

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA

ARBITRATION APPLICATION No.140 of 2014

DATE: 10.04.2015

Between:

Smt. Gayathri,

Hyderabad and another

... Applicants

And

M/s. Gharonda Builders and Developers,

Rep. by its Managing Partner,

Mr. Sunil J. Sachdev,

Hyderabad.

... Respondent

This Court made the following:

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA

ARBITRATION APPLICATION No.140 of 2014

ORDER:

This is an application for appointment of an Arbitrator under Section 11 (6) of the Arbitration and Conciliation Act, 1996.

There is no dispute in this matter except the following issues:

1. That the arbitration agreement, which is a tripartite agreement, is not enforceable as it is insufficiently stamped; and
2. That the original agreement is not produced as required in terms of the judgment of the Supreme Court in **SMS Tea Estates Private Limited v. Chandmari Tea Company Private Limited.**

I have examined the first issue and it appears to me that it is a tripartite agreement for sale of a flat, not for construction or development of any land or building. Therefore provisions of Stamp Act referred to by the learned lawyer for the respondent does not apply. In my view, Schedule I-A (6) of the Indian Stamp Act, 1899 will be applicable, which reads as under:

Description of Instrument	Proper stamp duty
6. Agreement or Memorandum of an agreement not otherwise provided for: (A) Where the value - a. does not exceed Rs.5,000/- b. exceeds Rs.5,000/- but does not exceed Rs.20,000/- c. exceeds Rs.20,000/- but does not exceed Rs.50,000/- d. exceeds Rs.50,000/-	Ten rupees. Twenty rupees. Fifty rupees. One hundred rupees.

I have seen that Rs.100/- stamp duty has been paid. Since appropriate duty has been paid, the question of payment of insufficient stamp duty does not arise.

As far as the second issue, namely, production of original or certified copy of the agreement, on the strength of the judgment of the Supreme Court in **SMS Tea Estates Private Limited’s case (supra)**, is concerned, I think that this judgment is not applicable to this case, as nothing has been shown that any rule has been framed by this Court requiring production of the original agreement or certified copy thereof. Therefore, this objection is overruled.

In view of the aforesaid observations, I think that the disputes between the parties are required to be adjudicated by the sole arbitration. When I asked for the choice of the Arbitrator, both the learned counsel have agreed for appointment of Sri

B. Nalin Kumar, a learned Member of the Bar, as an arbitrator to adjudicate the disputes.

I, therefore, appoint Sri B. Nalin Kumar, a learned member of the Bar, sole Arbitrator, to adjudicate the disputes between the parties.

The learned Arbitrator will fix his own remuneration upon deliberation and consultation with the parties. He will also fix the costs and expenses of the secretarial assistance for the arbitration proceedings upon deliberation and consultation with the parties. All the costs and expenses of the arbitration proceedings shall be borne by both the parties in equal share. The learned Arbitrator is directed to conclude the arbitration proceedings and make publication of Award within five months from the date of entering upon the reference.

The Arbitration Application is accordingly disposed of.

K.J. SENGUPTA, CJ

Date: 10.04.2015

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