

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 88 OF 2018

Shcova Laboratories Private Limited

..... Petitioner

VERSUS

Kirty Dave & Anr.

..... Respondents

Mr.Pradeep Mahadik for the Petitioner.

Ms.Vaishali Chaudhari for the Respondent no.2.

CORAM : R.D. DHANUKA, J.

DATE : 18th APRIL, 2018

P.C.

By this petition filed under section 14 of the Arbitration and Conciliation Act, 1996 the petitioner seeks an order and declaration that the mandate of the learned arbitrator shall stand terminated, in the event of the failure of the respondent no.2 to produce before the learned arbitrator, the original stamped Memorandum of Understanding dated 22nd November,2013, evidencing the payment of deficit stamp duty and penalty within six weeks from the date of order and for other reliefs.

2. The parties had entered into a Memorandum of Understanding dated 22nd November,2013. The dispute arose between the parties. The respondent no.2 invoked the arbitration agreement recorded in the said Memorandum of Understanding. The arbitral proceedings are going on before the learned arbitrator who is impleaded as respondent no.1. The respondent no.2 has filed a statement of claim before the

learned arbitrator. The petitioner herein has filed written statement and also the counter claim.

3. The matter is at the evidence stage before the learned arbitrator. The evidence of the respondent no.2 is over. The evidence of the petitioner is going on before the learned arbitrator.

4. Learned counsel for the petitioner submits that the said Memorandum of Understanding annexed at page 42 of the arbitration petition is insufficiently stamped and thus the learned arbitrator cannot be allowed to proceed with the ongoing arbitration proceedings till an appropriate amount of stamp duty is paid thereon. Learned counsel placed reliance on the order of adjudication dated 27th February, 2018 passed by the stamping authorities on the said document determining the stamp duty payable as Rs.12 lacs and also imposing penalty.

5. Learned counsel for the respondent no.2 on the other hand submits that the petitioner as well as the respondent no.2 have relied upon the said Memorandum of Understanding before the learned arbitrator. The petitioner has also filed a counter claim based on the said Memorandum of Understanding. She submits that the said Memorandum of Understanding was tendered in evidence by the respondent no.2 before the learned arbitrator at the stage of oral evidence. The said document is already marked as exhibit. No objection was raised by the petitioner about the alleged insufficiency of the stamp duty payable on the said document. She also invited my attention to the affidavit in lieu of examination in chief filed by the

witness of the petitioner relying upon the said Memorandum of Understanding and tendering the said document before the learned arbitrator.

6. Insofar as the order of adjudication passed by the stamping authority is concerned, learned counsel invited my attention to the application dated 26th September, 2017 filed by the petitioner before the stamping authority seeking adjudication of the said Memorandum of Understanding. She submits that the petitioner has committed fraud upon the stamping authority as well as her client by stating in the said application that the stamp duty if any, payable would be paid by the respondent no.2 though respondent no.2 had not applied for adjudication of the stamp duty on the said document. She submits that even in the affidavit in lieu of examination in chief filed by the petitioner before the learned arbitrator, the document described by the petitioner is Business Association Manufacturing Loan License describing the respondent as the licensor and the petitioner as licensee therein. It is submitted that no interest is created in favour of the petitioner under the said Memorandum of Understanding in respect of the property which absolutely is owned by the respondent no.2.

7. It is common ground that the respondent no.2 as well as the petitioner have relied upon the said Memorandum of Understanding before the learned arbitrator and have made their rival claims based on the said document. It is also not in dispute that the said document was already tendered in evidence by the respondent no.2 during the course of the examination in chief. No objection in respect of the

insufficiency of the stamp duty was raised by the petitioner at the time of tendering of the said document by the respondent no.2. The said document is already marked as exhibit. The petitioner himself has relied upon the said Memorandum of Understanding and has tendered along with its evidence in examination in chief. In my view, the objections in respect of the insufficiency of the stamp duty ought to have been raised by the petitioner when the said document was tendered in evidence and not at this stage in this petition.

8. Insofar as submission of the learned counsel for the respondent no.2 that the application dated 26th September,2017 annexed at page 267 of the affidavit in reply is concerned, a perusal of the said application indicates that the said application is admittedly filed by the petitioner during the pendency of the arbitral proceedings before the learned arbitrator. In the said document the petitioner has valued the said property at Rs.5 crores which is contrary to the stand taken by the petitioner in the affidavit in lieu of examination in chief filed before the learned arbitrator. It is surprising that in the said application, the petitioner has mentioned that the stamp duty would be payable by the respondent no.2 though the respondent no.2 had neither applied for adjudication of the said document nor agreed to pay the stamp duty. In my view, the application made for adjudication of the document for the purpose of stamp duty during the course of recording the oral evidence before the learned arbitrator and that also stating that the stamp duty would be payable by the respondent no.2 without any consent or authority of the respondent no.2 is mischievous and is fraudulent. I am thus not inclined to accept the submission of the learned counsel for

the petitioner that the order of adjudication having been already passed by the stamping authority directing the respondent no.2 to pay the stamp duty on the said Memorandum of Understanding, the arbitral proceedings cannot be allowed to be proceeded with and the mandate of the learned arbitrator shall be terminated.

9. In my view, the arbitration petition is thoroughly misconceived and is accordingly dismissed. Learned arbitrator is directed to dispose off the arbitral proceedings expeditiously.

10. The petition is directed to pay Rs.50,000/- to the respondent no.2 within one week from today.

[R.D. DHANUKA, J.]