IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26-03-2025

CORAM :

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Civil Revision Petition No. 1517 of 2020

M/s.AG Melco Techno Services Private Limited
Formerly known as
M/s.ETA Melco Techno Services Private Limited
7th Floor, Khivaraj Complex II,
480, Anna Salai, Nandanam,
Chennai - 600 035.
Represented by its Director
R.Kannan .. Petitioner

Versus

1. Mr. A. Mohammad Abdul Aziz
S/o.T.M.K.A.Ahmed Meeran

2. Mr.A.Mohammad Ashik
S/o. T.M.K.A.Ahmed Meeran ..
Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the judgment and Order dated 29.11.2019 in I.A. No. 5747 of 2018 in O.S. No. 5056 of 2017 on the file of the learned XIII Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr. C. Manohar Gupta, Senior Advocate
for M/s.Gupta and Ravi

For Respondents : Mr. K.M. Aasim Shahzad
for BFS Legal

ORDER

This Civil Revision Petition is filed seeking to set aside the order dated 29.11.2019 passed by the learned XIII Assistant Judge, City Civil Court, Chennai in I.A. No. 5747 of 2018 in O.S. No. 5056 of 2017.

2. The Revision Petitioner is the Plaintiff, who has instituted the suit in O.S. No. 5056 of 2017 before the XIII Assistant Judge, City Civil Court, Chennai. The suit was filed for recovery of Rs.9,30,800/- together with interest at the rate of 18% per annum from the date of filing the plaint till realisation.

3. The Respondents are the owners of the flat bearing Door No.49, Old Door No.26, Mount Road, Saidapet measuring 3105 square feet. According to the Revision Petitioner-Plaintiff, a portion of the said property was given to the Revision Petitioner for lease on a monthly rent of Rs.1,84,000/- per month from 01.12.2015. At the time of being inducted as a tenant, the Revision Petitioner also paid Rs.14 lakhs towards advance. After taking possession of the premises, due to business re-structuring, the Plaintiff sent a letter dated 08.10.2016 expressing their intention to vacate the premises by 31.12.2016. However, the Respondents, by reply dated 19.12.2016 refused to permit the Revision Petitioner from vacating the property. Notwithstanding such refusal, the Revision Petitioner vacated the premises and handed over the

key to the Respondents on 04.01.2017. When the Revision Petitioner sought for refund of the advance amount of Rs.9,30,800/- after adjusting the monthly rent for October, November and December 2016 apart from service tax and Tax Deducted at Source (TDS), the Respondents refused to pay. The Revision Petitioner therefore issued a notice dated 14.02.2017 calling upon the Respondents to pay Rs.9,30,800/-. On receipt of the notice, a reply dated 25.04.2017 was sent by the Respondents calling upon the Revision Petitioner to pay Rs.4,18,811/- as the Revision Petitioner had vacated the premises before the expiry of 36 months from the date of lease.

4. On notice, the Respondents filed the instant I.A. No. 5747 of 2018 in O.S. No. 5056 of 2017 mainly contending that the suit is not maintainable. The agreement dated 30.11.2015 entered into between the parties categorically states that in the event of any dispute, the parties shall approach an Arbitrator as per Section 8 of the Arbitration and Conciliation Act, 1996. Instead of approaching an Arbitrator for resolution of the dispute, the Revision Petitioner has filed the instant suit and it is not maintainable. Accordingly, the Respondents prayed for dismissal of the suit.

5. A reply statement was filed by the Revision Petitioner contending that they are not liable to pay any amount to the Respondents, as claimed. It is also submitted that the lease agreement is unregistered and unstamped and

therefore, the contents contained thereof will not bind the Revision Petitioner in any manner.

6. The learned XIII Assistant Judge, City Civil Court, by the order dated 29.11.2019, allowed the application filed by the Respondents herein by holding that the suit filed by the Revision Petitioner is not maintainable in view of the fact that in the lease agreement between the parties, there is a clause for referring the dispute, if any, to an Arbitrator. Therefore, the Revision Petitioner has to only approach the Arbitrator for resolution of the dispute and the suit as filed is not maintainable. Accordingly, the learned XIII Assistant Judge, City Civil Court, allowed the application filed under Section 8 of the Arbitration Act and dismissed the suit by referring the parties to the arbitration in accordance with the provisions of the lease agreement dated 30.11.2015.

7. The learned Senior Counsel for the Revision Petitioner-Plaintiff would vehemently contend that the lease agreement dated 30.11.2015 is legally not enforceable inasmuch as the lease agreement in an unstamped and unregistered instrument under the provisions of the Indian Stamp Act, 1899 and the Registration Act, 1908 respectively. The lease agreement is an instrument which has to be mandatorily stamped as per Section 3 r/w. Article 35 Schedule I of the Indian Stamps Act, 1899. It is also an instrument which is to be compulsorily registered as per Section 17 of the Registration Act, 1908.

When the lease agreement is unregistered and not in accordance with Section 17 of the Registration Act, 1908, the contents contained therein are not enforceable. The learned Senior Counsel further stated that the Respondents have not paid the prescribed registration charges as per the Indian Registration Act 1908. Therefore, the lease agreement does not have legal validity in the eyes of law or it can be admitted in evidence before any Court as per Section 35 of the Indian Stamps Act,1899 and Section 49 of the Registration Act which entail the legal consequences of instrument that are not stamped and registered as per the provisions of Indian Stamps Act, 1899 and the Registration Act, 1908.

8. The learned Senior Counsel for the Revision Petitioner also submitted that the order passed by the learned XIII Assistant Judge, City Civil Court is against the reported decision of the Hon'ble Supreme Court in the case of ***SMS Tea Estates (P) Ltd -vs- Chandmari Tea Co.(P) Ltd reported in (2011) 14 SCC 66***, wherein it is held as follows:

> *"17. What if an arbitration agreement is contained in an unregistered (but compulsorily registerable) instrument which is not duly stamped? To find an answer, it may be necessary to refer to the provisions of the Stamp Act. 1899 ('the Stamp Act, for short). Section 33 of the Stamp Act relates to examiation and impounding of instruments. The relevant portion thereaf is extracted below:*
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> *"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 sarne.

(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 India when such instrument was executed or first executed:".

18. Section 35 of the Stamp Act provides that instruments not duly stamped are inadmissible in evidence and cannot be acted upon. The relevant portion of the said section is extracted below:

35.Instruments, not cruly stamped inadmissible, in evidence, etc- No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by low or consent of parties authority 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:

Provided that-

(a) any such instrument shall 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;"

19. Having regard to Section 35 of the Stamp Act, unless the stamp duty and penalty due in respect of the instrument is paid, the court cannot act upon the instrument, which means that it cannot act upon the arbitration agreement also which is part of the instrument. Section 35 of the Stamp Act is distinct and different from Section 49 of the Registration Act in regard to an unregistered document. Section 35 of the Stamp Act, does not contain a proviso like Section 49 of the Registration Act enabling the instrument to be used to establish a collateral transaction.

20. The Scheme for Appointment of Arbitrators by the Chief Justice of Gauhati High Court, 1996 requires an application under Section 11 of the Act to be accompanied by the original arbitration agreement or a duly certified copy thereof. In fact, such a requirement is found in the scheme/rules of almost all the High Courts. If what is produced is a certified copy of the agreement/contract/instrument containing the arbitration clause, it should disclose the stamp duty that has been paid on the original. Section 33 casts a duty upon every court, *that is, a person having by law authority to receive evidence (as also every Arbitrator who is a person having by consent of parties, authority to receive evidence) before whom an unregistered instrument chargeable with duty is produced, to examine the instrument in order to ascertain whether it is duly stamped. If the court comes to the conclusion that the instrument is not duly stamped, it has to impound the document and deal with it as per Section 38 of the Stamp Act.*

21. Therefore, when a lease deed or any other instrument is relied upon as containing the arbitration agreement, the court should consider at the outset, whether an objection in that behalf is raised or not, whether the document is properly stamped. If it comes to the conclusion that it is not properly stamped, it should be impounded and dealt with in the manner specified in Section 38 of the Stamp Act. The court cannot act upon such a document or the arbitration clause therein. But if the deficit duty and penalty is paid in the manner set out in Section 35 or Section 40 of the Stamp Act, the document can be acted upon or admitted in evidence."

9. In the light of the above decision of the Honourable Supreme Court, the learned Senior Counsel submitted that the order passed by the learned XIII Assistant Judge, City Civil Judge is perverse and it is to be set aside.

10. Per contra, the learned Counsel for the Respondents/defendants submitted that as per Section 8 of the Arbitration Act r/w. 9 of C.P.C the position of law is absolutely clear. The Civil Courts are barred from exercising jurisdiction over matters covered under Arbitration. The Plaintiff has filed the suit for recovery of money based on the lease agreement dated 30.11.2015. The learned Judge placing reliance on the lease agreement dated 30.11.2015 in the light of the reported decision of the Hon'ble Supreme Court in the case of ***SMS***

Tea Estates Pvt Ltd -vs- Chandmari Tea Co Pvt Ltd reported in ***2011 (4) SCC 574*** rightly allowed the application filed under Section 8 of The Arbitration and Conciliation Act, 1996. However, the said decision was overruled in the subsequent decisions of the Honourable Supreme Court. In this context, the learned Counsel for the Respondents placed reliance on the decision of the Honourable Supreme Court in ***Curative Petition (C) No. 44 of 2023*** reported in ***2023 INSC 1066*** wherein the Honourable Supreme Court held as follows:-

> *"185. The corollary of the doctrine of competence-competence is that courts may only examine whether an arbitration agreement exists on the basis of the prima facie standard of review. The nature of objections to the jurisdiction of an arbitral tribunal on the basis that stamp-duty has not been paid or is inadequate is such as cannot be decided on a prima facie basis. Objections of this kind will require a detailed consideration of evidence and submissions and a finding as to the law as well as the facts. Obligating the court to decide issues of stamping at the Section 8 or Section 11 stage will defeat the legislative intent underlying the Arbitration Act.*
>
> *217. An arbitration agreement or its certified copy is not rendered void or unenforceable because it is unstamped or insufficiently stamped. We accordingly clarify that the position of law laid down in Jupudi Kesava Rao (supra) and Hariom Agarwal (supra) cannot constrain a referral Court at Section 11 stage (as well as Section 8 stage) from acting upon a certified copy of an arbitration agreement and referring the parties to arbitral Tribunal.*
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> *218. The discussion in preceding segments indicates that the referral court at Section 11 stage should not examine or impound an unstamped or insufficiently stamped instrument,but rather leave it for the determination by the arbitration tribunal. When a party produces an arbitration agreement or its certified copy, the referral court only has to examine whether an arbitration agreement exists in terms of Section 7 of The Arbitration Act. The referral Court under Section 11 is not required to examine whether a certified copy of the agreement/instrument/contract discloses the fact of payment of stamp duty on the original. Accordingly, we hold that the holding of this Court in SMS Tea Estate (supra), as*

reiterated in N.N. Global 2 (supra) is no longer valid in law.

....

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 objection in relation to the stamping of the agreement fall within the ambit of the arbitral tribunal; and

e. The decision in N.N. Gopal 2 (supra) and SMS Tea Estates (supra) are overruled. Paragraphs 22 and 29 of Garware Wall Ropes (supra) are overruled to that extent."

11. By pointing out the above decision of the Honourable Supreme Court, it is contended by the learned Counsel for the Respondents that even the issue relating to insufficient or inadequate stamp can be gone into by the Arbitral Tribunal and the suit filed by the Revision Petitioner-Plaintiff is not maintainable. There is no perversity in the order passed by the learned XIII Assistant Judge, City Civil Court. This Civil Revision Petition has no merits and is to be dismissed.

12. By way of reply to the submissions of the learned Counsel for the Respondents, the learned Senior Counsel for the Revision Petitioner submitted

that the learned trial Judge had misdirected herself by relying upon para 15 alone of the judgment in ***SMS Tea Estates Pvt Ltd -vs- Chandmari Tea Co Pvt Ltd*** reported in ***2011 (4) SCC 574.*** The position of law has been made clear by the constitutional Bench of the Hon'ble Supreme Court in the latter paragraph. While filing the petition invoking arbitration clause, the petition shall be accompanied by the deed entered into between the parties to the dispute or the certified copy of the same. Here the alleged lease deed is for a period of three years which was not duly stamped and duly registered. Therefore, the Civil Court cannot rely on such an unregistered or not sufficiently stamped document. Whereas the learned XIII Assistant Judge, City Civil Court had relied on the unregistered and not sufficiently stamped lease deed to dismiss the suit instituted by the Revision Petitioner. Therefore, it is against the reported decision of the Hon'ble Supreme Court in the case of ***SMS Tea Estates Pvt Ltd -vs- Chandmari Tea Co Pvt Ltd*** reported in ***2011 (4) SCC 574.*** The dispute is to be considered only during trial without reference to clause available for arbitration. The Arbitration and Conciliation Act, 1986 mandates that the original or certified copies of the agreement of which Arbitration clause is part of, is to be filed along with application under Section 8 before the Court without which it shall not be entertained. It had been made clear in the case of ***Atul Singh and others vs Sunil Kumar Singh and others*** reported in ***(2008) 2 SCC 602.*** Accordingly, the learned Senior Counsel prayed for allowing the Civil Revision Petition.

Point for consideration:

Whether the order dated 29.11.2019 in I.A.No.5747 of 2018 in O.S.No.5056 of 2017 passed by the learned XIII Assistant Judge, is to be set aside as perverse?

13. Heard the learned Senior Counsel for the Revision Petitioner and the learned Counsel for the Respondents.

14. On perusal of the order passed by the learned XIII Assistant Judge, City Civil Court, it is found that in view of the clause contained in the agreement between the parties, to refer the dispute, if any, to an Arbitrator, the suit is not maintainable and the parties have to be relegated to approach the Arbitrator. Such a conclusion has been reached on the ground that the document relied by the Respondents/Petitioners in I.A. No. 5747 of 2018 in O.S. No. 5056 of 2017 was not duly stamped and duly registered. However, as per the reported decision of the Hon'ble Supreme Court in ***SMS Tea Estates Pvt Ltd -vs- Chandmari Tea Co Pvt Ltd*** reported in ***2011 (4) SCC 574*** it was held that an unregistered and insufficiently stamped document cannot be relied on to show that there is an arbitration clause available for the parties to work out their remedy. In the said judgment of the Hon'ble Supreme Court in the case of ***SMS Tea Estates Pvt Ltd -vs- Chandmari Tea Co Pvt Ltd*** reported in

2011 (4) SCC 574, in para 17 it was observed as follows.

> *"17. What if an arbitration agreement is contained in an unregistered (but compulsorily registerable) instrument which is not duly stamped? To find an answer, it may be necessary to refer to the provisions of the Stamp Act. 1899 ('the Stamp Act, for short). Section 33 of the Stamp Act relates to examiation and impounding of instruments. The relevant portion thereaf is extracted below:*
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> *"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 sarne.*
>
> *(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 India when such instrument was executed or first executed:".*

15. However, subsequently, the decision in the case of ***SMS Tea Estates Pvt Ltd -vs- Chandmari Tea Co Pvt Ltd*** reported in ***2011 (4) SCC 574*** was overruled by the Honourable Supreme Court in **Curative Petition (C) No. 44 of 2023**. While overruling the earlier verdict in ***SMS Tea Estate***, it was held that even the issue relating to inadequacy or insufficiency of stamp on an instrument can be gone into by the Arbitral Tribunal, which alone is competent to examine such objections relating to the stamping of the agreement. Such an issue falls only within the ambit of the Arbitral Tribunal. It was also held that non-stamping or insufficiently stamping of a document is a curable defect and therefore, such agreements cannot be rendered void or void *ab initio* or

unenforceable. Therefore, in the light of the dictum laid down by the Honourable Supreme Court in the decision cited supra, the order dated 29.11.2019 passed by the learned XIII Assistant Judge, City Civil Court, relegating the parties to this Civil Revision Petition to go before the Arbitrator for resolution of their dispute, cannot be found fault with. As per the decision of the Honourable Supreme Court, it is for the Arbitral Tribunal to decide the admissibility or inadmissibility of the arbitration agreement in question as well as the adequacy or inadequacy of the stamp made thereof, during the course of arbitral proceedings. In such view of the matter, the suit, as filed by the Revision Petitioner-Plaintiff, especially when there is a clause for arbitration mentioned thereof, is not maintainable.

16. When this Court was about to pronounce orders, the learned Counsel appearing for the Respondent requested this Court not to pronounce the Order as the ruling relied on by the learned Senior Counsel for the Revision Petitioner in the case of ***SMS Tea Estates Private Ltd Vs. Chandmari Tea Co. Pvt. Ltd.,*** reported in ***2011 (4) SCC 574*** was overruled by the Seven Judges Bench of the Hon'ble Supreme Court in **Curative Petition (C) No.44 of 2023 in Review Petition (C) No.704 of 2021 in Civil Appeal No.1599 of 2020** In **Re: Interplay between Arbitration agreement under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899 and with**

Arbitration Petition No.25 of 2023 in which the Hon'ble Judges of the Supreme Court had given conclusions 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."*

17. Further, he would submit that as per the Seven Judges Bench ruling, even if agreement between the parties was not duly stamped and registered, still the Arbitrator can go into those questions. Therefore, as per the latest ruling of the Hon'ble Supreme Court, the Seven Judges Bench, even if the agreement between the parties/Plaintiff and Defendant was not sufficiently stamped even such dispute can be gone into by the arbitrator. The technical plea that the agreement entered between the parties was not registered and not stamped cannot be gone into by the Civil Court, if there is a clause for arbitration between the parties. Such objections and technicalities of law raised by the Respondent shall be raised after the Constitution of the Arbitral Tribunal. Therefore, the learned Counsel for the Respondent sought to dismiss

this Civil Revision Petition as having no merits in the light of the latest ruling of the Seven Judges Bench of the Honourable Supreme Court.

18. The learned Senior Counsel for the Revision Petitioner relied on the Judgment of this Court dated 19.01.2023 in CRP.No.1466 of 2020.

19. As per Section 8 (iii) of the Arbitration and Conciliation Act, 1996, the Plaintiff is not willing to Arbitration as the Defendant had not appointed Arbitrator. Till date, there is no Stay from this Court pending the Civil Revision Petition. After a long period, the Plaintiff cannot be heard to contend that he is not willing to appoint Arbitrator as the Defendant/the Respondent had not furnished the Arbitration Petition in I.A along with the original agreement between the Plaintiff and Defendant. In the light of those circumstances, the Plaintiff in the Suit is not willing for Arbitration at this length of time. Therefore, the learned Senior Counsel for the Revision Petitioner seeks to set aside the Order passed by the learned XIII Judge, City Civil Court in I.A.No.5747 of 2018 in O.S.No.5056 of 2017.

20. The submission of the learned Senior Counsel for the Revision Petitioner that the Plaintiff is not willing for Arbitration at this length of time in the light of the latest Judgment of Seven Judges Bench cited by the learned

Counsel for the Respondent cannot be countenanced.

20. In the light of the above ruling of the Constitution Bench of 7 Hon'ble Judges of the Hon'ble Supreme Court in **Curative Petition (C) No.44 of 2023 in Review Petition (C) No.704 of 2021 in Civil Appeal No.1599 of 2020 In Re: Interplay between Arbitration agreement under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899 and with Arbitration Petition No.25 of 2023**, the point for consideration is answered in favour of the Respondents and against the Revision Petitioner. The order dated 29.11.2019 passed in I.A. No. 5747 of 2018 in O.S. No. 5056 of 2017 on the file of the learned XIII Assistant Judge, City Civil Court, Chennai, is found proper and the same is to be confirmed.

In the result, **this Civil Revision Petition is dismissed.** The order dated 29.11.2019 passed in I.A. No. 5747 of 2018 in O.S. No. 5056 of 2017 on the file of the learned XIII Assistant Judge, City Civil Court, Chennai, is confirmed. There shall no order as to costs.

26.03.2025

shl
Index : Yes/No
Internet : Yes/No
Speaking/Non-speaking order

To:

1. The XIII Assistant Judge,
   City Civil Court, Chennai
2. The Section Officer,
   V.R. Section,
   High Court of Madras.

SATHI KUMAR SUKUMARA KURUP, J

shl

Order in
C.R.P.No.1517 of 2020

26.03.2025