

Kesang Doma Bhutia, J.– The present appeal is directed against an order passed by a Learned Single Judge in WPA No. 191 of 2021 on 25.01.2022 whereby the Single Judge has been pleased to keep the pending Appeal No. 3/LMR of 2021 under Section 47B of Indian Stamp Act, 1899 read with Rule 7(1) and (2) of the West Bengal Stamp (Prevention of Undervaluation of Instruments) Rules, 2001, filed by the appellant before the learned Divisional Commissioner at Jalpaiguri, in abeyance till the disposal of the Arbitration Proceeding. By the said order the State has been permitted to apply before the Arbitrator for being added as a party respondent to agitate its contention that the assignment deed executed between the lessee and third party LLP is void ab initio inter alia for want of prior permission of the Collector.

After considering the submissions made by learned Counsel for the parties and from the materials in record, there appear to be multiple proceedings, both civil and criminal, initiated by the parties to the present appeal against each other and the subject matter of all those dispute happens to be the Haldibari Tea Estate, situated under Banarhat P.S. in the district of Jalpaiguri and

owned by the Government of West Bengal, recorded in the name of Divisional Commissioner, in Khatian No. 1, J.L. No. 27.

It further, appears the Governor through the Collector, Jalpaiguri has leased out the above Tea Estate to the present respondent no. 1 for a period of thirty years in the year 1995 till the month of November of 2025 on condition that lessee respondent no. 1 cannot transfer the whole or part of the leased Tea Estate to any third party without the prior permission of the Collector, Jalpaiguri.

It has come on record the present respondent no. 1 without the prior permission of the Collector Jalpaiguri appears to have entered into preliminary agreement for sale of the Tea Estate for twenty three crores and fifty lac rupees with one Sushil Mitruka by executing a Term Sheet on 5th of March 2019. Thereafter, said Sushil Mitruka in order to acquire the tea estate formed partnership along with his wife Anita Mitruka and incorporated it as a Limited Liability Partnership Firm under the name and style Haldibari Tea Manufacturers (LLP)/the present appellant on 6.11.2019.

On formation of such Limited Liability Partnership Firm, an agreement for assignment of lease of the Tea Garden was executed

between the present respondent no.1/lessee of the Tea Garden and partnership firm/the appellant on 11.11.2019 in pursuance of earlier executed term sheet or preliminary agreement for sale on 03.05.19.

It also appears the appellant a Limited Liability Partnership Firm was reconstituted on retirement of Anita Mitruka and with the induction of Ruby Mitruka daughter of original two partners of the firm and one Kajal Sarkar on 30.1.2020. That respondent no. 1/ lessee/assignor has terminated the deed of assignment executed on 11.11.2019 on 23.4.2021.

Thus, differences and disputes arose not only between the appellant and respondent no.1 but also between designated partners i.e. Mitruka in one side and Kajal Sarkar alleged designated partner having fifty per cent shares in the appellant firm giving rise to the following multiple proceedings :-

1- Misc. Arbitration Case No. 4 of 2021 under Section 9 of the Arbitration and Conciliation Act, 1996 was filed by the present appellant against the respondent no. 1 seeking interim relief restraining the respondent no. 1 from creating any third party interest over the disputed Tea Estate.

In such proceeding the respondent no. 1 had sought impoundment of unregistered agreement for the assignment of lease of the disputed Tea Estate. After impounding the said document was send to the Collector, Jalpaiguri for assessment of Stamp Duty payable along with the penalty by the learned Commercial Court, Siliguri. Unfortunately, the Collector has refused to assess the stamp duty payable on unregistered agreement of assignment along with penalty by declaring the agreement for assignment to be void ab initio for want of prior permission from the Collector for transfer of the disputed Tea Garden by the present respondent no. 1/ lessee to the present appellant/third party.

However, Commercial Court was pleased to dispose of Misc. Case 4 of 2021 and restrained the present respondent no. 1/lessee/assignor from transferring or creating third party interest over the disputed Tea Garden/ the subject matter of the dispute till conclusion of the Arbitration Proceeding.

2- In Misc. Arbitration Case being no. 5 of 2021 under Section 9 of Arbitration and Conciliation Act, 1996 the present appellant has challenged the letter of termination of agreement of assignment by the present respondent no. 1/Lessee/Assignor on

26.04.2021 and has prayed for declaration that termination to be null and void and not binding upon the Appellant till the disposal of the Arbitration Proceeding.

However, the learned Commercial Court has restrained itself from passing any order as prayed by the present appellant on the ground the possession of the present appellant over the disputed Tea Garden was not decided, but observed that the interest of the present appellant will be protected if the respondent no. 1/lessee/assignor is restrained from creating any third party interest over the Tea Estate or causing encumbrance of the assets and properties and business of disputed Tea Estate till the disposal of Arbitration Proceeding in view of relief granted by it in Misc. Arbitration Case No. 4 of 2021 and thereby disposed of the Misc. Case No. 5 of 2021.

3- Misc. Arbitration Case No. 6 of 2021 under Section 9 of the Arbitration and Conciliation Act, 1996 was filed by Kajal Sarkar one of the designated partners of the present appellant challenging his expulsion from the appellant firm and notice dated 22.7.2020 issued by Sushil Mitruka and Ruby Mitruka the other designated partners of the appellant firm. The learned Commercial Court was pleased to dismiss such Arbitration Case filed by Kajal

Sarkar with the finding that relationship between Kajal Sarkar and the appellant was confined only to pen marks and there is nothing to show any prima facie interest or action of Kajal Sarkar for the benefit of the firm.

From the judgement of the Misc. Case No. 6 of 2021 it is seen that Sushil Mitruka has also filed another proceeding under Section 9 of Arbitration and Conciliation Act, against Kajal Sarkar in the Court of learned District Judge, Darjeeling. But the order which was passed in his favour was later set aside by this Court in Appeal.

4- In C.O. No. 61 of 2021 under Section 11 of the Arbitration and Conciliation Act, 1996 filed by Appellant and on the prayer of the appellant an unregistered agreement for assignment of lease of Huldibari Tea Estate was impounded and was send for assessment to the Collector, Jalpaiguri for the purpose of payment of Stamp Duty thereon. This time the Collector, instead of declining to assess the Stamp Duty, appears to have assessed the market value of the Tea Estate at Rs. 87,26,14,456/-and Stamp Duty payable at the rate of 6 per cent on such market value at Rs. 5,23,56,867/-.

The learned Single Judge in C.O. 61 of 2021 vide order dated 21.12.2021 directed the appellant/Assignee to make payment or deposit the deficit Stamp Duty of Rs. 4, 89,65, 967/- with the Registrar of the Circuit Bench at Jalpaiguri and subjected the same to the decision of the Divisional Commissioner, Jalpaiguri in Appeal No. 3/LMR of 2021 under Section 47B of Indian Stamp Act, 1899 read with Rule 7(1) and (2) of the West Bengal Stamp (Prevention of Undervaluation of Instruments) Rules, 2001. The assessment made by the appellate authority shall be final and agreement for assignment of lease will be admissible in evidence.

Further, the learned Single Judge was pleased to appoint Justice Asok Kumar Ganguly former Judge of the Supreme Court as an Arbitrator to adjudicate the dispute between the parties and thereby disposed of the C.O. No. 61 of 2021.

It is also seen from the body of the order passed in C.O. No. 61 of 2021, that appellant had moved the Supreme Court. The Supreme Court while disposing of the Special Leave Petition No. 12719 and 12720 of 2021 on 20.9.2021 appointed Justice Asok Kumar Ganguly as an Arbitrator to adjudicate the dispute between the Assignor and Assignee in respect of Haldibari Tea Estate.

5- The respondent no.1/lessee/assignor appears to have filed WPA No. 2576 of 2021 challenging the assessment of Stamp Duty payable on unregistered agreement of assignment of lease of Tea Estate without imposing any penalty in terms of Section 35 (a) and Section 40 (1) (b) of Stamp Act, 1899 and such writ petition appears to be pending.

6- It is also seen that respondent no.1/lessee/assignor has filed FMAT 626 of 2021 with CAN 2 of 2022 and FMAT 676 of 2021 with CAN 1 of 2021 against the appellant in respect of a matter arising out of an application under section 17 of the Arbitration and Conciliation Act, 1996. The Division Bench while disposing such Appeals has given liberty to the Arbitral Tribunal to decide the application u/s 17 along with any issue if raised and which has already been decided by the learned court below u/s 9 of the Arbitration and Conciliation Act, afresh without being fettered by any principle of res judicata of matter at the interlocutory stage.

7- It is also seen that the Arbitrator has already initiated hearing of the dispute between the parties in respect of the validity of the agreement for assignment of lease of the disputed tea estate executed by the responded no.1 in favour of the present appellant

on 11.11.2019, the validity of revocation of such agreement by the responded no.1 in the month of April 2021, partners inter se dispute including the matter arising out of FMAT 626 of 2021 with CAN 2 of 2022 and FMAT 676 of 2021 with CAN 1 of 2021.

8- In the Course of hearing CRM(A) 171 of 2022 by this Division Bench on 22.04.2022, it has come to the notice of this Bench that Matigara Police Station initiated Case No. 124 of 2021 dated 22.02.2021 under Sections 465/467/468/471/420/120B of the Indian Penal Code, against Kajal Sarkar which also involves the disputed Tea Garden.

From the above it appears after execution of agreement of assignment of the lease of Tea Estate between the appellant/partnership firm and the respondent no. 1 lessee/assignor on 11.11.2019, disputes and differences arose between them and as such the respondent no.1/lessee/assignor has revoked the assignment agreement dated 11.11.2019 by issuing notice dated 26.04.2021. The assignment agreement having an arbitration clause the dispute between the respondent no.1/ lessee /assignor and the appellant/assignee has been duly referred to the sole Arbitrator.

It is also seen Kajal Sarkar one of the partners of the Appellant Firm has been expelled from the appellant firm and the disputes inter se the partners were referred to the Arbitral Tribunal. Matter relating to impounding and assessment on Stamp Duty without penalty by Collector is also under challenge and pending before Hon'ble Court in WPA No. 2576 of 2021.

By filing the present appeal the Appellant/Assignee has challenged the order passed by the Learned Single Judge in WPA191 of 2022 on 25.01.2022 on following three Grounds:-

(i) That respondent no.1/lessee/assignor has no locus standi to challenge the assessment of Stamp Duty on impounded unregistered agreement for assignment of lease by the Collector or any order that has been passed by the Divisional Commissioner in appeal against the assessment order passed by Collector of Jalpaiguri as in the matter of payment of Stamp Duty the party whose interest have been involved are the State and the assignee/the appellant who was/is liable to pay the amount that would be decided ultimately.

(ii) That the learned Single Judge exceeded its jurisdiction by keeping the Appeal No. 3/LMR of 2021 before the Divisional

Commissioner, Jalpaiguri in abeyance and depriving the Appellant of its right to proceed with the hearing of the Appeal.

(iii) That learned Single Judge committed an error in permitting the State to apply before the Arbitrator for being added as a party.

The respondent no.1 has filed WPA 191 of 2022 challenging the interim orders dated 21.12.2021, 07.01.2022 and 17.01.2022 passed by the Divisional Commissioner in an appeal u/s 47B of the Indian Stamp Duty Act, 1899 (3LMR/2021) preferred by the appellant against the assessment of Market Value of disputed Tea Estate and Stamp Duty payable on the agreement for assignment of lease by the Collector, Jalpaiguri.

Ld. counsel in support of his contention that respondent no.1 has no locus standi to file writ petition against the interim orders passed by the Divisional Commissioner, Jalpaiguri in appeal preferred by the appellant referred to a judgement passed by learned co-ordinate bench in WPO No 108 of 2018 with WPO 109 of 2018 between *Jagjeet Singh Kohli Vs. State of West Bengal and others*, where learned judge held a person shall have no locus standi to file a writ petition if he is not personally affected by the impugned order or his fundamental rights have neither been

directly nor substantially invaded nor there is any imminent danger of rights being invaded or his acquired interest violated ignoring the applicable rules. The relief under Article 226 of the Constitution is based on the existence of a right in favour of the person invoking the jurisdiction.

This court does not dispute with such settled principle of law and observation made by the learned co-ordinate bench in *Jajgit Singh Kohli (supra)*. But fact remains the appellant has failed to file any affidavit-in-opposition against such WPA 191 of 2022 challenging the locus standi of the respondent no. 1 to challenge the orders passed by the Divisional Commissioner in connection of its appeal on 21.12.2021, 07.01.2022 and on 17.01.2022.

Further, the impugned order is totally silent about the appellant making any oral submission before the learned Single Judge challenging the maintainability of WPA 191 of 2022 on the ground the writ petitioner/respondent no.1 has no locus standi to file such writ application. In fact, it is seen the appellant did not raise any issue relating to the locus standi of the respondent no.1 to maintain the writ petition no. 191 of 2022 before the learned Single Judge.

Fact remains, the respondent no.1 is one of the signatories of the impounded document, being the executor of the same and out right it cannot be said that no interest of the respondent no.1 is invaded and cannot say it cannot challenge any action taken in connection of the document to which it is a party.

That apart, it is settled principle of law if a party fails to raise any objection on material issue such as on the point of jurisdiction, or on the locus standi of the petitioner to maintain the case or on the point of maintainability of the lis at the initial stage or at the time of hearing and takes active part in the proceeding without raising any objection on the point of maintainability or on locus standi of the respondent to file such writ petition is barred and prevented from raising such issues for the first time in Appeal. Therefore this Court is of the view that such a plea taken by the appellant at the appellate stage is hit by doctrine of non-traverse which means that where a material averment is passed over without specific denial, it is taken to be admitted. Any allegation touching the root of the case/lis must either be pleaded by filing affidavit in opposition or must be raised at the initial stage of hearing, otherwise it will be deemed to be admitted.

Thus, this Court is of view at this appellate stage the appellant is barred from challenging the locus standi of the respondent no.1 to maintain WPA 191 of 2022.

Consequently, this court does not find any illegality in the order impugned passed by the learned Single Judge, in keeping the appeal under Section 47B of Indian Stamp Act, 1899 in abeyance till the disposal of arbitration proceeding. Such appeal relates to the impounded agreement for assignment of lease, the question of legality of which is pending before an Arbitral Tribunal for determination.

The appellant has contended that the State not being a party to the agreement for assignment of lease dated 11.11.2019 cannot be added as a party in the proceeding pending before Arbitral Tribunal. In the present appeal the subject matter of dispute is Haldibari Tea Estate which is owned by the State of West Bengal which has leased out the same for a period of thirty years to the respondent no. 1 on the condition that the lessee/respondent no. 1 cannot transfer either the whole or any part of the Tea Estate, without obtaining prior permission from the Collector, Jalpaiguri. Admittedly, in the present case the respondent no. 1 without obtaining any prior permission from the Collector, Jalpaiguri had

entered into an agreement for assignment of lease of the Tea Estate in favour of the appellant on 05.03.2019.

From the observations made in the judgements passed by Commercial Court, Siliguri, in different proceedings it appears the appellant after execution of agreement for sale or assignment had invested huge amount of money in the disputed Tea Garden has also cleared certain loan of respondent no.1 to Punjab National Bank. Thus, it is seen the appellant and respondent no. 1 appear to have acted on the unregistered agreement for assignment of lease of Tea Estate owned by the State of West Bengal and that too behind the back of the Government.

It is seen all the disputes between lessee/assignor and LLP/assignee arising out of an agreement for assignment of lease of the tea estate owned by State including stamp duty related matter are pending for adjudication before the Arbitrator. Thus, this court is of view that the State is indeed a necessary party in the pending Arbitration Proceeding, where its property is at stake. For regularization of any kind transfer done legally or illegally in respect of its property, its consent or permission is mandatory. So this court is of the view that without the presence of the State before the Arbitrator, no effective adjudication can be made. Such

view stands supported by the decision of the Hon'ble Supreme Court passed in *Chloro Controls India (P). Ltd. Vs. Severn Trent Water Purification Inc. reported in (2013)1 SCC 641*, where the Hon'ble Supreme Court held, a non- signatory or third party can be subjected to arbitration without his consent, but only in exceptional circumstances. The Hon'ble Supreme Court has been pleased to analysis the term "any person claiming through or under" appearing in section 45 of Arbitration and Conciliation Act, and held the scope of the words "the parties" should be enlarged beyond and include parties who are not signatories to the arbitration agreement and include within its ambit persons who are in a legal relationship through or under multiple party agreements.

Therefore, the ratio of *Pawan Kumar Jain vs. Parduman Jain & Ors. reported in ILR (2005) II Delhi 397, S.N. Prasad, Hitek Industries (Bihar) Limited vs. Monnet Finance Limited &Ors. reported in(2011) 1 Supreme Court Cases 320 and Karamshi Jethabhai Somaiya (Delhi) Trust vs. Anant Raj Agencies Pvt. Ltd. & Ors. reported in2009 SCC Online Del 878*, (referred by the Appellant) where it has been held that a non-party to an arbitration agreement cannot be impleaded as necessary party to

arbitration proceedings stands overruled by *Chloro Control (supra)* the subsequent decision where Hon'ble Supreme Court held that a non-signatory to the arbitration agreement can be impleaded as a party to the arbitration proceeding if it is found that in fact and in law the third party is claiming through or under the signatory party as contemplated under section 45 of the Arbitration Act.

In the present case the subject matter of dispute between the parties to the arbitration agreement is Haldibari Tea Estate owned by the State of West Bengal and whose property is at stake before the Arbitral Tribunal is a necessary party to the pending arbitration proceeding.

Thus, this court holds the learned Single Judge has rightly given liberty to the State to be added as a party in the Arbitration Proceeding, since the State owns the disputed tea garden.

For the foregoing reasons, this court does not find any merit in the present Appeal or any reason to interfere with the findings of the learned Single Judge.

MAT 21 of 2022 with **CAN 1 of 2022 and CAN 2 of 2022** accordingly stand dismissed.

There will be no order as to costs.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I Agree,

(Moushumi Bhattacharya, J.)

(Kesang Doma Bhutia, J.)