

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

ARBITRATION APPLICATION NO. 308 OF 2014

Kud Realtors Pvt. & Anr.

...Applicants

Versus

Ecorecycling Limited & Ors.

...Respondents

Mr.Ajit Tamhane a/w. Mr.A.M. Khandekar and Mr.Rohan Tamhane i/b M/s. Tamhane & Co. for applicants.

Mr.Nikhil Wadikar a/w. Mr.Chetan Mhatre and Mr.Suyash Gadre i/b M/s. Utangale and Co. for respondent Nos.1 and 2.

CORAM : K.R.SHRIRAM, J.

DATE : 13TH JUNE, 2017

P.C.

1 This is a peculiar case inasmuch as the applicants have filed this application under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of Arbitrator. The respondents have taken a defence that the Agreement is not adequately stamped and, therefore, will not have any evidentiary value under Section 39 of the Indian Stamp Act, 1899. Admittedly, it is the respondents' duty to pay the stamp duty. In the order dated 3rd July 2015, the respondents have made a statement to the Court that if upon adjudication, stamp duty, penalty and registration charges are required to be paid in terms of prayer clause 14, the respondents shall pay within the time prescribed under the provisions of the Maharashtra Stamp Act, 1958. The statement was accepted by the Court. Subsequently, the

agreement has been impounded and the document was sent to the Collector of Stamps under the provisions of Maharashtra Stamp Act, 1958 to adjudicate upon the document and determine the payment of stamp duty, penalty and registration charges. The respondents filed an Appeal against the order of adjudication by the Collector of Stamps which Appeal also has been partly allowed. Against that, the respondents have preferred a Writ Petition which is still pending.

2 The counsel for the respondents states that if the respondents chose not to pay the stamp duty, the applicants should pay the stamp duty and claim the same against the respondents in arbitration proceedings. This is one of the dishonest submission made by any party that I have come across. A party states on oath that it is its obligation under the agreement to pay stamp duty, but also makes a statement to the Court that the stamp duty paid by the respondents is inadequate and raises the defence on the evidentiary value of the agreement. Since the respondents have undertaken to pay the stamp duty, that too, to the Court, the responsibility of the respondents raising the defence of inadequate stamping, cannot be accepted. The fact that there is an agreement and it contains an arbitration clause is also not disputed.

3 In the circumstances, the application is allowed in terms of prayer clause (a).

Hon'ble Shri Justice A.R. Joshi, Judge (Retd.) of this Court is appointed as Arbitrator to decide/adjudicate upon all the disputes/questions between the parties under the Agreement dated 29th June 2011 read with Memorandum of Understanding, dated 1st February 2011.

The fees and expenses of the Arbitrator to be shared equally between the parties and the same will be costs in the Arbitration Proceedings.

4 The Application disposed accordingly.

(K.R. SHRIRAM, J.)