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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION NO.107 OF 2013

Hirachand P. Gulelcha & Anr.	...Applicants
V/s.	
Jagdish B. Mehta & Anr.	...Respondents

Mr.Simil Purohit with Mr.Suraj Iyer, Mr.Rohan Mathur and Mr.Mehul Hiremath i/b Ganesh & Co. for the Applicant.

Mr.Sharan Jagtiani i/b Mr.Lalit Jain for the Respondents.

CORAM : R.D. DHANUKA, J.
DATE : 29TH JULY, 2015.

P.C. :-

1. By this application filed under section 11 of the Arbitration & Conciliation Act, 1996, the applicants seek appointment of the arbitrator by invoking clause 15 of the Memorandum of Understanding (MOU) dated 28th August, 2012. There is no dispute that the arbitration agreement exists between the parties.

2. In view of the objection raised by the respondents about the admissibility of the MOU on the ground of the said document being insufficiently stamped, learned designate of the Hon'ble Chief Justice by an order dated 6th May, 2014 impounded the said MOU dated 28th August, 2012 and directed the applicant to deposit the said document with the Prothonotary & Senior Master of this Court within two weeks from the date of that order. The Prothonotary & Senior Master had been directed to remit the said document to the Collector

of Stamps, Mumbai for adjudication and collection of requisite stamp duty and penalty within three weeks from the date of receipt of the MOU. The learned designate of the Chief Justice directed the Collector of stamps, Mumbai to dispose of the adjudication exercise within twelve weeks of the receipt of the authenticated copy from the Prothonotary & Senior Master of this Court.

3. The said order passed by the learned designate of the Chief Justice was impugned by the applicants before the Supreme Court of India being Special Leave to Appeal (C) No.18050 of 2014. By an order dated 8th January, 2015 passed by the Supreme Court, the said petition for special leave to appeal came to be rejected. The Supreme Court directed the Collector to act as per the directions of the High Court and to take appropriate decision in the matter, including the decision as to who would be liable to make deposit of duty payable in respect of the documents in question. Pursuant to the said order passed by the Supreme Court, the Collector of Stamps has passed an order on 6th May, 2015 and has determined the amount of stamp duty and penalty. In furtherance of the said order passed by the Collector of Stamps, the designate of the Chief Justice by an order dated 3rd July, 2015 directed the respondents to comply with the order passed by the Collector of Stamps and to pay the deficit amount of the stamp duty and penalty on or before 15th July, 2015 and produce a challan before this Court.

4. Mr.Jagtiani, learned counsel for the respondents states that the respondents have challenged the said order passed by the Collector of Stamps dated 6th May, 2015 before the Appellate Authority under the provisions of Maharashtra Stamp Act and the said appeal is pending. He submits that since the said appeal is pending,

the respondents would not be able to pay any stamp duty and penalty as directed by this Court vide order dated 3rd July, 2015.

5. Learned counsel for the respondents states that the respondents have alleged fraud in the affidavit in reply filed in the present proceedings. He submits that the respondents be permitted to allege fraud in the arbitral proceedings before the learned arbitrator and the learned arbitrator shall decide the same. He states that the respondents would not however, raise any issue of jurisdiction under section 16 of the Arbitration & Conciliation Act, 1996 before the learned arbitrator to decide the allegation of fraud. The statement is accepted.

6. In my view, though the respondents had raised an objection about insufficiency of stamps of the said MOU which contained arbitration clause, the respondents have not complied with the order passed by the Collector of Stamps and this Court. In my view, the respondents thus cannot be permitted to raise the issue of insufficiency of stamps or payment of the said stamp duty and penalty in this application for appointment of arbitrator and also in arbitral proceedings.

7. I therefore pass the following order :-

a). Dr.Birendra Saraf, advocate is appointed as the sole arbitrator. Since the respondents have not complied with the order passed by this court, the respondents would not be permitted to raise the issue of insufficiency of stamps before the learned arbitrator.

b). It is made clear that the learned arbitrator would have

jurisdiction to decide the allegations of fraud. The respondents shall not raise any issue of jurisdiction of the learned arbitrator in adjudicating upon the allegations of fraud.

(c). It is made clear that the appeal filed by the respondents before the Appellate Authority under the provisions of the Maharashtra Stamp Act shall be decided on its own merits and in accordance with law. This order would not affect the jurisdiction of the Appellate Authority to dispose of the appeal.

8. The arbitration application is accordingly disposed of in the aforesaid terms. No order as to costs.

(R.D. DHANUKA, J.)