

IN THE COURT OF THE LXXXVI ADDL. CITY CIVIL JUDGE
AT BANGALORE [CCH.No.87]

Present:

Sri. SUNIL ANDANEPPA SHETTAR, B.Sc., LLB (SPL)
LXXXVI ADDL.CITY CIVIL JUDGE,

Dated this the 28th day of July, 2022

Com.Ex.No.45/2022

Plaintiff/s : Chawla Interbild Construction Co Pvt Ltd

- Vs -

Defendant/s : M/s Skyline Construction & Housing Co.
Pvt Ltd.,

ORDER ON I.A.No.1

This is an application filed by the J.DR on 04.05.2022 under section 33 and 34 of the Karnataka Stamp Act, 1957 to impound the award dated 31.07.2014 produced by the D.HR as it is required to be stamped under the Karnataka Stamp Act, 1957.

2. The managing director of the J.DR has sworn to an affidavit annexed to the application and contended that the execution petition arises out of the judgment and decree dated 17.12.2020 passed in Com.AS.116/2014 on the file of CCH-84. As per article 11 of the Karnataka Court Fees and

suits valuation Act 1958, the D.HR is required to pay requisite stamp duty on the award and has contended that the order of the Hon'ble High Court of Karnataka dated 21.07.2022 in W.P.No.20090/2016 is not applicable to the present case. There is no exemption to make payment of stamp duty on the Arbitral awards. Hence, prayed to allow the application.

3. The D.HR has resisted the application by filing his objections and contended that Sec.33 of the Karnataka Stamp Act, 1957 is not attracted to award dated 31.07.2014 and the award is not chargeable with stamp duty. Article 11 of said Act excludes award passed pursuant to a reference to arbitration made by the court. In the case on hand the Hon'ble High Court of Karnataka by its order dated 20.06.2013 has appointed an arbitrator in CMP.No.112/2011 and directed to proceed with the arbitration in accordance with rules framed by it. Article 11 of the Karnataka Stamp Act states that an award made otherwise than by an order of the court in course of the suit would be liable to stamp duty. An order passed on a reference made by court is not

liable to stamp duty. The D.HR relying upon the judgment of the Hon'ble High Court of Karnataka in ILR No.1974 karantaka 1254, followed by W.P.No.20090/2016 has prayed to dismiss the application.

4. It is further contended that the claim under sec.34 Karantaka Stamp Act relates to documents, which are inadmissible in evidence and the award is not being exhibited in his evidence and hence, Sec.34 Karantaka Stamp Act is not applicable. The rest of the averments made in the affidavit are denied and prayed to dismiss the application.

5. Considering the contentions of the respective parties, the following point arises for my consideration:

“ Whether the award under execution is liable for payment of stamp duty and penalty as per Sec.33 and 34 Karantaka Stamp Act ?”

6. Having heard the arguments of both the counsels on the application and considering the entire materials available on record, I answer the above point in 'Negative' for the following:

REASONS

7. This execution petition arises out of the award passed by the learned sole arbitrator in AC No.12/2013. It is a fact that the award passed by the learned sole arbitrator was challenged in AS No.116/2013 on the file CCH-84, which came to be dismissed on 17.12.2013.

8. On the one hand the applicant/JDR claims that the DHR is liable to pay the deficit stamp duty and penalty on the award. On the other hand it is the contention of the DHR that he is not liable to pay the deficit stamp duty and penalty.

9. The arbitral award shall be enforced in accordance with the provisions of the code of civil procedure, 1908 in the same manner as if were the decree of the court.

10. considering the contentions of the respective parties, It is necessary to go through Sec.33 of the Karnataka Stamp Act, 1957, which reads as under:

(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) ²[the ³[State Government]] may determine what offices shall be deemed to be public offices; and

(b) ⁴[the ²[State Government]] may determine who shall be deemed to be persons in charge of public offices.

11. It is an admitted fact that the arbitrator came to be appointed by the Hon'ble High Court of Karnataka by its the order dated 20.06.2013 passed in CMP.No.112/2011 c/w CMP No.113/2011. The learned counsel for the DHR by furnishing the extract of Sec.20 of the Arbitration Act, 1940 and relying upon the judgments reported in ILR 1974 KAR 1254 (Govindswamy and another V/s Lakkanna and others, W.P.No.20090/2016 (Vijaya Bank Employees housing Co-operative Society V/s Thimme Gowda and others, ILR 1974 A.P. 238 (Geddamm Chinna Kondaiiah V/s Geddamm Pedda Kondaiiah), AIR 1984 Del (Darshan Singh V/s M/s Forward India Finance P Ltd), ILR 2015 KAR 4336 (Sri Dilli Babu V/s The State of Karnataka) has argued that as per article 11 of Karnataka Stamp Act, 1957 if the appointment of an arbitrator is by an order of the court, such an award is exempted from payment of stamp duty.

12. The Hon'ble High Court of Karnataka in its judgment reported in ILR 2015 KAR 4336 has held that it is

the date of signing the award, which has to be taken into consideration for payment of stamp duty. No doubt the question of payment of stamp duty would be relevant only when the parties would file the award for its enforcement under section 36 of the arbitration and conciliation act, but the stamp duty is to be paid as on the date when the award is signed.

13. The aspect of payment of stamp duty when the reference is made pursuant to an application 20 of the 1940 act was considered by the Hon'ble High Court in ILR 1974 A.P.238, wherein it is held that if an award is made on a reference made by the order of the court in the course of a suit, the same is not liable to any stamp duty under article 11 of the Karnataka Stamp Act.

14. Further the Hon'ble High Court of Karnataka in its order dated 28.04.2018 in W.P.No.20090/2016 between M/s Vijaya Bank Employees housing Co-operative Society V/s Thimme Gowda and others by a referring to the judgment reported in ILR 1974 A.P.238 has held that an award is made on a reference made by the order of the court in the

course of a suit, the same is not liable to any stamp duty under article 11 of the Karnataka Stamp Act. It is further held that an arbitrator appointed by the High Court under sec.11 of the Arbitration and Conciliation Act, 1996 cannot be held as falling outside the exception carved out in article 11 of the Karnataka Stamp Act, 1957.

15. At the same time the learned counsel for JDR has relied upon the following judgments :

1. 2016 SCC Online KAR 1077 (United Precision Engineers Pvt Ltd V/s United Precision Engineers Pvt.Ltd),
2. (2003) 8 SCC 565 (M.Anasuya Devi and another V/s M.Manik Reddy and others)
3. W.P.No.205899/2019
4. Sri.Pedda Rangappa (Since deceased and represented by his legal representatives V/s Kanthilal D.Gandhi in MFA No.24247/2017 (AA) High Court of Karnataka Dharwad Bench.
5. (Hari Shankar Singhania (Now... V/s Dr. Gaur Hari Singhania) Bombay High Court
6. The Maharashtra Stamp Act (extract article 12)

16. It is the argument of the learned counsel for the JDR that since the appointment of an arbitrator is not in the course of the suit, the award under execution is liable for payment of stamp duty and penalty. I have gone through all the judgments relied upon by the learned counsel for the JDR and the principles laid down in the said judgments are not at all disputed, but the same will not come to the rescue of the JDR as on factual aspects the said cases differ from the present case.

17. Under the facts and circumstances of the present case, it is a fact that the arbitrator was appointed under section 11 of the Arbitration and Conciliation Act and as per article 11 of the Karnataka Stamp Act, 1957 the award under execution is not liable to payment of stamp duty and penalty. The appointment of an arbitrator is under Sec.11 and hence the award in question would fall within the ambit of the words "by an order of the court in the course of a suit" and hence the award does not attract stamp duty and penalty. Hence, I answer the above point in the 'Negative' I proceed to pass the following;

ORDER

I.A.No.1 filed by the JDR under section 33 and 34 of Karnataka Stamp Act 1957 dated 05.04.2022 is hereby dismissed.

For further steps.

(Dictated to the Stenographer online transcribed & computerized by her, corrected on computer and signed by me then pronounced in the Open Court, dated this the 28th day of July, 2022)

(SUNIL.A.SHETTAR)
LXXXVI Addl. City Civil Judge
Bangalore.