

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION NO.123 OF 2024

Vijay Sharma

....Applicant

Versus

Vivek Makhija & Anr.

...Respondents

Mr. Anish Sharma *i/b. Dinesh Tiwari & Associates, Advocate for Applicant.*

Mr. Abhinav Chandrachud *a/w. Akash Menon, Kalash Bakliwal, Advocates for Respondents.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : JANUARY 23, 2025

PC :

1. This is an Application under Section 11 of the Arbitration and Conciliation Act, 1996 (*"the Act"*), seeking appointment of an arbitrator in connection with disputes and differences between the parties relating to an agreement dated June 2, 2009 for sale of property. It is not necessary to burden this order with further detail at this stage.
2. The matter was heard at some length. A very short and limited issue arises for consideration.

3. Learned Counsel for the Respondents strongly opposes any consideration of the present Section 11 Application. He submits that a Section 11 Application filed in 2018 had been disposed of in 2022 on the ground that the agreement was inadequately stamped. A statement made by the Applicant at that point in time, that the Applicant would present the instrument for adjudication of stamp duty, had been recorded in an order dated January 31, 2022.

4. Learned Counsel for the Applicant submits that in 2022, the instrument was presented for adjudication of stamp duty, and it has not been received from the stamp authorities as yet. Learned Counsel for the Respondents submits that according to his instructions, no application has been made to the stamp authorities. This is a statement he makes on the basis of a reply to an application made by the Respondent under the Right to Information Act, 2005. Consequently, he submits, the right to invoke Section 11 of the Act this time around, is fettered by the order dated January 31, 2022, which was based on the commitment that the instrument would be presented for adjudication of stamp duty.

5. Learned Counsel for the Applicant submits that his client has indeed submitted the instrument to the stamp authorities for adjudication, and he seeks one week's time to bring on record the

application that he had filed before the stamp authorities. To enable him to do so, stand over to ***February 4, 2025***.

6. It is made clear that the jurisdiction of the Section 11 Court being very specifically and delineated in Section 11 (6A) of the Act, the Court would restrict itself to examining the existence of an agreement. Any issues arising out of non-pursuit of stamping by the Applicant would, *prima facie*, fall outside the scope of jurisdiction. It is trite law that orders passed under Section 11 of the Act do not have precedential value. That apart, the law on stamp duty implications has undergone a complete change, and the relevance of the stamping issue raised in the last round would need to be examined. These are *prima facie* observations, and will be considered on the next date.

7. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[**SOMASEKHAR SUNDARESAN, J.**]