

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
(Original Side)

AP 189 of 2022

Reserved on: 01.07.2022
Pronounced on: 05.08.2022

Paridhi Merchandise Private Limited and Ors.

...Petitioner

-Vs-

Debi Kamal Trust Estate and Anr.

...Respondents

Present:-

Mr. Debnath Ghosh,
Mr. S. Dasgupta,
Ms. S. Bose, Advocates

... for the Petitioner

Mr. Dhruva Ghosh, Id. Sr. Adv.
Mr. S. Ghosh,
Mr. D Kundu, Advocates

... for the respondent nos. 1 to 6

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE

Prakash Shrivastava, CJ:

1. This application under Sections 14 and 15 read with Section 11 of the Arbitration and Conciliation Act, 1996 has been filed with the prayer to appoint the sole Arbitrator in place of Mr. Bhaskar Mitra, learned Sole Arbitrator who was appointed earlier.

2. The record reflects that on 16th of February, 2001, applicant had entered into 20 agreements for purchase of certain land. The dispute had arisen between the parties, therefore, by order dated 10th of March, 2010 passed by this Court, Mr. P.K. Malik, learned Senior Advocate was appointed as sole Arbitrator and thereafter, by order dated 13th of May, 2014, Mr. Bhaskar Mitra, learned Advocate, was appointed in place of Mr. P.K. Malik, learned Senior Advocate as sole Arbitrator. The agreements dated 16th of February, 2001 were unstamped and unregistered. The

Arbitrator had passed the order dated 14th of February, 2017 keeping the arbitral reference pending till the process of adjudication of stamp duty and penalty. The respondent had approached this Court by filing AP 208 of 2017 and the learned Single Judge by order dated 26th of April, 2017 had directed the Collector under the Indian Stamp Act, 1899 to immediately assess the stamp duty and further observed that the claimants well have an option to pay the duty penalty, etc. and make the document admissible in evidence by 15th of June, 2017 and the Arbitrator was directed to resume the arbitration on 20th June, 2017 and to proceed with it with due dispatch. The learned Collector, South 24 Parganas had passed the order dated 17th of May, 2017 assessing the deficit stamp duty and penalty. Meanwhile, appeal was preferred by the applicant before the Division Bench against the order of the learned Single Judge and the Division Bench by order dated 4th of December, 2017 in APO 515 of 2017 had noted the applicant's case that the applicant will not pay the balance stamp duty on account of errors or penalty thereon and had observed that the document may not be looked into for any purpose. The Arbitrator, thereafter, had passed the order dated 3rd of July, 2018 concluding the reference. After three and a half years, applicant had filed the application dated 28th of January, 2022 before the Arbitrator to fix the date of hearing. The sole Arbitrator by the order dated 24th of February, 2022 had taken note of the fact that the applicant had not complied with the earlier order and had not paid the deficit stamp duty, therefore, the reference stood terminated and the Arbitrator had no jurisdiction to receive, entertain or try any such subsequent application at the instance of the claimants.

3. Submission of learned counsel for the applicant is that the applicant is not seeking any specific performance of the contract but is only seeking refund of the money paid and damages. He further submits that for a claim of Rs. 1 crore, the applicant cannot be expected to pay the

stamp duty of Rs. 8 crores, therefore, in terms of Section 15 of the Act, the mandate of the Arbitrator be terminated and substitute Arbitrator be appointed.

4. Learned counsel for the respondent has opposed the application and has submitted that no stamp duty has been paid by the applicant and the issue has been concluded by the earlier order of the Division Bench and the arbitral proceedings stood closed long back. Therefore, at this stage, there is no question of terminating the mandate of the Arbitrator or appointing the sole Arbitrator.

5. Having heard learned counsel for the parties and on perusal of the record, it is noticed that undisputedly after the assessment of the stamp duty and penalty by the Collector of stamps by the order dated 17th of May, 2017, the applicant has not cured the defect of deficit payment of stamp duty and penalty.

6. The Division Bench of this Court by the order dated 4th of December, 2017 passed in APO 515 of 2017 had duly considered this aspect of the matter and held as under:

“The appellants do not want specific performance of the contracts. The appellants say that if damages are awarded, the appellants would be satisfied. The appellants are also agreeable to obtain refund of the payments tendered along with interest.

Since the documents pertain to the purchase of an immovable property, they were compulsorily registrable and appropriate stamp duty ought to have been paid thereon. Such documents cannot be looked into for any purpose whatsoever or tendered in evidence in view of, inter alia, Section 35 of the Stamp Act, 1899. Once a document cannot be looked into for any purpose, it just cannot be looked into at all. The appellants cannot ignore that part of the agreements pertaining to the purchase of land and seek damages or refund or interest on the basis of some other clauses contained in the same agreements. If the agreement cannot be looked into, claims founded on the clauses of the agreement are stillborn and cannot be pursued.

By the order impugned dated April, 26, 2017, the arbitrator had been directed to resume the reference on June 20, 2017. The further direction in the order is that if the claimants are unable to produce the stamped documents on June 20, 2017 or thereafter, the arbitrator should proceed as if the documents were unstamped. Since it is now the appellants' positive case that the appellants will not pay the balance stamp duty on account of

arrears or penalty thereon, the documents may not be looked into for any purpose. For whatever its worth, the arbitrator should conclude the reference in accordance with law as expeditiously as possible and without granting any further adjournment to the appellants herein.”

7. The above order clearly reflects that the Division bench considering the same argument which is now being advanced by the applicant, had held that the document may not be looked into for any purpose because the applicant was not ready to pay the balance stamp duty on account of arrears or penalty thereon. In this background, the Division Bench had directed to conclude the reference in accordance with law.

8. The learned Arbitrator following the direction of the Division Bench had concluded the reference on 3rd of July, 2018. The matter stood closed at that stage, therefore, no error has been committed by the learned Arbitrator in passing the order dated 24th of February, 2022 and holding that since the arbitration reference stood terminated, therefore, subsequent applications cannot be entertained. Since the arbitral proceedings were concluded and the reference stood terminated on account of non-payment of the stamp duty and penalty on the agreement in question, therefore, at this stage, the application filed by the applicant under Section 15 of the Act for termination the mandate of the Arbitrator and for appointing substitute Arbitrator cannot be entertained.

9. So far as the reliance of learned counsel for the applicant upon the judgment of the Hon’ble Supreme Court in the matter of **N.N. Global Mercantile Private Limited vs. Indo Unique Flame Limited and Others** reported in **(2021) 4 SCC 379** is concerned, in that judgment also, it has been held that there is no legal impediment to the enforceability of the arbitration agreement pending payment of stamp duty on the substantive contract but the adjudication of the rights and applications under the underlying substantive contract cannot be proceeded before deficit stamp duty is paid in accordance with law. That apart, the issue stood concluded in the present case by the order of the

Division bench dated 4th of December, 2017 in AP 515 of 2017 as the same order was not challenged any further.

10. In view of the above factual and legal position, I find no merit in the present application which is accordingly dismissed.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

Later,

After this order was pronounced, a prayer was made by learned counsel for the applicant for staying this order for 10 days.

I find no ground to accept such a prayer. Accordingly, the prayer is rejected.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

Kolkata
05.08.2022

PA(RB)

(A.F.R. / N.A.F.R.)