the Central Government to extend to Part C States laws which are in force in Part A States, even though such laws might conflict with or affect laws already in existence in the area to which they are extended. The power given by the last portion of the section makes provisions in any extended enactment for the repeal or amendment of any corresponding provincial law, which is for the time being applicable to that Part C States, is therefore, illegal and *ultra vires*."

Mr. Kapur, learned counsel for the petitioner, argues that it is apparent from section 2 of Part C States (Laws) Act that a Central Act cannot be either amended or repealed. If the Central Government is denied this power, the learned counsel goes on to argue, it cannot achieve that result indirectly by extending laws prevailing in Part A States which have also modified or amended the Central Acts applicable to those States. The extension of such laws indirectly

Chander Bhan
v.
Maha Singh
and another

Mahajan, J.

replaces the existing laws or Central enactments which are for the time being applicable to Part C States.

This argument seems to have force. The scheme of section 2 of the Part C States (Laws) Act is that Central Acts applicable to Part C States have to be left alone. The Central Government is not given the power by the Parliament, in any way, to amend or modify the Central Acts applicable to Part C States. Parliament is the legislature for Part C States and is competent to make laws for such States. It appears that, for this reason, no power was conferred on the Central Government, either to amend or alter a Central Act. That power was with the Parliament and it remained with it. If the Central Government cannot amend or modify a Central Act, which is applicable to a Part C State, it cannot, in my view, achieve that result by an indirect method, that is by extending a law prevailing in Part A State which has modified or amended the Central Act.

It is settled principle of law that what cannot be done directly cannot be done indirectly. Thus on the terms of section 2, this argument must prevail and any modification of the Indian Stamp Act by the Indian Stamp (East Punjab Amendment) Act, 1949, would be inoperative.

It cannot be disputed, and indeed it was not, that a Part A State has the right to enact a law on any of the items in List III (Concurrent List). It has also the power to modify or amend any Central Act if it relates to an item falling in that List. The State Legislature has no power to enact a law with regard to items in List 1(Union List). If a State Legislature wants to enact a law with regard to an item in List III, which covers the same field which is covered by an existing law or by an Act of Parliament, it can only do so in accordance with the procedure prescribed in

Article 254 of the Constitution. This course could not be adopted for Delhi, but Parliament could make such a law. But recourse cannot be had to section 2 of the Part C States (Laws) Act to achieve this object. The extended Act [The Indian Stamp (East Punjab Amendment) Act, 1949] not only raised the rates of stamp duty but made a substantial modification in section 35 of the Indian Stamp Act. No trouble would have arisen if the extended Act had merely dealt with the revision of rates. In that contingency, the matter would have possibly stood concluded by the majority decision in *Delhi Laws Act case* (1). The trouble has arisen because the Indian Stamp (East Punjab Amendment) Act amended section 35 of the Indian Stamp Act. Section 35 of the Indian Stamp Act, as applicable to Delhi before its amendment by the Indian Stamp (East Punjab Amendment) Act, was in these terms:—

> "35. No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:—
>
> Provided that—
>
> (a) any such instrument *not being an instrument chargeable with duty of one anna or half an anna only, or a bill of exchange or promissory note* shall subject to all just exceptions be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together

Chander Bhan
v.
Maha Singh
and another

Mahajan, J.

with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof, exceeds five rupees, of a sum equal to ten times such duty or portion;

(b) * * * * * *

(c) * * * * * *

(d) * * * * * *

(e) * * * * * *."

After amendment by the East Punjab Amendment Act, it reads thus:—

"35. No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:—

Provided that—

(a) any such instrument *not being an instrument chargeable with duty of one anna or half anna only, or a bill of exchange or promissory note or acknowledgement or delivery order shall subject to all just* exceptions be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof, exceeds five

rupees, of a sum equal to ten times such duty or portion;

"* * * * * * "

The substantial change brought about was that acknowledgments were placed on the same footing as the bills of exchange and promissory notes, etc.

This would take out the acknowledgement outside of the enabling provision in section 35 Indian Stamp Act as it stood before its amendment by the extended Act. The power to legislate about the rates of stamp duty is vested in the State Legislature. See List II, Schedule VII:—

"Item 63. Rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty."

The only restriction on this power is in List I, item 91, which is in these terms:—

"91. Rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts."

It will be obvious from item No. 91 (List I) that acknowledgment is not one of the documents which has been taken out of item 63 (List II). Therefore, regarding acknowledgments, the State Legislature was competent to increase the rate of stamp duty within the limits of its own jurisdiction whether this increase could have been given effect to in a Part C State under the provisions of section 2 of the Part C States (Laws) Act possibly would have presented no difficulty because such an extension would not offend the

Chander Bhan
v.
Maha Singh
and another

Mahajan, J.

majority view in the *Delhi Laws Act case*. The learned counsel for both the parties are agreed that so far as the increase in rates is concerned no fault can be found with the extension of the Indian Stamp (East Punjab Amendment) Act. The entire argument has centred round the extension of Indian Stamp (East Punjab Amendment) Act so far as it amends section 35 of the Indian Stamp Act.

I may here state the reason for this argument. The reason is that if acknowledgment is taken away from section 35 of the Indian Stamp Act, no trouble would arise so far as the present case is concerned. The petitioner can make good the deficiency of stamp, that is, pay an additional one anna, and in addition thereto pay the requisite penalty and thereafter section 35 will not stand in the way of the admissibility of the acknowledgement into evidence, otherwise the acknowledgement being at par with the documents mentioned in section 35, proviso (a) it will not be admissible in evidence. The enabling provision in proviso (a) to section 35 of the Indian Stamp Act which allows the deficiency in stamp duty to be made good and the imposition of a penalty so as to make an instrument admissible in evidence, is not applicable to documents specified in proviso (a), such as, instruments chargeable with stamp duty not exceeding one anna or a bill of exchange, etc. The moment, acknowledgment is taken out of the category of instruments mentioned in proviso (a) and it being not a document requiring a duty below one anna, the enabling provisions of the proviso will be attracted. In that situation, the petitioner would be able to pay the deficiency in stamp along with the penalty and claim that the acknowledgment be admitted into evidence. The entire basis of the petitioner's suit is the acknowledgment. If the acknowledgment is ruled out, as it has been ruled out, the suit was bound to fail, as it failed.

Going back to the argument, the question that arises is: whether the amendment by the Indian Stamp (East Punjab Amendment) Act, of section 35 solely relates to rates and, therefore, it could be made applicable to Delhi under section 2 of the Part C States (Laws) Act? I am unable to hold that this is so. The extended Act affects a Central Act and, therefore, by recourse to section 2 of the Part C States (Laws) Act, it could not have been extended to Delhi. Entry No. 44 in List III, which reads thus:—

> "44. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty."

gives the power of legislation regarding stamp duties to both the Parliament and the State Legislature. With regard to the rates of such stamp duties the power with regard to all documents excepting those set out in List I, item 91, is with the State Legislature,—*vide* item No. 63, List II. Moreover, section 35 of the Indian Stamp Act embodies a rule of evidence. What it does is, it prohibits insufficiently stamped documents from being tendered into evidence. Viewed in this manner, section 35 could have very well been enacted under entry No. 12, List III. This entry reads thus:—

> "12. Evidence and oaths; recognition of laws, public acts and records, and Judicial proceedings."

In either event, whether section 35 can be enacted under entry No. 44 (List III) or entry No. 12 (List III), the legislation with regard to it can be undertaken both by the Union Legislature as well as by the State Legislature.

Thus it will be apparent from what has been stated above, that the Central Government could not

Chander Bhan
v.
Maha Singh
and another

Mahajan, J.

extend the provisions of the Indian Stamp (East Punjab Amendment) Act to Delhi by recourse to section 2 of the Part C States (Laws) Act, because section 35 of the Indian Stamp Act was applicable to Delhi and no amendment or modification of this provision could be made by recourse to the powers conferred on the Central Government by section 2 of the Part C States (Laws) Act. This follows logically from the provisions of section 2 and from the decision of the Supreme Court in *Delhi Laws Act case* (1). I am, therefore, of the view that the contention of the learned counsel for the petitioner is correct and must prevail. The amendment of section 35 of the Indian Stamp Act by the Indian Stamp (East Punjab Amendment) Act, 1949, has to be ruled out as being beyond the powers conferred on the Central Government by section 2 of the Part C States (Laws) Act and even if such a power could be spelt out of section 2, that power is *ultra vires* for the reasons given *in Delhi Laws Act case.*

Mr. Bishambar Dayal, learned counsel for the Delhi Administration, sought to argue that the amendment of section 35 was an incidental matter—incidental to the enhancement of the rate of stamp duty on certain documents. He, however, argued that as the State Legislature had the power to legislate about the rates of stamp duty, it had also the power incidently to prescribe penalties for the non-payment of those duties. This argument is not sound in view of the fact that the other matters relating to stamp have been specifically taken out of List II as would be apparent from the corresponding entry in List III that is, entry No. 44. If the various entries, which I have already dealt with in Lists I, II and III, are kept in view, a clear indication is provided that only with regard to the matter of rates of stamp duty with certain exceptions was left to the exclusive jurisdiction of the State Legislature. All other matters regarding imposition of stamp duties. etc., were put in List

III. I have, therefore, no hesitation in repelling the argument of the learned counsel for the State.

In this view of the matter, it is not necessary to advert to the second contention.

For the reasons given above, this petition is allowed, the judgment and decree of the learned Additional Judge, Small Cause Court is set aside and the case is remitted to him for decision after admitting into evidence the acknowledgment in dispute after recovery of the deficient stamp and penalty.

There will be no order as to costs.

The parties are directed to appear before the trial Court on the 12th June, 1964.

INDER DEV DUA, J.—I agree.

Dua, J.

B.R.T.

CIVIL MISCELLANEOUS

Before Inder Dev Dua and Daya Krishan Mahajan, JJ.

THE DELHI CLOTH & GENERAL MILLS CO. LTD., AND OTHERS,—*Petitioners*

versus

THE CHIEF COMMISSIONER, DELHI AND ANOTHER,—*Respondents.*

Civil Writ No. 227-D of 1962

1964

May, 7th.

Registration Act (XVI of 1908)—Ss. 78 and 79—Notification prescribing table of fees for registration based on value or consideration money specified in the document sought to be registered—Whether ultra vires *and inoperative—Fee charged on basis of value or consideration—Whether a fee or tax.*