



ARBITRATION AND CONCILIATION

Admissibility of Arbitration Clause in Insufficient Stamped Agreement

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A three bench judge of the Supreme Court comprising of CJI S.A. Bobde, Justice BR Gavai and Justice Surya Kant in a recent judgment **M/s Dharmaratnakara Rai Bahadur Arcot Narainswamy Mudaliar Chattram & Other Charities & Ors. Versus M/s Bhaskar Raju & Brothers & Ors**^[1] have considered whether the court can act on an arbitration clause in an insufficiently stamped agreement.

The judgment arose out of an appeal challenging a judgment of the Karnataka High Court wherein an arbitrator was appointed under section 11(6) of the Arbitration and Conciliation Act, 1996 to decide the disputes between the parties. The parties had executed a lease deed on 31st May, 1996 for a period of 38 years for development of a land owned by the Appellant. Thereafter, a subsequent lease deed on identical terms and conditions of the previous deed was executed on 12th March, 1997. The Appellant filed a suit before City Civil Court on the ground that Respondents failed to pay the full security deposit envisaged under the lease deeds. The Civil Court granted an interim order directing to maintain status quo over the disputed property. However, even after participating in the suit proceedings for 2 years, a notice dated 6th September 2013 was issued by the Respondent Nos. 1 and 2 to the Appellant invoking arbitration clause in lease deeds. In furtherance thereof a petition under section 11(2) of the Arbitration Act for appointment of an Arbitrator was filed before the Karnataka High Court and the High Court appointed an arbitrator.

The Appellant approached the Supreme Court against this order of the Karnataka High Court. The Supreme Court observed that both the lease deeds were neither registered nor sufficiently stamped as required under the provisions of the Karnataka Stamps Act, 1956. In addition to this, the report of Registrar (Judicial) of Karnataka High Court drew attention to the fact that the document of 1997 executed between the parties was a lease deed and not an agreement to lease and thereby directing the Respondent Nos. 1 and 2 to pay deficit stamp duty and penalty amounting to Rupees One Crore and above.

The Apex Court held that the issue is not a point without a precedent and placed reliance on **MS Tea Estates Private Limited v Chandmari Tea Company Private Limited**^[2] which is in consonance with the provisions of Sections 33 and 34 of the Karnataka Stamp Act, 1957 and reads as:

“20. Having regard to Section 35 of the Stamp Act, unless the stamp duty and penalty due in respect of the instrument is paid, the court cannot act upon the instrument, which means that it cannot act upon the arbitration agreement also which is a part of the instrument. Section 35 of the Stamp Act is distinct and different from Section 49 of the Registration Act in regard to an unregistered document. Section 35 of the Stamp Act does not contain a proviso like Section 49 of the Registration Act enabling the instrument to be used to establish a collateral transaction.

21. Therefore, when a lease deed or any other instrument is relied upon as contending the arbitration agreement, the court should consider at the outset, whether an objection in that behalf is raised or not, whether the document is properly stamped. If it comes to the conclusion that it is not properly stamped, it should be impounded and dealt with in the manner specified in Section 38 of the Stamp Act. The Court cannot act upon such a document or the arbitration clause therein. But if the deficit duty and penalty is paid in the manner set out in Section 35 or Section 40 of the Stamp Act, the document can be acted or admitted in evidence.”

Quashing the Order of the Karnataka High Court and setting aside section 11 application filed by the respondents, the Supreme Court held that the Karnataka High Court has erred in relying on the lease dated 12th March 1997 and even on equity the Respondents are not entitled to any reliefs.

This judgment reiterated the earlier precedent without any confusion that the Court cannot act upon a document or for the matter the arbitration clause therein which is insufficiently stamped. However, if the deficit duty and penalty is paid in accordance to the provisions of the Stamps Act, 1899, the document can be acted upon or can be admitted in evidence.

^[1] 2020 SCC OnLine SC 183

^[2] (2011) 14 SCC 66