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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 16th JANUARY, 2024

IN THE MATTER OF:

+ **W.P.(C) 9291/2023 & CM APPL. 35374/2023**

MRS VINNU GOEL

..... Petitioner

Through: Ms. Kanika Agnihotri, Mr. Shaurya Rohit, Mr. Gandharv Garg, Advocates.

versus

DEPUTY COMMISSIONER STAMP REGISTRATION & ORS.

..... Respondents

Through: Mr. Ajay Verma, Sr. Advocate with Mr. Ishaan Verma and Ms. Diviani K. Verma, Advocates for R-3.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

1. Petitioner has approached this Court with the following prayers:

“(a) Declare that the Memorandum of Understanding dated 12.11.2014 has been incorrectly and insufficiently stamped/endorsed by the Respondent No.1 on 18.04.2016;

(b) Declare the stamping/endorsing done by the Respondent No.1 on 18.04.2016 as non-est in the eyes of law and set aside the same;

(c) Pass any other, further order(s) as this Hon'ble Court may deem fit and proper in favour of the Petitioner and against the Respondents.”



2. As far as prayer (b) of the Petitioner is concerned, the same cannot be granted in view of the judgment passed by the Seven Judges Bench of the Apex Court in Re : Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899; 2023 SCC OnLine SC 1666, wherein the Seven Judges Bench has held that the 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 or that Non-stamping or inadequate stamping is a curable defect.

3. As far as prayer (a) of the Petitioner is concerned, it is necessary to clear certain facts. The Petitioner is a plaintiff in CS (OS) No. 371/2017, which is a suit for declaration of the Memorandum of Understanding dated 12.11.2014, which is purported to be signed between Defendant Nos.1-3 and the Plaintiff, as null and void as well as partition of the suit properties. An application under Section 8 of the Arbitration & Conciliation Act was filed in CS (OS) No. 371/2017 by Respondents No.2 & 3 herein praying that the parties to the said suit be referred to arbitration in view of the MOU dated 12.11.2014. The said application was decided on 08.08.2023. In the said application the Petitioner herein had raised a contention that the MOU seeks to create rights in the properties which would amount to conveyance under the Stamp Act 1899 (*hereinafter referred to as the "Indian Stamp Act"*), requiring stamping on an ad valorem basis. The Petitioner herein had also placed reliance on the judgment passed by the Five Judges Bench of the Apex Court in N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd., (2021) 4 SCC 379, to state that the MoU cannot be acted upon. The



contention of the Petitioner herein was rejected by the Coordinate Bench of this Court on various grounds. Judgment of the learned Single Judge of this Court is a subject matter of an LPA which is pending before the Division Bench of this Court.

4. It is stated by the learned Counsel for the Petitioner that prayer (a) of the present Writ Petition which is for a declaration that the Memorandum of Understanding dated 12.11.2014 has been incorrectly and insufficiently stamped/endorsed by the Respondent No.1 on 18.04.2016 is maintainable because it is the duty of the authorities to adjudicate as to whether the document has been properly stamped and the writ that is sought for is for a declaration that the MOU seeks to create rights in the properties which would amount to conveyance under the Indian Stamp Act and would require stamping on an ad valorem basis. Learned Counsel for the Petitioner draws the attention of this Court to Section 33 of the Indian Stamp Act which deals with Examination and impounding of instruments provides that every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same. He further relies on Section 33 (2)(b) of the Indian Stamp Act which provides that 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. Reliance has also been placed on the Judgment of the Apex Court in Chief Controlling Revenue Authority v. Maharashtra Sugar Mills Ltd., 1950 SCC OnLine SC 25.



5. *Per contra*, learned Senior Counsel for the Respondent contends that the present Writ Petition is an attempt to circumvent the Judgment dated 08.08.2023, passed by the learned Single Judge in IA No.11717/2017. He draws the attention of this Court to contend that the learned Single Judge has rejected the contention of the learned Counsel for the Petitioner that the MOU dated 12.11.2014 is an admissible document as per law as the same is ill-founded. He states that the learned Single Judge has held that even where the document is not registered but is compulsorily registrable, having regard to Section 16(1)(a) of the Act, the Court can delink the Arbitration Agreement from the main document and can refer the parties to arbitration. Learned Senior Counsel for the Respondent also contends that in any event, the scope of the Arbitral Tribunal is wide enough as to comprehend all preliminary issues affecting its jurisdiction including the issue of sufficiency of stamping.

6. Heard the Counsels for the parties and perused the material on record.

7. Section 31 of the Indian Stamp Act reads as under:

“Section 31. Adjudication as to proper stamp.

(1) When any instrument, whether executed or not and whether previously stamped or not, is brought to the Collector, and the person bringing it applies to have the opinion of that office as to the duty (if any) with which it is chargeable, and pays 1[a fee of one hundred rupees], the Collector shall determine the duty (if any) with which, in his judgment, the instrument is chargeable.

(2) For this purpose the Collector may require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem



necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein, and may refuse to proceed up to any such application until such abstract and evidence have been furnished accordingly.

(3) When an instrument so brought to the Collector under subsection (1) relates to a transaction of immovable property on which stamp duty is chargeable on the basis of market value of the subject matter of property, the Collector shall, for the purposes of assessing proper stamp duty payable thereon, determine the market value of such property by following the procedure as prescribed by rules made by the 3[Government of the Union territory of Jammu and Kashmir] in this behalf.]

(4) When an instrument is brought to the Collector for adjudication, the person liable to pay the stamp duty 6[under section 29] shall pay the same within sixty days from the date of service of the demand in respect of the stamp duty adjudicated by the Collector. If such person fails to pay the stamp duty so demanded within the said period, he shall be liable to pay a penalty at the rate of 2 of the deficient portion of the stamp duty, for every month or part thereof, from the date of execution of such instrument :

Provided that—

(a) no evidence furnished in pursuance of this section shall be used against any person in any civil proceeding, except in an enquiry as to the duty with which the instrument to which it relates is chargeable ; and

(b) every person by whom any such evidence is furnished shall, on payment of the full duty with which the instrument to which it relates is chargeable, be



relieved from any penalty which he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid.”

8. Section 33 of the Indian Stamp Act reads as under:

“Section 33. Examination and impounding of instruments.

(1) Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in 1[India] when such instrument was executed or first executed:

Provided that--

(a) nothing herein contained shall be deemed to require any Magistrate or 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 1898);

(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.

(3) For the purposes of this section, in cases of doubt,--



*(a) the State Government may determine what offices shall be deemed to be public offices; and
(b) the State Government may determine who shall be deemed to be persons in charge of public offices.”*

9. Section 56 of the Indian Stamp Act reads as under:

“Section 56. Control of, and statement of case to, Chief Controlling Revenue-authority.

(1) The powers exercisable by a Collector under Chapter IV and Chapter V 1[and under clause (a) of the first proviso to section 26] shall in all cases be subject to the control of the Chief Controlling Revenue authority.

(2) If any Collector, acting under section 31, section 40 or section 41, feels doubt as to the amount of duty with which any instrument is chargeable, he may draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue-authority.

(3) Such authority shall consider the case and send a copy of its decision to the Collector, who shall proceed to assess and charge the duty (if any) in conformity with such decision.”

10. A perusal of the abovementioned Sections shows that the intent is to ensure that the State is not deprived of its revenue.

11. The contention of learned Senior Counsel for the Respondent that granting prayer (a) would amount to undoing the Order dated 08.08.2023 passed in I.A. No. 11717/2017 in CS(OS) 371/2017 allowing the application under Section 8 of the Arbitration & Conciliation Act, 1996 cannot be accepted because the learned Single Judge has held that the issue of stamping of registration of MOU is not relevant for the purpose of



adjudication of the application under Section 8 of the Arbitration & Conciliation Act.

12. In view of the foregoing, this Court is of the opinion that the interest of justice would be served by permitting the Petitioner to approach the Chief Controlling Revenue Authority as to the amount of duty with which the instrument in question is chargeable and proceed ahead in accordance with law.

13. The contention of learned Senior Counsel for the Respondent that the same exercise can be done by the Arbitral Tribunal cannot denude the jurisdiction of this Court from entertaining this writ petition as the question that is being considered is whether the State has been deprived of the revenue of the stamp duty payable on the instrument or not.

14. It is made clear that this Court has not made any observation on the merits of the case and the Chief Controlling Revenue Authority is directed to apply its mind without being influenced by any observations made in the instant writ petition.

15. The writ petition is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

JANUARY 16, 2024

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