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**CO 3916 of 2024
with
CAN 1 of 2025**

**GTL Infrastructure Limited
Vs.
Smt. Kanan Karkun**

Mr. Sk. Jahadar Alam ...for the Petitioner

Mr. Supriyo Das ...for the Opposite party

This application has been preferred against the order no. 8 dated 8th May, 2023 and order no. 12 dated 20th March, 2024 passed by the learned Civil Judge (Senior Division), 2nd Court at Barasat in Title Suit no. 178 of 2021.

The opposite party being the plaintiff instituted aforesaid suit for eviction and recovery of khas possession and also for injunction against the petitioner/defendant. In the said suit, the petitioner herein as defendant appeared and filed an application under Section 8 read with Section 5 of the Arbitration and Conciliation Act, 1996 praying for referring the matter for arbitration in terms of the arbitration clause. Subsequently, the plaintiff also filed a written objection to the said application.

The crux of the matter is that the plaintiff and defendant entered into an unregistered lease agreement, for twelve years executed on 24.7.2007, in

respect of installation and maintenance of a mobile tower/roof top telecom tower upon the scheduled property. The petitioner's further case is that in the said agreement for lease dated 24th July, 2007 at clause 7.2, both the parties have accepted that the matter would be referred to arbitration in case of any dispute.

Learned court below while taken up the said application for disposal, held that the impugned lease deed upon which the plaintiff has based his claim is unregistered and as such, he impounded the lease deed and sent it to the collector for assessment and to report regarding the payable stamp duty. Thereafter, the collector submitted his report and thereafter, by the other impugned order dated 28th March, 2024, court below asked the petitioner/defendant herein to make payment of the deficit stamp duty by the next date. The trial court while passed the impugned orders, relied upon the judgment of the Apex court in **M/s. Tea Estate Pvt. Ltd. Vs. M/s. Chandmari Tea Company Pvt. Ltd. (Civil Appeal no. 5820 of 2011)** and **Garware Wall Ropes Ltd. Vs. Coastal Marine Constructions and Engineering Ltd. (Civil Appeal no. 3631 of 2019)**.

Being aggrieved by the said order, learned counsel for the petitioner submits that the learned court below acted illegally and with material irregularity in not

disposing of the said application under Section 8 read with Section 5 of the Arbitration and Conciliation Act, 1996 and he ignored the fact that there exists valid arbitration clause in the agreement between the parties and as such, he had no other alternative but to refer the matter to the arbitration. He further submits that the court below had committed grave error in observing that the lease agreement is inadequately stamped and as such, unless it is impounded and deficit stamp duty be not paid, it could not be referred to the arbitration. In fact, the court below failed to appreciate that any objection in relation to the stamping of the agreement falls within the jurisdiction of arbitral tribunal and as such, both the impugned orders are not sustainable in the eye of law and also in the facts and circumstances of the case.

Learned counsel for the opposite party submits that the Trial court did not commit any mistake in referring the matter to the collector for assessment of the stamp duty, to be paid by the defendant, since the lease agreement which is for more than one year is an unregistered instrument which will become valid only if deficit stamp duty is paid. Before that arbitration clause cannot be invoked.

Having considered the submissions made on behalf of both the parties, it appears that two judgments of the Apex court relying of which, the

impugned order was passed by the court below namely, **M/s. Tea Estate Pvt. Ltd. (*supra*) and Garware Wall Ropes Ltd. (*supra*)** have already been overruled by the Apex court in the judgment reported in **(2024) 6 SCC 1**. In the said judgment, the Supreme Court has made specifically observed in the concluding part at paragraph 235 which reads as follows:

235. *The conclusions reached in this judgment are summarised below:*

235.1. *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;*

235.2. *Non-stamping or inadequate stamping is a curable defect;*

235.3. *An objection as to stamping does not fall for determination under Sections 8 or 11 of the Arbitration Act. The Court concerned must examine whether the arbitration agreement prima facie exists;*

235.4. *Any objections in relation to the stamping of the agreement fall within the ambit of the Arbitral Tribunal; and*

235.5. *The decision in N.N. Global (2) [N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd., (2023) 7 SCC 1 : (2023) 3 SCC (Civ) 564] and SMS Tea Estates [SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd., (2011) 14 SCC 66 : (2012) 4 SCC (Civ) 777] are overruled. Paras 22 and 29 of Garware Wall Ropes [Garware Wall Ropes Ltd. v. Coastal Marine Constructions & Engrg. Ltd., (2019) 9 SCC 209 : (2019) 4 SCC (Civ) 324] are overruled to that extent.*

In view of such latest position of law, it is clear that the lease agreement which if inadequately stamped, are inadmissible in evidence under Section 35 of the Stamp Act. But since such lease agreement for want of adequate stamp duty is not rendered *void or void ab initio* or unenforceable and since it is the specific case of the petitioner and which has not been disputed by the opposite party that there exists an arbitration clause and since the non-stamping or

inadequate stamping of the lease deed is a curable defect, such objection as to stamping does not fall for determination while considering prayer made under Section 8 of the Arbitration Act.

In such view of the matter, two impugned orders dated 8th May, 2023 and 20th March, 2024 are hereby set aside.

The Trial court is directed to examine whether there prima facie exists any arbitration clause in the lease deed or not and if he finds arbitration clause then he will send it to the arbitration under the provision of the Arbitration Act without considering the objection as to stamping of the lease deed. However, the opposite party's right to raise objection if any, in relation to the stamping of the agreement in future shall be reserved to raise before the appropriate authority at the appropriate stage.

Accordingly, C.O. 3916 of 2024 is disposed of. Connected application being CAN 1 of 2025 is also disposed of.

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

(Dr. Ajoy Kumar Mukherjee, J.)