

**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

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CIVIL REVISION PETITION NO.2945 OF 2013

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ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

The petitioners herein are the petitioners in I.A. No.1382 of 2010 in O.S. No.220 of 2010 before the Court of the III Senior Civil Judge, City Civil Court, Hyderabad and the defendants in O.S. No.220 of 2010.

I.A. No.1382 of 2010 was filed, under Section 8(1) of the Arbitration Conciliation Act, requesting the Court below to refer the matter to arbitration per the clause mentioned in the lease deed dated 01.03.2005. By the order under revision, the Court below dismissed the I.A. on the ground that the respondent was not a party to the lease; as the lease deed was unregistered and was inadmissible in evidence; and as the lease agreement does not contain the signature of the respondent, against whom the arbitration reference was sought. There is no document, as contemplated under Section 7(4) of the Arbitration Conciliation Act, from which it may be spelt out that the petitioner and respondents were parties to the said clause. The I.A. was dismissed. Aggrieved thereby the present Revision.

Smt. Manjiri S. Ganu, Learned Counsel for the petitioners, would place reliance on the judgment of the Supreme Court, in **SMS Tea Estates Pvt. Ltd. v. Chandmari Tea Company Pvt. Ltd.**^[1], in support of her submission that the arbitration agreement does not require registration under the Registration Act. She would also place reliance on the judgment of the Delhi High Court in **Bestech India Private Limited v. MGF Developments Ltd.**^[2] and **M/s. Hic India Properties Pvt. Ltd v. M/s. Adidas India Marketing**^[3], in support of her submission that, as the lease was assigned to the respondent by way of attornment, the arbitration clause therein is binding on him. On the other hand, Sri C.N. Murthy, Learned Counsel for the respondent, would rely on the judgment of the Supreme Court, in **Naina Thakkar v. Annapurna Builders** in support of his submission that, as the lease deed is insufficiently stamped,

the arbitration clause mentioned therein cannot even be looked into.

The respondent herein purchased the subject property, by way of registered sale deed dated 15.12.2009, from Ketan Parek with whom the petitioners in this revision had earlier entered into a lease agreement. Clause 11 of the lease deed, entered into between Sri Ketan Parek and the petitioner herein on 01.03.2005, specifically provides that, in the event of the lessor selling the schedule property to a third party, the lessor shall ensure that the tenancy is duly attorned by the new owner/third party; the sale shall be subject to such a condition only; and the lessee shall continue to pay the agreed rent to the new owner/third party.

The sale deed dated 15.12.2009 executed by Sri Ketan Parek in favour of the respondent herein, contains various conditions. Clause 11 records that the vendor has delivered possession of the property to the vendee by way of attornment of the tenancy of the tenant i.e., M/s. Bharathi Cell Limited; the vendee shall be entitled to receive all rents from the said tenant with effect from the date of the sale deed; and the vendee hereby confirms that the vendor has delivered all the related documents, in connection with the lease transaction, to him along with the refundable deposit of an amount of Rs.63,000/-.

The respondent had himself filed a copy of the original lease deed along with the plaint. In view of the law declared by the Supreme Court, in **SMS Estates Pvt. Ltd¹**, the arbitration clause, even in an unregistered lease deed, would remain in force and continue to operate. In **Bestech India Pvt Ltd²**, **M/s. Hicare India Properties Pvt Ltd³**, the Delhi High Court, relied on the judgment of the Supreme Court in **Khardah Company Ltd v. Raymond Company (India) Private Ltd^[5]**, to hold that assignment of a lease would render the arbitration clause mentioned therein applicable even to the assignee. The conclusion of the Court below, to the extent it held that the lease deed was inadmissible in evidence, and it was not a document in the eye of law as it did not contain the signature of the respondent, is erroneous and must be set aside.

The question which would still necessitate examination is whether

lease deed is adequately stamped. In the counter-affidavit filed by them in No.1382 of 2010, the respondent specifically stated that, as the lease deed is improperly stamped, it has no legal existence. In **Naina Thakkar**⁴ the Supreme Court held:

“.....It is true that the consequences provided in the Stamp Act, 1899 must follow where sufficient stamp duty has not been paid on an instrument irrespective of the willingness of a party to the instrument to pay deficit stamp duty but the procedure where the arbitration clause is contained in a document which is not registered although compulsorily registerable and which is not duly stamped as summed up by this Court in *SMS Tea Estates (P) Ltd. case* shall not be applicable to the proceedings under Section 8 of the Act where the party making such application does not express his/her readiness and willingness to pay the deficit stamp duty and the penalty. It is not the duty of the Court to adjourn the suit indefinitely until the defect with reference to deficit stamp duty concerning the arbitration agreement is cured. Accordingly, we are of the opinion that no fault can be found in the order of the trial court in rejecting the application made under Section 8 of the Act as the document on which the petitioner relied upon was admittedly unregistered and insufficiently stamped.....”. (emphasis supplied)

The question, whether the lease deed is adequately or insufficiently stamped, necessitates consideration by the Court below and, in case inadequately stamped, it is only if the petitioners express their readiness and willingness to pay the deficit stamp duty and penalty within the time stipulated, can the defect, with regard to deficit stamp duty concerning the arbitration agreement, be said to have been cured. As the Court below has not considered this aspect, we consider it appropriate to set aside the order under revision and remand the matter to the Court below to examine whether the lease deed is inadequately stamped and, if so, the consequences which would follow therefrom.

The Civil Revision Petition is disposed of accordingly. All other miscellaneous petitions pending, if any, shall also stand disposed of. No costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

Date: 09.03.2015

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^[1] (2009) 1 SCC 392

[\[2\]](#) 161 (2009) DLT 282

[\[3\]](#) Judgment in Arbitration Petition No.370 of 2009 dated 27.04.2010

[\[4\]](#) (2013) 14 SCC 354

[\[5\]](#) 1962 SC 1810