

20.12.2023

ct. no. 654

sl. No. 11

sn

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

**RVW 152 of 2023
(CAN 1 of 2023, CAN 2 of 2023 & CAN 3 of 2023)
With
C.O.2545 of 2022**

**M.D. Creations & Ors.
versus
Ashok Kumar Gupta**

Mr. Rahul Karmakar

Mr. Sounak Mukherjee

Mr. S.K. Podder

... for the petitioners

Ms. Monika Kalra

Mr. Farhan Gaffar

..for the opposite party

This matter was heard on 8th September, 2023 and the judgment was reserved.

On an application filed by the opposite party for expeditious disposal of the review application being CAN 3 of 2023, this matter is listed today.

This review application has been filed challenging the judgment dated 9th June, 2023 passed in C.O. 2545 of 2022.

The brief fact of the case is that the petitioner filed an application before the learned Arbitrator under Section 16 of the Arbitration & Conciliation Act, 1996 raising objection to the jurisdiction of the Arbitrator on the ground that the arbitration agreement is unstamped and cannot be acted upon. The application of the petitioner under Section 16 of the Act was dismissed by

the learned Arbitrator. Challenging such order of dismissal, the petitioner filed Civil Revision being no. 2545 of 2022. The said Civil Revision was dismissed as not maintainable. Hence, this review petition on the ground of error apparent on the face of record.

Mr. Rahul Karmakar, learned advocate for the petitioner referring to the decision of Hon'ble Supreme Court in ***N.N. Global Mercantile Private Limited versus M/s. Indo Unique Flame Limited & Another*** reported in ***(2023) 7 SCC 1 2023*** submitted that unstamped document is non-est and non-existent in the eye of law. As such arbitration proceeding carried on the basis of a non-est and non-existent document is in itself a patent inherent lack of jurisdiction. Hence, the judgment passed in the Civil Revision is an error apparent on the face of the record inasmuch as the Hon'ble Single Bench has been oblivion of the reference answered by Hon'ble Supreme Court in its aforesaid decision that an unstamped document is non-est and non-existent. He also submitted that when there is a mistake or error apparent on the face of record the same can be corrected by way of review and he relied on the following decisions:

- i. ***Surjit Singh and Others versus Union of India and Others*** reported in ***(1997) 10 SCC 592***,

- ii. ***Board of Control for Cricket of India and Another versus Netaji Cricket Club and Others*** reported in ***(2005) 4 SCC 741***,
- iii. ***Tinkari Sen and Others versus Dulal Chandra Das and Others*** reported in ***AIR 1967 Cal 518***.

In the light of his aforesaid submissions, he prays for modification and/or setting aside the judgment passed in Civil Revisional application being C.O.2545 of 2022, on the score until and unless such arbitration agreement is properly stamped the Arbitrator has no jurisdiction to proceed with the arbitration.

Mr. Farhan Gaffar, learned advocate appearing for the opposite party submits for expeditious disposal of the review application since due to pendency of the review petition the proceeding before the Arbitrator is held up. He also submits that the proposition in *N.N. Global Mercantile Private Limited (supra)* has been overruled by Seven Judges Bench of Hon'ble Supreme Court in ***Re: Interplay Between Arbitration Agreement Under The Arbitration and Conciliation Act 1996 and The Indian Stamp Act 1899*** reported in ***(2023) SCC OnLine SC 1666***.

There is no quarrel that on the ground of error apparent on the face of the record, review of judgment can be considered and entertained as has been submitted by Mr. Karmakar, learned advocate for the

petitioner relying on *Surjit Singh (supra)*, *Board of Control for Cricket of India (supra)* and *Tinkari Sen (supra)*.

Now it is to be seen whether there is any error apparent on the face of the record.

Precisely, the petitioner in the review petition has challenged the judgment passed in C.O. 2545 of 2022 on the ground that the arbitration agreement being unstamped is non-existent and non-est in the eye of law which in itself is an inherent lacking in jurisdiction referring to *N.N. Global Mercantile Private Limited (supra)*. In a recent decision of Seven Judges Bench of the Hon'ble Supreme Court passed in *Re: Interplay Between Arbitration Agreement Under The Arbitration and Conciliation Act 1996 and The Indian Stamp Act 1899*, the decision passed in *N.N. Global Mercantile Private Limited (supra)* has been overruled with the following conclusion:-

- “a. Agreements which are not stamped or are inadequately stamped are inadmissible in evidence under Section 35 of the Stamp Act. Such agreements are not rendered void or void ab initio or unenforceable;*
- b. Non-stamping or inadequate stamping is a curable defect;*
- c. An objection as to stamping does not fall for determination under Sections 8 or 11 of the Arbitration Act. The concerned court must examine whether the arbitration agreement prima facie exists;*
- d. Any objections in relation to the stamping of the agreement fall within the ambit of the arbitral tribunal; and*

e. The decision in NN Global 2 (supra) and SMS Tea Estates (supra) are overruled. Paragraphs 22 and 29 of Garware Wall Ropes (supra) are overruled to that extent.”

The learned Arbitrator having reliance to Section 35 of the Stamp Act, 1899 has kept the issue raised with regard to unstamped document open since such defect is curable upon payment of deficit stamp duty and held that the instrument not duly stamped cannot be adduced as evidence.

The Hon’ble Supreme Court in the aforesaid decision has held that agreements which are not stamped or are inadequately stamped are inadmissible in evidence under Section 35 of the Stamp Act. Such agreements are not rendered void or void *ab initio* or unenforceable. Non-stamping or inadequate stamping is a curable defect.

In view of the decision of Seven-Judges Bench of the Hon’ble Supreme Court as above, the review petition fall short of merit. Accordingly, the review petition stands dismissed.

All connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

Urgent photostat copy of this order, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)