



CR No. 6693 of 2023(O&M)

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**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

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CR No. 6693 of 2023 (O&M)

Reserved on 03.04.2024

Date of decision : 24.05.2024

Quadrant Televentures Limited

... Petitioner

Vs.

ATC Telecom Infrastructure Pvt. Ltd.

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Akshay Bhan, Senior Advocate with
Mr. Harsh Vasu Gupta, Advocate,
Mr. Sumit Puri, Advocate and
Ms. Anjali Sheoran, Advocate for the petitioner.

Mr. Ashok Aggarwal, Senior Advocate with
Mr. Nilesh Bhardwaj, Advocate
Mr. Yadwinder Singh, Advocate
Mr. Shrenik Jain, Advocate
Mr. Vaibhav Gupta, Advocate
Mr. Amit Aggarwal, Advocate and
Mr. Hari Pal, Advocate for the respondents.

SUVIR SEHGAL J.

1. Petitioner has approached this Court, under Article 226/227 of the Constitution of India, for setting aside order dated 02.11.2023, Annexure P-1, passed by the learned Additional District Judge, SAS Nagar, Mohali in EXE-578-2021, whereby its application for impounding of arbitral award, dated 25.05.2019, Annexure P-2, and rejection of the execution petition, has been dismissed.



2. Factual matrix leading to the filing of the petition is that pursuant to some disputes between the parties, matter was referred for determination to Mr. Justice (Retd.) Ajit Parkash Shah, as an Arbitrator, who passed award dated 25.05.2019, Annexure P-2. Petitioner filed objections under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Arbitration Act') before the High Court of Delhi and the respondent filed a petition under Section 36 of the Arbitration Act for enforcement of the award. Petitioner, who was on caveat, appeared and filed an affidavit that it does not possess any assets within the territorial jurisdiction of the High Court at Delhi. On an application moved by the respondent, it was granted permission to withdraw the execution petition by order dated 26.02.2021, Annexure P-5 with liberty to file the application for enforcement of the award before the court having jurisdiction where the assets of the petitioner are located. A fresh execution petition, Annexure P-6 was filed by the respondent before the courts at SAS Nagar, Mohali. Petitioner filed an application dated 17.05.2023, Annexure P-10 under Section 33 of the Indian Stamp Act, 1899 (for short 'the Stamp Act') for impounding of the arbitral award, Annexure P-2 and the rejection of the execution petition. The respondent filed reply, Annexure P-11 and the petitioner filed rejoinder, Annexure P-12. By order dated 02.09.2023, Annexure P-13, Executing Court dismissed the application. A revision petition bearing CR No.5700 of 2023 was filed wherein order dated 17.10.2023. Annexure P-14, was passed by this Court upon a consensus between the parties and the matter was remanded back to the Executing Court with a



direction to decide it afresh after hearing both the parties and by passing a speaking order. Thereafter, a fresh order, Annexure P-1, has been passed by the Executing Court rejecting the application, which is under challenge in the present petition.

3. Learned senior counsel representing the petitioner has referred to the various provisions of the Arbitration Act and the Stamp Act. It has been argued by him that as the award, Annexure P-2, was insufficiently stamped, it was the mandatory duty of the Executing Court to have impounded it. Reliance has been placed by it upon the judgments in *M. Anasuya Devi and another Versus M. Manik Reddy and others*, (2003) 8 SCC 565; *Hyder Consulting (U.K.) Limited versus Governor, State of Orissa* (2015) 2 SCC 189; *Delhi Airport Metro Express Private Limited Versus Delhi Metro Rail Corporation*, (2022) 9 SCC 286 and; *In Re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899*, 2023 SCC Online 1666 as well as in *Mangalore Ganesh Beddi Works Versus CIT*; (2005) 2 SCC 329.

4. While supporting the impugned order, learned Senior counsel representing the respondent has urged that the award is sufficiently stamped and interest has to be excluded while calculating the stamp duty. Reliance has been placed by him upon *Bihar State Housing Board Versus Atma Ram Shah*, 1997(1) PLJR 130; *Barisal Rindan Samiti Versus Sital Chandra Mukhopadya*, AIR 1930 Calcutta 630; and *J.M.A. Raju Versus Krishnamurthy Bhatt* 1975 SCC Online Gujarat 106.



5. I have heard counsel for the parties and considered their respective submissions besides examining the documents appended with the paper book.

6. The provisions of the Stamp Act came up for interpretation before the Constitution Bench of the Supreme Court in ***Re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899*** and it was observed as under:--

“38. *The legislature recognized that the mandate of the Stamp Act may not be complied with because of the reasons listed in the preceding paragraph or otherwise. It was in recognition of this fact that the provisions in Chapter IV were enacted. Section 33 provides that every person who has authority to receive evidence (either by law or by consent of parties) shall impound an instrument which is, in their opinion, chargeable with duty but which appears to be not duly stamped. The power under Section 33 may be exercised when an instrument is produced before the authority or when they come across it in the performance of their functions. Persons in charge of public office except police officers are similarly empowered under Section 33,.....”*

7. The Supreme Court arrived at the following conclusion:-

"234. *The conclusions reached in this judgment are summarized 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 objection 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."

8. It is clear that the Stamp Act is a fiscal measure and its stringent provisions are meant to protect the interest of the revenue. It cannot be used as a weapon by a litigant to defeat the cause of the opponent. Any document which is inadequately stamped is neither void nor voidable nor is it unenforceable. Supreme Court has held that non-stamping or inadequate stamping is a curable defect and it is for the Court or the Collector, where the document is produced, to examine as to whether the document is sufficiently stamped or not. As the impugned order was passed prior to the judgment of



the Supreme Court, the Executing Court did not have the benefit of the judgment of the Apex Court.

9. Interpreting the provisions of Sections 34 and 36 of the Arbitration Act, Supreme Court in ***M. Anasuya Devi*** 's case (supra) has held that an application for setting aside an arbitration award would lie only on the grounds specified in Section 34. The question as to whether the award is required to be stamped and registered is relevant only when the parties file the award for its enforcement under Section 36 of the Act. It is at this stage that the parties can raise the objections regarding its admissibility on account of non-registration and non-stamping under Section 17 of the Registration Act, 1908. Therefore, an objection can always be raised regarding inadequacy of the stamp duty affixed on the award at the stage of its execution. In ***Shri Ram City Union Finance Limited Veruss Mr. Dayanand Donald and others***, 2022 ILR (Karnataka) 4049, it has been held that the instruments can be stamped before or at the time of the execution of the award.

10. In view of the interpretation given to the provisions of the Arbitration Act and the Stamp Act, it was therefore, the bounden duty of the Executing Court to determine as to whether the award was sufficiently stamped, more so when an objection in this regard was raised by the party resisting the award. At this stage, in case, the Executing Court comes to the conclusion that the award is inadequately stamped, an option has to be given to the party relying upon the award to deposit the balance stamp duty and penalty, if any, in terms of the provisions of the Stamp Act. However, by not



examining the stamp duty paid on the award, the Executing Court failed to discharge the duty imposed upon it by the statute. For this reason alone, the impugned order passed by the Executing Court cannot be sustained and deserves to be set aside.

11. As the Executing Court has failed to exercise the power vested in it, this Court is of the view that the matter deserves to be remitted to examine the document and the stamp duty paid on it to arrive at the conclusion whether it has been sufficiently stamped and in case, it comes to the conclusion that the award is inadequately stamped, it should proceed further in accordance with law.

12. Accordingly, impugned order is set aside. Matter is remitted to the Executing Court for fresh decision of the application, Annexure P-10 after hearing the parties. Parties are directed to appear before the Executing Court on 10.07.2024 at 10:00 am for further proceedings in accordance with law. Executing Court shall dispose of the application as expeditiously as possible, preferably within three months from the date of appearance of the parties.

13. Revision petition is disposed of.

14. All pending applications are also disposed of.

24.05.2024

pooja saini

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No