

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELENGANA AND THE STATE OF ANDHARA PRADESH

C.R.P.Nos.1156, 1158, 1159 and 1161 of 2014

Between:

1. Smt.Aruna Sagar and others

.....Petitioners.

and

1. M/s.Shrushti Infrastructure Corporation and others

.....Respondents.

Date of Judgment pronounced : 06-11-2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

1. Whether Reporters of Local newspapers : --

May be allowed to see the judgments?

2. Whether the copies of judgment may be marked : Yes

to Law Reporters/Journals:

3. Whether Their Lordship wishes to see the fair copy : --

Of the Judgment?

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

C.R.P.Nos.1156, 1158, 1159 and 1161 of 2014

%06-11-2015

C.R.P.No.1156 of 2014

#1. Smt.Aruna Sagar and others.Petitioners.

Versus

\$ 1.M/s.Shrushti Infrastructure Corporation and othersRespondents.

C.R.P.No.1158 of 2014

#1. Smt.Aruna Sagar and others.Petitioners.

Versus

\$ 1.M.Ram Reddy and othersRespondents.

C.R.P.No.1158 of 2014

#1. Smt.Aruna Sagar and others.Petitioners.

Versus

\$ 1.M/s.Shrushti Infrastructure Corporation and othersRespondents.

C.R.P.No.1161 of 2014

#1. Smt.Aruna Sagar and others.Petitioners.

Versus

\$ 1.M.Ram Reddy and othersRespondents.

< GIST:

> HEAD NOTE:

!Counsel for petitioners : Sri V.Venkata Ramana

^ Counsel for the R-3 and R-4

in C.R.P.Nos.1156 and 1159 of 2014 : Sri V.L.N.G.K.Murthy, learned counsel for Sri P.Venkata Reddy, counsel

? Cases referred

1. 2002(6) ALD 101
2. 1980(2) ALD 436
3. AIR 1938 Madras 307
4. AIR (33) 1946 Privy Council 51
5. 2007(1) ALD 67
6. 2003(2) ALD 638
7. 2007(6) ALD 781
8. (2011) 14 SCC 66
9. 2013(4) SC 354
10. 2013(4) ALT 24

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION Nos.1156, 1158, 1159 and 1161 of 2014

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COMMON ORDER:

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Since common point arises for consideration in all these Revisions, they are being disposed of by this common order.

2. Petitioners in these Revisions are third parties to O.S.Nos.58 of 2007 and 154 of 2007 on the file of I Additional District Judge, Medak at Sanga Reddy.
3. Both these suits had been filed for specific performance and permanent injunction.
4. O.S.No.58 of 2007 was filed by respondent Nos.1 to 4 in C.R.P.Nos.1156 of 2014 and 1159 of 2014 against 5th respondent therein originally. Thereafter respondent Nos.6 to 14 were impleaded as defendant Nos.2 to 9.

5. O.S.No.154 of 2007 was filed by 1st respondent in C.R.P.Nos.1158 of 2014 and 1161 of 2014 against 2nd respondent therein and respondent Nos.3 to 11 have been impleaded therein subsequently.
6. The subject matter of both these suits is land in Sy.Nos.833, 834, 836, 837 and 838 of Patancheru village, Patancheru Mandal, Medak District. In O.S.No.154 of 2007 only Ac.3.00 is the subject matter while in O.S.No.58 of 2007, Ac.12.415 gts is the subject matter.
7. The petitioners in both these Revisions filed applications I.A.No.397 of 2013 in O.S.No.154 of 2007 and I.A.No.414 of 2013 in O.S.No.58 of 2007 under Order I Rule 10 C.P.C. to implead themselves as defendants in the two suits.
8. One Prathipati Srinivas claiming to be the Special Power of Attorney Holder of petitioners filed I.A.Nos.400 of 2013 in O.S.No.58 of 2007 and I.A.No.398 of 2013 in O.S.No.154 of 2007 under Rule 32 of the Civil Rules of Practice to permit him to appear on behalf of petitioners claiming that petitioners herein had executed an irrevocable General Power of Attorney dt.21-07-2012 in his favour in respect of properties including the properties which are subject matter of the above suits authorising him to pursue all the affairs and issues on behalf of petitioners and that under the said Power of Attorney, he was authorized to file civil and criminal cases against any persons in respect of the property which is subject matter of both the suits. He contended that the said Power of Attorney empowered him to appoint Advocates, to file cases and to represent in pending cases on behalf of petitioners since the petitioners are unable to

personally appear and pursue the matters before the Courts and other authorities.

9. The applications under Rule 32 of the Civil Rules of Practice were opposed by 2nd respondent in C.R.P.No.1158 of 2014, who is 5th respondent in C.R.P.No.1159 of 2014 and also other respondents. They contended that the irrevocable General Power of Attorney dt.21-07-1992 being relied upon by the Power of Attorney Holder requires to be compulsory registered since it is in the nature of an agreement-cum-General Power of Attorney and is inadmissible in evidence. They also contended that Rule 33 of the Civil Rules of Practice was not followed.
10. By separate orders dt.17-02-2014, the I Additional District Judge, Medak at Sanga Reddy dismissed all the applications. The Court below considered the contents of the irrevocable General Power of Attorney dt.21-07-1992 and held that it not only requires registration but it is also insufficiently stamped as per the provisions of the Stamp Act,1899 and in view of Section 35 of the Stamp Act, it is not admissible without paying proper stamp duty and penalty. It held that the irrevocable General Power of Attorney was executed for a consideration and that the petitioners had transferred all their rights in the schedule property to their attorney and also conferred the power of sale upon him apart from declaring extinguishment of their rights over the property. It rejected the contention of the petitioners that the rights conferred on the petitioners in respect of the schedule property were not alienable under Section 54 of the Transfer of

Property Act, 1882 since it deals with future rights and held that Section 17 of the Registration Act, 1908 deals with future rights also. It further held that the irrevocable Power of Attorney requires stamp duty as per Schedule-I Article 48 sub-clause (f) of the Indian Stamp Act, 1899; that Article 48 deals with the Power of Attorney and clause (f) thereof discloses that when given for consideration authorising the attorney to sell any immovable property, it has to be charged with same duty as a conveyance on the amount of consideration, and since the Special General Power of Attorney was executed only on Rs.100/- stamp paper and is inadequately stamped, under Section 35 of the Stamp Act it cannot be looked into for any purpose.

11. Challenging the same, these Revisions are filed.
12. Heard Sri V.Venkata Ramana, learned counsel for petitioners in these Revisions and Sri V.L.N.G.K. Murthy, learned counsel for Sri P.Venkat Reddy, counsel for respondent Nos.3 and 4 in C.R.P.Nos.1156 and 1159 of 2014. Although the names of the counsel for respondents in C.R.P.Nos.1158 and 1161 of 2014 are mentioned in the cause list, on the dates when the Revisions were heard they did not appear or advance arguments. Similar is the case with regard to other respondents other than those represented by Sri P.Venkat Reddy in C.R.P.Nos.1156 and 1159 of 2014. Therefore, it is treated that these respondents had no arguments to address and the matter is heard and decided in their absence.
13. Sri V.Venkata Ramana, learned counsel for petitioners in these Revisions contended that Rule 32 of the Civil Rules of Practice only requires that if a party is represented by an agent, such

agent should seek leave of the Court to represent the party and it is sufficient if the Court is satisfied that the agent was authorised to sign the pleadings. He contended that the question of non-registration and insufficiency of stamp duty of the instrument containing the authorization cannot be gone into by the Court below while deciding whether or not to permit the party to be represented by an agent under Rule 32 of the Civil Rules of Practice and that those issues should be decided only if the document is sought to be adduced *in evidence*. He contended that since there is no dispute as to the subsistence of the irrevocable General Power of Attorney, and since Rule 32 is only a procedural provision intended to ensure that persons unconcerned with the case are not impleaded and allowed to contest a suit, and since most of the times Rule 32 applications are ordered even without any contest, the Court below erred in applying Section 35 of the Stamp Act at the stage of consideration of Rule 32 application and in dismissing the applications seeking permission under Rule 32 . He relied upon the decisions in **Ismath Ahmedizade Mahmoodi Abidi Vs. Kurshidunnisa Begum** and **Tayi Rama Krishna Rao Vs. Pebbu Panchalamma and others**. He alternatively contended that the portion of the irrevocable General Power of Attorney authorising the attorney to file cases in Courts has to be treated as a separate and independent instrument, and as regards this portion of the said document, the bar under Section 35 of the Stamp Act would not be attracted even if it is assumed for the sake of argument that the General Power of Attorney was insufficiently stamped for the main transaction i.e the agreement of sale also dealt with by it.

14. Learned counsel for respondents Sri V.L.N.G.K. Murthy, on the other hand, refuted the above submissions and contended that insufficiently stamped document is inadmissible in evidence *for any purpose* and cannot be admitted even for a collateral purpose. He relied upon the decisions in **Pandivi Satyanandam and others Vs. Paramkusam Nammayya and another, Ram Rattan Vs. Parma Nand, Lakkaraju Radha Krishna Vs. Pyarle Sri Rama Sarma and others, Rachakonda Ramakoteswara Rao and others Vs. Manohar Fuel Centre, Neruducherla, Khammam and another** and **Nookala Krishnaiah (died) and another Vs. Nookala Dakshina Murthy and others**. He further contended that the Supreme Court of India in **SMS Tea Estates Private Limited Vs. Chandmari Tea Company Private Limited** and **Naina Thakkar Vs. Annapurna Builders** has held that even an arbitration clause contained in an insufficiently stamped document cannot be invoked under Section 11 of the Arbitration and Conciliation Act, 1996 to have an arbitrator appointed, and this indicates that even if a single instrument contains more than one transactions, each independent of the other, still, if the instrument is insufficiently stamped, it cannot be relied upon for any purpose.

15. I have noted the submissions of both sides.

16. Rules 32 and 33 of the Civil Rules of Practice states :

“32. Party appearing by Agent:

(1) When a party appears by any agent, other than an advocate, the agent shall, before making of or doing any appearance, application, or act, in or to the Court, file in court the power of attorney, or written authority, thereunto authorizing him or a properly authenticated copy

thereof together with an affidavit that the said authority still subsisting, or, in the case of an agent carrying on a trade or business on behalf of a party, without a written authority, an affidavit stating the residence of his principal, the trade or business carried on by the agent on his behalf and the connection of the same with the subject matter of the suit, and that no other agent is expressly authorized to make or do such appearance, application, or act.

(2) The Judge may thereupon record in writing that the agent is permitted to appear and act on behalf of the party; and unless and until the said permission is granted, no appearance, application, or act, of the agent shall be recognized by the Court.

33. Signing or verification by Agent:

If any proceeding, which under any provision of law or these rules, is required to be signed or verified by a party, is signed or verified by any person on his behalf, a written authority in this behalf signed by the party shall be filed in court, together with an affidavit verifying the signature of the party, and stating the reason of his inability to sign or verify the proceeding, and stating the means of knowledge or the facts set out in the proceeding of the person signing or verifying the same and that such person is a recognized agent of the party as defined by Order III Rule 2 of the Code and is duly authorized and competent so to do”.

17. A Division Bench of this Court in **Natubhai Chotabhai Patel Vs. Smt. Patnam Shakuntala and another** had an occasion to consider whether Rules 32 and 33 of the Civil Rules of Practice are mandatory or not, and whether non-filing of an affidavit by the agent that he is authorized to represent a party as per the said provision and that his authority is still subsisting, is mandatory in all situations. The Bench held that a party is generally represented by an Advocate, but this provision enables an agent other than an advocate to represent the party and it was introduced to discourage the parties to appoint an agent to represent them in Courts other than the legal practitioners. It observed that the words “when a party appears by any agent other than an Advocate” used in Rule 32 indicate

that the authorization is for all purposes including filing of pleadings, examination of the witnesses, marking of the documents and advancing of the arguments, which is generally expected to be performed by an Advocate who is a legal expert in the field. If an agent having such authority represents a party, the Bench held that he may not know the implications and complications of the issues involved in the matter, thereby it is likely to cause injustice to the party. If the party is prepared to take the risk of authorizing an agent, it is an indication that the party is prepared to reap the consequences by appointing an agent, and in order to make sure that the party authorized the agent to represent him in the matter, an affidavit is necessary. It however observed that in cases of authorizing an agent to sign the pleadings *while authorizing a legal practitioner to appear on his behalf*, it is sufficient if the Court is satisfied that he was authorized to sign and in such a case, the filing of an affidavit is not mandatory. It observed that the defect of not filing an affidavit can be cured at a later stage also by convincing the Court that the agent was duly authorized by the respective party in that regard. It distinguished the situation where an agent is authorised to undertake not only signing of the pleadings, adducing of evidence and advancing of arguments, and held that in such a case, the agent shall be permitted in writing and the party has to file an affidavit that he has duly authorized the agent to represent him instead of an Advocate. Thus, the Bench drew a distinction between the situation where the party is represented by an Advocate while he had authorized an agent to sign the pleadings *in contrast to* the situation where an agent is authorised not only to sign the pleadings but also to adduce

evidence and to advance arguments. In the former case, according to the Division Bench it is sufficient that if the Court is satisfied that he was authorised to sign the pleadings and in such a case, the filing of an affidavit is not mandatory, but in the latter case, the party has to file an affidavit that he has duly authorised the agent to represent him instead of an Advocate. The Division Bench thus clarified that Rule 32 of the Civil Rules of Practice is not mandatory in a situation where the agent or General Power of Attorney is authorised only to sign pleadings or to give evidence as a witness.

18. Relying on this decision, learned counsel for petitioners contended that since in the present case the petitioners are represented by an Advocate and since there is authority to sign the pleadings, the provisions of Rule 32 are not mandatory and in any event, the Agent had filed an affidavit as required by Rule 32 and therefore the Court below ought not to have gone into the issue of admissibility of the document on the ground of insufficiency of stamp duty and should have allowed both the applications under Rule 32 of the Civil Rules of Practice and applications under Order I Rule 10 C.P.C. filed by petitioners in both the suits.

19. But the learned counsel for respondents contended that *satisfaction* of the Court mentioned in the above decision can only be done by seeing the General Power of Attorney, and if the General Power of Attorney is inadmissible for want of adequate stamp duty, in view of the bar contained in Section 35 of the Stamp Act, there is no question of permitting the agent to represent the petitioners even at the stage of a Rule 32 petition.

20. Learned counsel for petitioners then relied on the judgment in **Ismath Ahmedizade Mahmoodi** (1 supra) wherein this Court had taken a view that an application under 32 of the Civil Rules of Practice cannot be dismissed on the ground that the General Power of Attorney Holder being a foreigner, he cannot do business in India unless necessary permission was granted by the Reserve Bank of India as mandated by Section 32 of the Foreign Exchange Regulation Act, 1973. In the said decision the Court observed that in an application filed under Rule 32 of the Civil Rules of Practice, the Court has to examine whether the same is in conformity with the provisions of Order 3 of C.P.C. and pass an appropriate orders and that refusing the permission to the General Power of Attorney Holder to appear and act on behalf of defendants only the ground of non-compliance with the requirements of Section 32 of the Foreign Exchange Regulation Act, 1973, is not warranted. The Court held that this is a matter to be gone into in the main suit and it would be premature to express any opinion at the stage of consideration of Rule 32 application.
21. In my opinion, this decision does not deal with a situation as to maintainability of a Rule 32 petition filed by a General Power of Attorney holder which is insufficiently stamped. It therefore cannot be of any assistance to the petitioners.
22. In **Tayi Rama Krishna Rao** (2 supra) cited by the learned counsel for petitioners, a learned Single Judge of this Court took a view that if a document consists of two distinct parts, one of which is chargeable and the other is non-chargeable with stamp duty, the portion which is not chargeable with stamp duty can be

received in evidence, while the other portion which is not stamped, though it is required to be stamped, cannot be received in evidence unless the stamp duty and penalty are paid in compliance with Section 35 of the Indian Stamp Act, 1899. The Court, therefore, took the view that admissibility of each portion has to be decided on its own merits.

23. Section 35 of the Indian Stamp Act, 1899 states :

“Section 35 - Instruments not duly stamped inadmissible in evidence, etc.

No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped :

Provided that--

- (a) any such instrument not being an instrument chargeable with a duty of twenty paise or a mortgage of crop (Article 36(a) of Schedule I-A) chargeable under Clause (aa) or (bb) of Section 3 with a duty of forty paise or a bill of exchange or promissory note, shall subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of [fifteen rupees] or, when ten times the amount of the proper duty or deficient portion thereof exceeds [fifteen rupees] of a sum equal to ten times such duty or portion;*
- (b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him then such receipt shall be admitted in evidence against him, on payment of a penalty of [three rupees] by the person tendering it;*
- (c) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;*

(d) nothing herein contained shall prevent the admission of any instrument in evidence in proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure 1898; [Now Chapters IX and X D of Cr.P.C. 1973;]

(e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act.”

24. A reading of the above provision indicates that it prohibits *the admission in evidence* of an instrument chargeable with duty and that it also prohibits *acting upon such instrument* unless such instrument is duly stamped. In view of the specific language of Section 35, it cannot be said that the bar of admissibility of instruments which are insufficiently stamped is confined only such documents which are sought to be *marked/admitted* in evidence. They cannot also be *acted upon* by any public officer unless such instrument is duly stamped. The words “acted upon”, in my considered opinion, apply to a situation like the present one where the purpose of a party relying on an instrument such as a Power of Attorney which is insufficiently stamped is seeking permission of the Court under Rule 32 of the Civil Rules of Practice to represent the party. In doing so he may not be interested in getting the instrument admitted in evidence. But he certainly wants the document to be *acted upon*.

25. In **Pandivi Satyanandam** (3 supra), a question arose whether a decree in a suit for partition of parties which is not engrossed on proper non-judicial stamp paper is capable of execution when no objection to its executability on the ground of want of proper

stamp was raised for over two years. A Division Bench of Madras High Court held that the decree was not executable unless it was engrossed on non-judicial stamp of proper value and that Section 36 of the Stamp Act, which precludes any subsequent objection of an insufficiently stamped document after it had been admitted in evidence, is inapplicable. The Bench observed that Section 36 deals only with admission of instruments in evidence and in the facts of that case, there is no question of admitting the decree in evidence. Since Section 35 of the Stamp Act prohibits even *acting upon* an instrument insufficiently stamped by any public officer unless it is duly stamped, the decree cannot be executed unless it is engrossed on the stamp paper. The Bench held that the only way in which the decree can be acted upon is by execution and when the party wanted that it should be put in execution, he wanted it to be acted upon and this cannot be done in view of Sec.35 of the Stamp Act.

26. This principle was elaborated in **Ram Rattan** (4 supra). The Privy Council explained that Section 35 of the Indian Stamp Act enacts that no instrument chargeable with duty shall be admitted in evidence for any purpose and rejected the contention that unstamped document can be admitted in evidence *for collateral purpose* i.e. to prove some matter other than a transaction recorded in the instrument. The Privy Council held that a document admitted in proof of some collateral matter is admitted in evidence for that purpose and when the Stamp Act enacts that it shall not be admitted in evidence *for any purpose*, the said words should be given their natural meaning and effect, and cannot be whittled down.

27. Having regard to the above decision of the Privy Council, I am of the opinion that the decision in **Tayi Rama Krishna Rao** (2 supra) cannot be said to be good law and in fact this decision of the Privy Council was not considered by the learned judge who decided it.
28. Similarly the decision in **Lakkaraju Radha Krishna** (5 supra) has to be held to be not correctly decided because even in the said decision, a distinction was made on the ground that a collateral matter would be different from the main transaction in a document, and that for a collateral purpose, the recitals in an insufficiently stamped instrument can be relied upon.
29. In **Rachakonda Ramakoteswara Rao** (6 supra) and **Nookala Krishnaiah** (7 supra) this Court had rightly held that an unstamped document is inadmissible in evidence even for a collateral purpose or collateral matter.
30. Let us now consider a situation where an arbitration clause contained in an instrument not sufficiently stamped can be taken into account to appoint an arbitrator under Sec.11 of the Arbitration and Conciliation Act, 1996.
31. Recently, in **SMS Tea Estates Private Limited** (8 supra), the Supreme Court considered this point. It held that in view of Section 35 of the Stamp Act, unless stamp duty and penalty due in respect of the instrument is paid, the Court cannot act upon the instrument, which means that it cannot act upon the arbitration agreement also which is part of the instrument. It held that if the Court comes to the conclusion that if the instrument is not duly stamped, it has to impound the document and deal with

it as per Section 38 of the Stamp Act, and that the Court cannot act upon such a document or the arbitration clause therein unless the deficit stamp duty and penalty is paid in the manner set out in Sections 35 and 49 of the Stamp Act.

32. The Supreme Court observed that when a contract contains an arbitration agreement, it is a collateral term relating to the resolution of disputes, unrelated to the performance of the contract and arbitration clause. Therefore, an agreement independent of the other terms of the contract or the instrument. It observed that even if the contract or its purpose is terminated or comes to an end on account of repudiation, frustration or breach of contract, the arbitration agreement would survive for the purpose of resolution of disputes arising under or in connection with the contract. But it held that even if this is so, if such arbitration agreement is contained in an insufficiently stamped instrument, such arbitration agreement cannot be invoked by a party unless he pays stamp duty and penalty.

33. It also observed that effect of non-registration of an instrument containing an arbitration clause and held:

“22. We may therefore sum up the procedure to be adopted where the arbitration clause is contained in a document which is not registered (but compulsorily registerable) and which is not duly stamped:

22.1. The court should, before admitting any document into evidence or acting upon such document, examine whether the instrument/document is duly stamped and whether it is an instrument which is compulsorily registerable.

22.2. If the document is found to be not duly stamped, Section 35 of the Stamp Act bars the said document being acted upon. Consequently, even the arbitration clause therein cannot be acted upon. The court should then proceed to impound the document under Section 33 of the Stamp Act and follow the procedure under Sections 35 and 38 of the Stamp Act.

22.3. *If the document is found to be duly stamped, or if the deficit stamp duty and penalty is paid, either before the court or before the Collector (as contemplated in Section 35 or 40 Section of the Stamp Act), and the defect with reference to deficit stamp is cured, the court may treat the document as duly stamped.*

22.4. *Once the document is found to be duly stamped, the court shall proceed to consider whether the document is compulsorily registerable. If the document is found to be not compulsorily registerable, the court can act upon the arbitration agreement, without any impediment.*

22.5. *If the document is not registered, but is compulsorily registerable, having regard to Section 16(1)(a) of the Act, the court can delink the arbitration agreement from the main document, as an agreement independent of the other terms of the document, even if the document itself cannot in any way affect the property or cannot be received as evidence of any transaction affecting such property. The only exception is where the respondent in the application demonstrates that the arbitration agreement is also void and unenforceable, as pointed out in para 15 above. If the respondent raises any objection that the arbitration agreement was invalid, the court will consider the said objection before proceeding to appoint an arbitrator.*

22.6. *Where the document is compulsorily registerable, but is not registered, but the arbitration agreement is valid and separable, what is required to be borne in mind is that the arbitrator appointed in such a matter cannot rely upon the unregistered instrument except for two purposes, that is (a) as evidence of contract in a claim for specific performance, and (b) as evidence of any collateral transaction which does not require registration.”*

34. The above decision was also followed in **Naina Thakkar**

(9 supra) and the above principle was applied even to proceedings under Section 8 of the Arbitration and Conciliation Act, 1996.

35. Thus from the above discussion it is clear that if an instrument is insufficiently stamped it cannot be relied upon *for any purpose* or *for any matter* even if such matter or purpose is *collateral*, in view

of express bar contained in Section 35 of the Stamp Act.

36. Therefore, since the irrevocable General Power of Attorney admittedly authorised the agent to sell the properties comprised therein including the plaint schedule properties and contains recitals which transfer the rights of the executant in favour of the Power of Attorney holder, it is clearly insufficiently stamped since it is typed on Rs.100/- stamp paper. Therefore the Court below was correct in refusing *to act upon* such General Power of Attorney for the purpose of permitting the petitioners to be represented by Sri Prathipati Srinivas, their agent and to implead them on the basis of the said irrevocable General Power of Attorney.
37. Therefore, I do not find any merit in these Revisions and they are accordingly dismissed. However, it is made clear that this will not preclude the petitioners from paying adequate stamp duty and penalty on the General Power of Attorney dt.21-07-1992 or filing another authorization authorizing the agent to represent them and act on their behalf in the suits and filing such applications again under Rule 32 of the Civil Rules of Practice and Order I Rule 10 C.P.C. in both the suits. If either of the said steps are taken by petitioners, the Court below shall consider the applications under Rule 32 Civil Rules of Practice and under Order I Rule 10 C.P.C. in accordance with law and decide the same after hearing both sides. No costs.
38. As a sequel, miscellaneous petitions pending if any, in these Revisions shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 06-11-2015

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