

GAHC010025382023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Arb.P./9/2023

M/S. L. GOPAL GOLD AND DIAMOND
A PARTNERSHIP FIRM HAVING ITS PRINCIPAL PLACE OF BUSINESS AT
AHMED BUILDING, FANCY BAZAR, GUWAHATI- 781001, ASSAM,
REPRESENTED BY ONE OF ITS PARTNERS SHRI KANHAIYA LAL SONI,
SON OF SHRI RAM GOPAL SONI, AGED ABOUT 51 YEARS.

VERSUS

ATIKUR RAHMAN
SON OF LATE ABIDUR RAHMAN,
RESIDENT OF 22 URBAN CITY COMPLEX, G.S. ROAD, NEAR
INTERNATIONAL (APPOLLO) HOSPITAL, GUWAHATI, ASSAM- 781005.

For the Petitioner(s) : Mr. O. P. Bhati, Advocate

For the Respondent(s) : None

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 24.07.2023

1. This is an application under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator in respect to a dispute which arose

out of an unregistered Lease Deed dated 18.11.2019.

2. A perusal of the said unregistered Deed of Lease reveals that the period of lease was (3 years + 3 Years + 3 Years) = 9 years which was to be renewed at the interval of every 3 years. The Stamp duty so paid on the unregistered Lease Deed was Rs.100/- as could be seen from a perusal of the Annexure-A to the application. However, from a perusal of Article 35(a)(iii) of the Indian Stamp Act, 1899 as applicable to Assam, the duty to be paid to such Lease Deed is the same duty as a conveyance for the consideration equal to the amount or the value of the average annual rent reserved. In a recent Constitution Bench judgment of the Supreme Court in the case of ***N.N. Global Mercantile Pvt. Ltd. Vs. Indo Unique Flame Ltd. reported in (2023) SCC Online SC 495***, it was observed that an instrument which is exigible to stamp duty may contain an Arbitration Clause and which is not stamped, cannot be said to be contract which is enforceable in law within the meaning of Section 2(h) of the Contract Act and is not enforceable under Section 2(g) of the Contract Act. It was further observed that an unstamped instrument, when it is required to be stamped being not a contract and not enforceable in law cannot therefore exist in law. In paragraph No.125 of the majority judgment, it was held that the Provisions of Section 33 and the bar under Section 35 of the Indian Stamp Act applicable to instruments chargeable to stamp duty under Section 3 read with the Schedule to the Stamp Act would render the Arbitration Agreement contained in any instrument as being non-existent in law unless the instrument is validated under the Stamp Act.

3. Taking into account the above, this Court therefore is of the opinion that as

the unregistered Lease Deed in question enclosed as Annexure-A to the application being not adequately stamped as required under the Stamp Act, more particularly as applicable to the State of Assam, the said Arbitration Clause contained in the said unregistered Lease Deed in the opinion of this Court cannot be acted upon in an application under Section 11 of the Arbitration and Conciliation Act, 1996.

4. Accordingly, the instant application therefore is devoid of any merits for which the instant application stands dismissed.

JUDGE

Comparing Assistant