O.A.Nos.786, 814, 815 and 817 of 2023

C.SARAVANAN, J.

By this common order, all these applications are being disposed of.

2.Original Application Nos.814, 815 and 817 are not maintainable, as they have been filed by a third party who has no contract with the respondent with the applicant in O.A.No.786 of 2023. These applications are therefore closed in the light of the well settled principles of law that Section 9 application by a party who is stranger to the agreement cannot invoke to Section 9 of the Arbitration and Conciliation Act, 1996. Accordingly, Original Application Nos.814, 815 and 817 of 2023 are dismissed as not maintainable.

3.As far as Original Application No.786 of 2023 is concerned, the applicant (respondent in the other applications) has prayed for an injunction to restrain the respondent, representatives, employees, agents and any person claiming through them, from entering the premises/operating the bar and permitting outsiders/third parties to enter the bar at Hotel Abu Palace at No.926, Poonamallee High Road, Chennai – 600 084.

4.The arrangement between the applicant and the respondent in O.A.No.786 of 2023, if governed by a Memorandum of Agreement to run the Pub/Bar entered into between them on 15.05.2018. The Memorandum of Agreement is for running a Pub/Bar. However, the said Memorandum of Agreement dated 15.05.2018 appears to be a lease agreement for a period of five years as is evident from Clause 25, 47 and 50 of the said agreement which read as under:-

> "25.The First Party shall give possession of the premises (approximately 7500 Sq.Ft) more fully described in the schedule hereunder today itself so that the Second Party can commence their work of furnishing the premises in compliance with the standard of running of modern Pub/Bar. The interior and exterior of the premises would be done exclusively by the Second Party whereas the work for the lift area would be done by the First Party and would be done to

the specifications told by the Second Party."

47.This MOU can only be terminated by the First Party by giving sufficient Notice and after proper enquiry is affected by a committee formed by both parties provided the Second Party conducts the pub diligently and brings satisfactory revenue from the Facility and does not deviate from the terms of this Agreement. The **Lease period** is for a minimum 5 years and commences from 01.05.2018 to 30.04.2023. The lock in period shall be 3 years. After expiry of the lease deed and if the **lease** is not extended and if the Second Party illegally runs the Pub 200% rent agreed will be charged.

50.The Pub/Bar will be used for specific purpose and not for any other purpose where agreed mutually. Alcoholic beverages will not be served out of permit room. Violation of the Alcohol Consumption Rule for the said premises will result in the immediate termination of the lease agreement. If any immoral or illegal activities are found inside and out side of the leased area the agreement will be terminated and three months rent will be deducted from the security deposit."

5.The arrangement between the applicant and the respondent is for a period of five years. Clause 47 and 50 of the Memorandum of Agreement to run the Pub/Bar dated 15.05.2018 make it clear that there is a lease agreement coupled with an obligation to run and operate a bar.

6.The lease period is for a minimum of five years commences from 01.05.2018 to 30.04.2023 with a lock in period of three years. In case, there is no renewal of the arrangement (lease arrangement), running of the bar by the respondent is to be treated as illegal and the respondent in O.A.No.786 of 2023 has to pay 200% of the agreed rent to applicant during such period between them under the aforesaid Memorandum of Agreement to run the Pub/Bar.

7.Clause 20 of the said agreement enjoins the respondent to not in any way of sublet, underlet or assign any part or whole of the demised premises without the earlier written consent of the applicant herein.

8.The respondent on the other hand had entered into an agreement visiting their rights to operate the Pub/Bar with the applicant in Application Nos.814, 815 and 817 of 2023. As far as departments are concerned, agreement contemplates resolution of dispute through the Arbitration. Relevant clause reads as under:-

> 56.In the event, any dispute arises relating to any of the terms contained herein, the dispute shall be referred to arbitration by a sole arbitrator to be nominated by First Party. The provisions of the Arbitration and Conciliation Act, 1996 as amended from time to time shall apply to the arbitration proceedings. The venue of arbitration shall be Chennai, and the language of the arbitration proceedings shall be English.

9.Clearly, the agreement is a lease agreement and is understamped. In the light of the Hon'ble Supreme Court in ***N.N.Global Mercantile Private Limited*** Vs. ***Indo Unique Flame Limited and others*** [(2023) 7 SCC 1], there is no agreement in force.

10.As per the decision of the Hon'ble Supreme Court in ***N.N.Global Mercantile Private Limited*** Vs. ***Indo Unique Flame Limited and others*** [(2023) 7 SCC 1], the arbitration agreement will not survive till proper stamp duty is paid. It is however curable defect. Proper stamp duty can be paid. Under these circumstances, the applicant in O.A.No.786 of 2023 is directed to surrender the original copy of the Memorandum of Agreement dated 15.05.2018 to run the Pub/Bar with the Registrar of this High Court for determination and payment of deficit stamp duty and penalty under the provisions of the Indian Stamp Act.

11.The Registrar shall send the said Memorandum of Agreement dated 15.05.2018 to District Collector for adjudication of proper Stamp Duty. The applicant shall pay the Stamp Duty and penalty as may be adjudicated.

12.At this stage, the parties have consented for appointment of Hon'ble Mr.Justice V.Parthiban, (Retired), Judge, Madras High Court, as the sole arbitrator. The Hon'ble Mr.Justice V.Parthiban, (Retired), Judge, Madras High Court shall enter appearance and decide the dispute in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The Award to be passed by the Hon'ble Mr.Justice V.Parthiban, (Retired), Judge, Madras High Court shall be enforced only after appropriate stamp duty and penalty is paid by the applicant in O.A.No.786 of 2023.

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These cases are listed under the caption 'for being mentioned'.

2. It was informed that whenever an instrument is found under-stamped and is sent to the District Collector for adjudication of deficit stamp duty and for levy of penalty, there is inevitable delay of the Court proceedings.

3. It is submitted that the power of adjudication of deficit stamp duty and penalty can be ordered by this Court on documents impounded under Section 33(2)(b) of the Indian Stamp Act, 1899. This is permissible under the Scheme of Indian Stamp Act, 1899.

4. Before proceeding further with the discussion, it may be useful to keep in mind to the views expressed by the Larger Bench of the Hon'ble Supreme Court in **Curative Petition (Civil) No.44 of 2023** in

Review Petition (Civil) No.704 of 2021 in **Civil Appeal No.1599 of 2020** on 13.11.2023. It has been clarified as follows:-

> 224. *The conclusions reached in this judgment are summarised below:*
>
> *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".*

5. In **Chilakuri Gangulappa** Vs. **Revenue Divisional Officer,**

Madanpalle and another, AIR 2001 SC 1321, 2001(4) SCC 197, the Hon'ble Supreme Court held that when a Civil Court finds that a document is insufficiently stamped, it shall offer an opportunity to the person producing such document to pay difference in stamp duty together with penalty for taking adjudicatory steps. The Hon'ble Supreme Court observed that the Civil Court shall forward original document to the Collector for adjudication on question of deficiency of stamp duty only if person producing the document is unwilling to pay difference in stamp duty together with penalty.

6. The underlying view of the Hon'ble Supreme Court in the above case can be explained by referring the scheme of the Indian Stamp Act, 1899.

7. Under Section 33(1) of the Indian Stamp Act, 1899, the specified Officer before whom any instrument, chargeable to duty is produced, is of the opinion that such an instrument is under stamped, he

can impound such under-stamped instrument. The Officers specified in Section 33(1) of the Indian Stamp Act, 1899 are:

i. a person having Authority by law to receive evidence **like Court of laws or Tribunal and quasi judicial officer etc**; or
ii. a person authorised to receive evidence with the consent of the parties **like the arbitrators/ mediators etc**; and
iii. by every person in charge of public office, except an Officer of Police.

8. Section 33(2) of the Indian Stamp Act, 1899 enjoins such a person referred to in Section 33(1) of the Indian Stamp Act, 1899 to examine every instrument so chargeable and so produced or coming before him, to ascertain whether it is stamped with a stamp of the value and description required by the law in force in India when such instrument was executed or first executed.

9. Under Clause (b) to proviso to Section 33(2) of the Indian Stamp Act, 1899, the Judge of a High Court can be delegate the power

to such officer as the Court appoints in this behalf. Thus, the Court has to appoint such a person in this behalf. Proviso to Section 33(2) of the Indian Stamp Act, 1899 reads as under:-

> *Provided that—*
>
> *(a) nothing herein contained shall be deemed to require any Magistrate of Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (V of 1989);*
>
> *(b**) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf**."*

10. Thus, a Judge of the High Court can either examine and impound an under stamped instrument produced in the course of a judicial proceeding and/or can delegate such power to such an officer of the Court in this behalf.

11. Under Section 35 of the Indian Stamp Act, 1899, no instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or the consent of parties to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped.

12. Few the exceptions are provided in proviso to Section 35 of the Indian Stamp Act, 1899. Proviso to Section 35 of the Indian Stamp Act, 1899 reads as under:-

> *"Provided that-*
>
> *(a) any such instrument not being an instrument chargeable with a duty not exceeding twenty paise only, or a mortgage of crop (Article 41(a) of Schedule I) chargeable under Section 3 with a duty of fifty paise or a bill of exchange or promissory note, shall subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;*
>
> *(b) where any person from whom a stamped*

receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;

(c) Where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;

(d) nothing herein contained shall prevent the admission of any instrument in evidence in proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure 1898 (V of 1898);

(e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government, or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act.”

13. Section 38 of the Indian Stamp Act, 1899 provides for a procedure after impounding of an instrument. A reading of Section 38 of the Indian Stamp Act, 1899 indicates that there is no impediment to

collect stamp duty and/or levy penalty by a person impounding an under-stamped instrument that is produced before him.

14. As per Section 38 of the Indian Stamp Act, 1899, the person impounding an under stamped instrument under section 33 who admits such instrument in evidence upon payment of a penalty as provided by section 35 or of duty as provided by section 37 of the Act is merely required to send to the Collector an authenticated copy of such instrument, **together with a certificate in writing, stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf**.

15. Section 38 of the Indian Stamp Act, 1899 reads as under:-

Section 38. *Instruments impounded how dealt with.—*

(1) Where the person impounding an instrument under section 33 has by law or consent of parties authority to receive evidence and admits such

instrument in evidence upon payment of a penalty as provided by section 35 or of duty as provided by section 37, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.

(2) In every other case, the person so impounding an instrument shall send it in original to the Collector.

16. Therefore, for the sake of uniformity and proper order, Registry is directed to obtain an administrative order from the Hon'ble Chief Justice appointing a senior officer of this Court on this behalf for delegating the power to examine and impound an under-stamped instrument for collection of deficit stamp duty and for levy of penalty and for sending the amount collected and for sending the authenticated copy of such instrument to the Collector under Section 38 of the Indian Stamp Act, 1899.

28.03.2024

JEN / KKD

C.SARAVANAN, J.
JEN/KKD

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