

INSTRUMENT CONTAINING AN ARBITRATION CLAUSE CANNOT BE RELIED UPON UNLESS IT IS DULY STAMPED

*A three Judge Bench of the Supreme Court of India in its recent decision in **M/s. Dharmaratnakara Rai Bahadur Arcot Narainswamy Mudliar Chattram & Other Charities & Ors. v. M/s. Bhaskar Raju & Brothers & Ors.** has reiterated that an instrument containing an arbitration clause cannot be enforced for providing reliefs under Section 11(6) of the Arbitration and Conciliation Act, 1996 unless the same is duly stamped in accordance with law.*

FACTS:

The Appellant No. 1, a registered Charitable Trust, intended to develop the land owned by it. The Respondent No. 1 offered to develop the said property, pursuant to which certain negotiations took place between the parties and a lease deed was executed between the Appellant No. 1 Trust and the Respondent No. 1 lessee on 31st May 1996. Thereafter, another lease deed dated 12th March 1997 was executed between the same parties.

Disputes arose between the Appellants and the Respondents on the delay in progress of the project and the non-payment of the entire security deposit on the part of the Respondents. The Appellant Trust then filed a suit before the City Civil Court at Bangalore. An interim order for maintaining status quo was passed by the City Civil Court. The Respondent Nos. 1 and 2, after participating in the suit proceedings for more than 2 years, issued a notice to the Appellants invoking the arbitration clause in the lease deed dated 31st May 1996 and 12th March 1997. The Respondent Nos. 1 and 2 further filed a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**")

before the High Court of Karnataka.

The Appellants objected to the Section 11(6) petition by contending that the lease deed dated 12th March 1997 being insufficiently stamped was required to be mandatorily impounded under Section 33 of the Karnataka Stamp Act, 1957 and it could not be relied upon unless proper duty and penalty was paid. The Single Judge of the High Court then referred the matter to the Registrar (Judicial) of the High Court for determination of the said issue.

The Registrar (Judicial) vide a detailed report held that the document in question was a lease deed and directed the Respondent Nos. 1 and 2 to pay deficit stamp duty and penalty amounting to Rs. 1,01,56,388/-.

Objections to the report of the Registrar (Judicial) were filed by the Respondent Nos. 1 and 2. However, the High Court without consideration of the report passed the impugned order, thereby allowing the petition under Section 11(6) of the Arbitration Act and appointed an arbitrator to decide the disputes between the Appellants and the Respondents.

ISSUE:

In the instant case, the question which arose for consideration was whether an arbitration clause contained in a lease deed which was insufficiently stamped can be relied upon by the court for appointing an arbitrator.

JUDGMENT:

The apex court observed that admittedly, both the lease deeds are neither registered nor sufficiently stamped as required under the Karnataka Stamp Act, 1957. Further, the Respondent Nos. 1 and 2 have not paid the deficit stamp duty and penalty.

While relying on the decision in ***SMS Tea Estates Private Limited v. Chandmari Tea Company Private Limited, (2011) 14 SCC 66*** the court stated that when a lease deed or any other instrument is relied upon as containing the arbitration agreement, the court is required to consider at the outset, whether the document is properly stamped or not.

In *SMS Tea Estates case (supra)*, it was held that the court is required to consider if an instrument is produced before it, whether it is properly stamped or not, even if an objection in that behalf is not raised. If the court comes to the conclusion that the instrument is not properly stamped, it should be impounded and dealt with in the manner specified in the Stamp Act. However, if the deficit duty and penalty is

paid as per the provisions of the Stamp Act, the document can be acted upon or admitted in evidence.

The Apex Court held that the lease deed containing the arbitration clause was not sufficiently stamped and the High Court erred in relying on the lease deed dated 12th March 1997.

Accordingly, the appeal was allowed and the impugned judgment and order of the High Court was set aside.

REMARKS:

Vide this judgment, a larger bench of the Supreme Court has reiterated the position earlier stated by the Apex Court in ***Garware Wall Ropes v. Coastal Marine Construction and Engineering Ltd., (2019) 9 SCC 209*** wherein it was held that the court must impound an insufficiently stamped document and hand it over to the relevant stamp authority for rectification. In order to balance the objective of expeditious disposal of cases and revenue collection by the authorities, the Supreme Court in *Garware Wall Ropes case (supra)* had stated that the revenue authorities should resolve the issues relating to stamp duty as expeditiously as possible and preferably within a period of 45 days from the date of receipt of such document.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.