

**IN THE COURT OF THE LXXXIII ADDITIONAL CITY CIVIL
AND SESSIONS JUDGE AT BENGALURU CITY [CCH-84]**

:Present:

Ravindra Hegde, M.A., LL.M.,
**LXXXIII Addl. City Civil & Sessions Judge,
Bengaluru**

Dated on this the 23rd day of March 2021

COM.A.S.No.125/2019

Plaintiff

M/s. Schneider Electric IT Business
India Private Limited,
(formerly known as American Power
Conversion India Private Limited)
A company registered and incorporated
under the Companies Act, 1956,
having its registered office at
Sy.No.187/3 & 188/3,
Jigani Industrial Area, Jigani,
Bengaluru-526106.
Represented herein by its
Authorized Representative
Mr.Kishore Shetty.

(By Sri.Y.A, Advocate)

// versus //

Defendant

M/s. United Telecom Limited,
A Company registered and
incorporated under the Companies
Act, 1956, having its office at
No.18A/19, Doddenakundi village,
Industrial Area, Mahadeva Post,
Whitefield, Bengaluru-560048.
Represented herein by
Managing Director.

(By Sri.A.N.N, Advocate)

Date of Institution of the suit	:	13/8/2019
Nature of the suit	:	Arbitration Suit
Date of commencement of recording of the evidence	:	
Date on which the Judgment was pronounced.	:	23/03/2021
Total duration	:	Year/s Month/s Day/s
		01 07 10

JUDGMENT

This petition U/S.34 of the Arbitration & Conciliation Act is filed by plaintiff praying to set aside the award passed in AC No.64/2018 by the learned sole Arbitrator on 13/5/2019, in the dispute between the plaintiff and defendant.

2. The case of the plaintiff as stated in the petition are as under:

The plaintiff and defendant are the companies registered under the Companies Act and are represented by authorized representatives. The plaintiff being aggrieved by the order of the learned sole Arbitrator Hon'ble Justice N.K.Sodhi (former Judge of Hon'ble High Court of Karnataka) in AC No.64/2018 has filed this petition. It is stated that the plaintiff as Lessee and defendant as Lessor entered into agreement for leasing out the premises belonging to the defendant and different lease agreements were executed for different period starting

from 17/04/2009. In respect of the lease of premises, the plaintiff has totally paid security deposit amount of Rs.1,23,20,100/-. It is stated that total security deposit amount of Rs.1,23,20,100/- is paid by the plaintiff to the defendant and same is noted in the lease agreement dated 24/3/2011.

3. By intimating the defendant, plaintiff vacated the premises on 31/12/2013. The plaintiff requested the defendant to confirm the manner in which the security deposit would be refunded and also to confirm the date on which the joint inspection of the premises could be carried out. The defendant also put forwarded certain claims which are rejected by the plaintiff. After exchanging of several correspondence, as parties could not decide the actual damage caused to the premises, on 15/11/2004, both parties met and agreed to appoint CBRE South Asia private Limited to inspect the premises and to submit report. In February 2015 the CBRE South Asia Private Limited conducted joint inspection and provided its report and as per the said report the defendant is entitle to deduct the cost of damages as assessed by CBRE and remit sum of Rs.73,20,100/- to the plaintiff. Though the plaintiff requested the defendant to pay this amount of Rs.73,20,100/-, defendant has not come forward to pay the same. Since the defendant has committed breaches and omissions, the plaintiff was constrained to invoke clause 6(o) of the lease agreement, providing resolution

of the dispute through arbitration and got issued notice dated 6/10/2015 appointing sole Arbitrator and seeking consent of the defendant, but the defendant has not replied the same. Thereafter, the plaintiff approached the Hon'ble High Court in CMP No.77/2016 seeking appointment of an Arbitrator and the Hon'ble High Court on 12/1/2018 appointed the Hon'ble Justice N.K.Sodhi (former Judge of Hon'ble High Court of Karnataka) as the Arbitral Tribunal to conduct the arbitration. Claim petition was filed by the plaintiff and the same was registered as AC No.64/2018. Plaintiff has prayed for an order for recovery of Rs.73,20,100/- with interest @ 12% per annum from the date of vacating of the premises. The defendant appeared and filed objection and inter-alia contended that the lease agreement was not sufficiently stamped as per the provisions of Karnataka Stamp Act and lease agreement cannot be looked into and also contended that the lease agreement is unregistered and therefore it cannot be enforced. The defendant also made a counter claim for Rs.3,82,53,043/-. The plaintiff filed rejoinder to the counter claim. During pendency of the matter before the learned Arbitrator, plaintiff paid Rs.2,97,487/- towards deficit stamp duty and Rs.29,74,870/- as 10 times the penalty on the lease agreement and thereby defect of insufficiency of stamp duty is cured. Thereafter, the evidence was recorded and arguments were heard. Thereafter the learned Arbitral Tribunal passed the impugned award and dismissed the claim of the plaintiff and also counter claim of the defendant

on the ground that the Arbitral Tribunal could not enforce the right of the plaintiff arising from unregistered lease agreement as a result of the bar created U/S.49 of the Registration Act.

4. Being aggrieved by this award of dismissing the claim of plaintiff, the plaintiff has filed this petition and prayed to set aside the award. The plaintiff has contended that the award is in conflict with the public policy of India, as it violates the very fundamental policy of Indian law and is in conflict with the most basic notions of justice, equity and good conscience and learned Arbitrator has failed to act judicially and without any legal justification, circumscribed and restricted his powers as a judicial authority and failed to adjudicate the dispute before him. It is stated that after holding that, on payment of the deficit stamp duty, non registration of the lease agreement would not come in the way of considering the arbitration clause in the agreement, the learned Arbitrator has failed to adjudicate the dispute in accordance with the known canons of substantive law that govern the parties. The learned Arbitrator has disregarded the substantive judicial principles of law pertaining to pleadings, admissions and evidence, which governs the parties and has violated Section 28(1)(a) of the Act. It is stated that the learned Arbitrator has come to the erroneous conclusion that without the lease agreement none of the facts urged by the plaintiff in support of their claim can be proved. Though all the main facts mentioned in the impugned award

are facts that have been admitted by the parties in the pleading as well as evidence, admitted facts of the case are not considered by the learned Arbitrator only on the ground that lease agreement is not registered. It is stated that the learned Arbitrator after completion of the pleadings had asked the parties to admit the document produced in evidence by the other party and by the said process documents were marked as Ex.C.1 to Ex.C.21 and these documents ought to have been considered as evidence by the learned Arbitrator. It is contended that there was no dispute that the admitted documents corroborate that the parties mutually agreed for assessing the damages through the third party and third party evaluator has submitted report suggesting deduction and after deduction of the same, the remaining part of the security deposit was to be returned to the plaintiff. It is contended that these admitted facts are considered by the learned Arbitrator in the award as they were forthcoming from the pleading and evidence and though they were beyond the contents of the lease agreement, on the basis of these admitted facts even outside the bar created by Section 49 of the Registration Act, the learned Arbitrator could have adjudicated the matter. It is stated that the admission of several facts and documentary evidence cannot be simply presumed to be tainted by Section 49 of the Registration Act, when they were given independently in the arbitral proceedings by the defendant. It is stated that learned Arbitrator has failed to appreciate that there is no bar in law

for the plaintiff to prove its case from other uncontroverted evidence and from admissions made by the defendant on record. The power of Tribunal to adjudicate judicially on these corroborating evidence and admissions available before the Tribunal has not been taken away merely because the Tribunal cannot look into the contents of the lease agreement. The section do not bar the Arbitral Tribunal from considering other documentary evidence and admissions of the same facts that are available on record. It is stated that great injustice has been caused to the plaintiff because of ignoring credible, uncontroverted and legally valid evidence and admissions by the Arbitrator. It is stated that the admitted facts clearly establish that the plaintiff was entitled to the repayment of interest free security deposit of Rs.1,23,20,100/- subject to any deductions towards cost of rectification of damages caused to the schedule property and these facts could have been gathered by the learned Arbitrator and even without looking into the lease agreement and there was no legal bar on the learned Arbitrator to come to a judicial conclusion. It is also contended that the unregistered document can be looked into for collateral purpose U/S.49 of the Registration Act. It is stated that the lease agreement was already terminated and it was admitted by the defendant. After termination of the lease the clauses governing the obligation of the parties after termination, the obligation to resolve disputes by arbitration only, the obligation of defendant to refund security deposit on getting vacant possession of the

property were the clauses that governed the rights and obligations of the parties after termination of the lease period and therefore ought to have been considered as collateral obligations and transactions divisible from the main lease transaction and the learned Arbitrator could have considered these as collateral transactions that do not require to be effected by a registered document. It is stated that the learned Arbitrator has considered the decision of the Hon'ble Supreme Court which was not applicable to the facts of the case. It is also contended that the learned Arbitrator could not have ignored the admission and uncontroverted evidence on record either in law, equity and good conscience. The learned Arbitrator ought to have considered that even after contending that Arbitrator has no jurisdiction to adjudicate the dispute, defendant had sought counter claim before the same Tribunal which show the defendant's admission to arbitrate all disputes arising between the parties and thereby consenting to jurisdiction of the tribunal. On all these grounds, the award of the learned Arbitrator dismissing the claim of the plaintiff is challenged by the plaintiff and plaintiff has prayed to set aside the said award.

5. The defendant appeared through counsel and filed statement of objection and denied various contentions taken in the petition. The defendant contended that the application is neither maintainable in law nor on facts. It is stated that the award is not in conflict with the public policy of India and

do not violate any fundamental policy of Indian law and is not in conflict with any basic notion of justice, equity and good conscience as urged in the petition. It is stated that the learned Arbitral Tribunal has judicially followed the rules of justice and equity and the impugned award is a well reasoned award. It is stated that reference is made to Section 28(1)(a) of the Act to come over the rigour of the provisions contained in Section 49 of the Registration Act and Section 107 of the Transfer of Property Act are baseless and ground sought to be urged is wholly misconceived and unsustainable and plaintiff has not made out any case for setting aside the award. The facts of the case leading to arbitration are stated by the defendant in the statement of objection. Vacating of the premises by the plaintiff and appointment of CBRE for assessing the damage caused to the premises are all stated by the defendant. The correspondence between parties is also referred. It is stated that as lease agreement was not registered, contents of lease agreement could not be considered for adjudication of the dispute by the learned Arbitrator and accordingly the learned Arbitrator has passed the award. It is stated that though the Arbitrator could be appointed, as lease deed was not registered, Arbitrator cannot rely upon the lease deed or any terms thereof. It is contended that the learned Arbitrator was right in holding that amount sought to be recovered by the plaintiff is linked with the lease deed and same cannot be enforced as it is unregistered. It is also stated that the learned Arbitral Tribunal rightly held that

the claim before it arises out of the unregistered lease deed and cannot be enforced. On all these grounds, the defendant has prayed to dismiss the petition.

6. Now the points that arise for consideration of this court are:

- 1) **Whether the plaintiff has made out grounds U/S.34 of the Arbitration & Conciliation Act, to set aside the Arbitral Award passed by the learned sole Arbitrator on 13/5/2019?**
- 2) **What order?**

7. Heard both the counsels. Perused the records.

8. My answer to the above points are :

POINT No.1 : In the Negative.

POINT No.2 : As per final order for the following:

REASONS

9. **POINT No.1** : Claim petition was filed by the plaintiff before the learned Arbitrator praying to direct the defendant to pay Rs.73,20,100/- towards refund of interest free security deposit with interest @18% per annum till the date of payment from the date of agreement. On this claim petition, the learned Arbitrator has passed award in AC No.64/2018 on 13/5/2019 and rejected the claim of the plaintiff. In the same case, the defendant had also made a

counter claim and that was also rejected by the learned Arbitrator. There was also another claim petition by the sister concern of the plaintiff against the same respondent and the same was numbered as AC No.63/2018 and claim in the said case is also rejected by common order by the learned arbitrator. Being aggrieved by the rejection of the claim by the learned Arbitrator, the present petition U/S.34(2) of Arbitration & Conciliation Act is filed by the plaintiff. Plaintiff was a claimant and defendant was respondent before the learned Arbitrator. By virtue of arbitration clause appearing in the agreement entered into between the plaintiff and defendant as per Ex.C.2 on 24/3/2011, appointment of Arbitrator was made by the Hon'ble High Court in the Civil Miscellaneous Petition filed by the plaintiff.

10. Since this petition is U/S.34 of the Arbitration & Conciliation Act the power of the court is very limited as provided in Section 34(2) and Section 34(2A) of the Act. The Arbitral Award may be set aside by the court only if the case falls under these sections. Therefore only if the plaintiff establishes any of the ground appearing in Section 34(2) and 34(2A), the Arbitral Award can be set aside. It is contended by the plaintiff that the award passed by the learned Arbitrator is patently illegal and learned Arbitrator has failed to act judicially and follow the rules of justice and equity and without any justification restricted its power as a judicial authority empowered to adjudicate upon the dispute before

him and therefore the award passed by the learned Arbitrator is opposed to public policy.

11. The facts leading to the dispute between the parties is stated in the petition and also in the claim petition before the learned Arbitrator. In the lease agreement dated 24/3/2011, there is reference to payment of security deposit of Rs.1,23,20,100/- which is a refundable interest free security deposit and after termination of the lease the said amount was to be refunded. Admittedly the plaintiff – lessee has vacated the premises and there was dispute with regard to damage caused to the premises etc and there was also provision in the lease agreement for joint inspection and both the parties have agreed to appoint third party to assess the damage to the premises and CBRE South Asia Private Limited has conducted inspection and prepared the report, as per which Rs.50,00,000/- is recommended to be deducted out of interest free security deposit and the balance amount to be paid to the plaintiff was Rs.73,20,100/- and this is the suit claim amount prayed by the plaintiff in the claim petition filed before the learned Arbitrator.

12. The Arbitral Award and the records discloses that the defendant appeared and raised objection mainly on the point of non payment of stamp duty and non registration of the lease deed which is compulsorily registrable. After filing of this objection, the plaintiff has paid the stamp duty and

also 10 times penalty and thereby the defect of non payment of stamp duty is cured. Thereafter the parties have led evidence and the learned Arbitrator by considering that the lease deed dated 24/3/2011 is not registered, but is compulsorily registrable U/S.17 of the Indian Registration Act and also U/S.107 of Transfer of Property Act has held that different clauses of lease deed Ex.C.2 cannot be given effect to and therefore refund of the security deposit amount which is one of the clause in the said deed cannot be enforced by the learned Arbitrator and therefore rejected the claim of plaintiff. On looking to the award, the learned Arbitrator has considered as to whether the lease deed can be considered for collateral purpose as provided in proviso to Section 49 of the Indian Registration Act.

13. In the award, it is observed that no doubt this amount of Rs.73,20,100/- is due to the claimant, but if the learned Arbitrator were to give such direction to the defendant, Tribunal would be enforcing clause 4(d) of the lease deed which is unregistered. It is held that Section 49 of Indian Registration Act debars the learned Arbitrator from passing such order and the Arbitral Tribunal cannot look to any clause in the lease deed and it cannot enforce it. On looking to the entire award, the learned Arbitrator has observed that the claimant/ plaintiff had paid the refundable security deposit amount as stated by it and the damage caused to the premises and the reconstruction cost

redetermined by the CBRE Rs.50,00,000/- and after deducting this amount, the claimant is entitle to receive the remaining amount of Rs.73,20,100/-. However, as the lease deed is not registered U/S.49 of the Indian Registration Act, learned Arbitrator has held that the lease deed cannot be considered and therefore the Arbitral Tribunal cannot order for payment of this claim amount to the plaintiff. Therefore, the only point on which the claim was rejected is non registration of the lease deed.

14. Ex.C.2 is dated 24/3/2011 and is entered to be between plaintiff and defendant and this lease was for a period of two years which could be extended even subsequently. As mentioned in this lease deed Rs.1,23,20,100/- was paid by the lessee i.e. plaintiff to the defendant – lessor. Since it is a lease for a period of two years it is compulsorily registrable document U/S.17 of the Indian Registration Act. As per clause 6(l) stamp duty and registration charges in respect of the lease deed was to be borne by the lessee i.e. plaintiff. Therefore, at the time of entering into this lease deed, parties were aware of requirement of payment of stamp duty and also requirement of registration of the lease deed and the expenditure for such registration was agreed to be borne by the plaintiff – lessee. However the stamp duty as required is not paid and document is also not registered. The deficit stamp duty is paid by the plaintiff during pendency of arbitration

proceeding and thereby this defect has been cured. However, the requirement of registration of the lease deed could not be cured and the document remain unregistered lease deed which is compulsorily registrable U/S.17 of the Indian Registration Act and U/S.107 of Transfer of Property Act. Since this document is not registered, it will have to face the effect as provided U/S.49 of the Indian Registration Act.

15. The learned counsel for the plaintiff has relied on many decisions in which the effect of unregistered document have been considered. In a decision reported in **MANU/SC/0562/1969 (Rana Vidya Bhushan Singh v/s Ratiram)**, the Hon'ble Supreme Court has held that a document required by law to be registered, if unregistered, is inadmissible as evidence of a transaction affecting immovable property, but it may be admitted as evidence of collateral facts, or for any collateral purpose, that is for any purpose other than that of creating, declaring, assigning, limiting or extinguishing a right to immovable property.

16. In another decision reported in **1991(1) SCC 422 (Rai Chand Jain v/s Miss Chandrakanta Khosla)**, the Hon'ble Supreme Court has held that unregistered lease deed can be looked into for collateral purpose of ascertaining whether the lease was granted for residential or non residential purpose. In another decision reported in **2015**

(16) SCC 787 (Yellapu Uma Maheswari and another v/s Buddha Jagadheeswara Rao and others), the Hon'ble Supreme Court has held that an unregistered partition deed can be relied upon for collateral purpose namely severance of status and nature of position of the parties. In another judgment relied by the plaintiff reported in **2012(8) SCC 516 (Ahmedsaheb (dead) by Lrs and others v/s Sayed Ismail)**, the Hon'ble Supreme Court has held that even though the rent deed is unregistered the admission of the party in the proceedings either in the pleadings or oral is the best evidence and the same does not need any further corroboration and the admission of the respondent in the written statement about the rate of rent and further admission about its non payment for the entire period for which the claim was made in the three suits was sufficient to support the suit claim and by holding so the Hon'ble Supreme Court has decreed the suit and set aside the order of the Hon'ble High Court.

17. The learned Senior counsel for the plaintiff has also relied on the decision of Hon'ble Supreme Court in **1972(3) SCC 799 (Mattapalli Chelamayya and another v/s Mattapalli Venkataratnam and another)** wherein the award which was filed U/S.14 of the Arbitration Act before the court was unstamped and unregistered and was inadmissible in evidence. The Hon'ble Supreme Court in para 11 has held

that, **the direction to pay a sum of money which has been held due and payable by the appellants to the respondents is a direction giving effect to a liability which already existed** and this part do not require registration and is admissible. In another judgment of our Hon'ble High Court in **WP No.15209/2015 dated 21/10/2020 (Gangamma v/s Rangaiah)**, the Hon'ble High Court has relied on the above decision and held that the proviso to Section 49 states that an unregistered document can be received as evidence of any collateral transaction not required to be effected by registered instrument and therefore unregistered document can be received as evidence of any collateral transaction which by itself is not required to be effected by means of a registered instrument. Even in the decision reported in **ILR 1973 Mysore 641 (Abdul Razack Sab v/s Gopal Shetty H.K)** the Hon'ble High Court has held that the unregistered document can be relied upon to prove that respondent is a tenant.

18. The learned counsel for plaintiff has also relied on the decision of Hon'ble High Court of Madras reported in **2011(2) Madras Weekly Notes (Civil) 680 (L.Prem v/s Rajan C. Ramchandani)**, the Hon'ble High Court has held that the payment of advance could be a collateral transaction as it is not compulsory for entering into lease transaction and such payment of advance can be entered into by a separate

document or by an issuance of receipt which need not require registration. Therefore the transaction of payment of advance amount even though a separate and divisible transaction can be clubbed with the lease agreement entered into between the parties and it is collateral transaction not required to be effected by a registered instrument. In another judgment of the Hon'ble High Court of Telangana in **Civil Revision Petition No.5722 of 2004 dated 8/2/2006 between N.Sankaraiah v/s R. Krishna Swamy** unregistered lease deed is held to be admissible for collateral purpose of proving the deposit of Rs.25,000/- as advance.

19. In most of these decisions relied by the learned senior counsel for the plaintiff the effect of non registration of document which is compulsorily registrable has been considered. The Hon'ble Supreme Court and even the Hon'ble High Court have held that if a document which is compulsorily registrable is unregistered, it is inadmissible in evidence of the transaction affecting the immovable property and it may be admitted as evidence of collateral fact, if such purpose is other than that of creating, declaring, assigning, limiting or extinguishing a right to immovable property. On the basis of these decisions the learned senior counsel for the plaintiff has vehemently argued that though Ex.C.2 lease deed dated 24/3/2011 is unregistered document and is not admissible U/S.49 of the Indian Registration Act, as per the

proviso of the said Section the document can be considered for the collateral purpose of proving payment of security deposit, which is even admitted. In this connection, the decisions of the Hon'ble High Court of Telangana in N.Sankaraiah v/s R.Krishna Swamy referred above is pressed, wherein, petitioner was permitted to rely upon the unregistered lease deed containing stipulation about depositing of Rs.25,000/- as advance amount. The Hon'ble High Court has held that when there is no dispute about the lease and lease has also expired and the dispute is only about recovery of advance, the Trial Court can receive the unregistered lease deed for the limited purpose of proving the fact as to whether petitioner made any deposit with the respondent. In another decision of Madras High Court in L.Prem v/s Rajan C. Ramchandani referred above also the Hon'ble High Court held that payment of advance could be collateral transaction as it can take place separately and this payment of advance do not require registration.

20. On considering these two decisions and also decision in Mattapalli Chelamayya referred above, as rightly argued by the learned Senior counsel for the plaintiff the payment of security deposit by the plaintiff to the defendant at the time of taking the premises on lease could be considered as a collateral purpose, for which even unregistered lease deed can be relied. Moreover, Ex.C.2 only recognize the payment already made to the lessor that is

defendant of Rs.1,23,20,100/- as interest free security deposit in clause 3. Therefore, this lease deed dated 24/3/2011 though unregistered could be considered for the collateral purpose of proving the fact of payment of security deposit amount by the plaintiff to the defendant. In fact, in the award it is clearly observed that payment of this amount as security deposit is even admitted by the defendant. Arbitral Tribunal also has considered that the payment of security deposit by the claimant is not in dispute.

21. In the decision relied by the learned senior counsel for defendant reported in **(2008) 8 Supreme Court Cases 564 (K.B.Saha and Sons Private Limited v/s Development Consultant Limited)** the Hon'ble Supreme Court in para 34 has considered the fact of non registration as under:

“From the principles laid down in the various decisions of this Court and the High Courts, as referred to hereinabove, it is evident that:

1. A document required to be registered, if unregistered is not admissible into evidence under Section 49 of the Registration Act.

2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso to Section 49 of the Registration Act.

3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.

4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or

interest in immovable property of the value of one hundred rupees and upwards.

5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose.”

22. This decision is even considered by the learned Arbitrator. In this decision the Hon'ble Supreme Court has held that the collateral transaction must be independent of or divisible from the transaction to effect which the law required registration and the collateral transaction must be a transaction not itself required to be effected by a registered document. As held in this decision based on this unregistered document any claim cannot be made, though for the collateral purpose, the document can be considered, in view of the proviso to Section 49. Ex.C.2 can be considered for the collateral purpose of proving the payment of amount of security deposit by the plaintiff to the defendant. However, this payment of security deposit by the plaintiff to the defendant is not in dispute in the present case.

23. The dispute is with regard to refund of the same. Refund of the security deposit amount is governed by the lease agreement itself. Clause 4(d) of Ex.C.2 is the clause which gives right to the lessee that is the plaintiff to receive the security deposit on expiry of the lease and after delivering vacant possession of the premises in good condition.

Therefore the refund of the security deposit amount is covered by clause 4(d) of the lease deed. Though the security deposit given by the plaintiff to the defendant is admitted by the defendant and it is a collateral purpose for which even Ex.C.2 can be relied, refund of the said amount is governed by clause 4(d) of this lease deed.

24. In the award the learned Arbitrator has considered the decision of the Hon'ble Supreme Court which is relied by the defendant even in the present case which is between **SMS Tea Estates Private Limited v/s Chandmari Tea Company Private Limited reported in (2011) 14 Supreme Court Cases 66**, in which the Hon'ble Supreme Court has held that *arbitration agreement in a contract is a collateral term relating to the resolution of disputes, unrelated to the performance of the contract. It is as if two contracts – one in regard to the substantive terms of the main contract and other relating resolution of disputes – had been rolled into one, for purposes of convenience. An arbitration clause is therefore an agreement independent of the other terms of the contract or the instrument. Resultantly, even if the contract or its performance is terminated or comes to an end on account of repudiation, frustration or breach of contract, the arbitration agreement would survive for*

the purpose of resolution of disputes arising under or in connection with the contract.

25. As held in this decision arbitration clause in a unregistered lease deed could be give effect to and accordingly learned Arbitral Tribunal is constituted and there is no dispute about the same. In this decision it is also held in para 23, 24 and 30 as under:

“ 23. Where a lease deed is for a term of thirty years and is unregistered, the terms of such a deed cannot be relied upon to claim or enforce any right under or in respect of such lease. It can be relied upon for the limited purposes of showing that the possession of the lessee is lawful possession or as evidence of some collateral transaction. Even if an arbitrator is appointed, he cannot rely upon or enforce any term of the unregistered lease deed. Where the arbitration agreement is not wide and does not provide for arbitration in regard to all and whatsoever disputes, but provides only for settlement of disputes and differences arising in relation to the lease deed, the arbitration clause though available in theory is of little practical assistance, as it cannot be used for deciding any dispute or difference with reference to the unregistered deed.”

“24.... Having regard to the limited scope of the said arbitration agreement (restricting it to disputes in relation to or in any manner touching upon the lease deed), the arbitrator will have no jurisdiction to decide any dispute which does not relate to the lease deed. Though the arbitrator will have jurisdiction to decide any dispute touching upon or relating to the lease deed, as the lease deed is unregistered, the arbitration will

virtually be a non-starter. A party under such a deed may have the luxury of having an arbitrator appointed, but little else. Be that as it may."

30. Lastly, we may consider the claim for recovery of the amounts allegedly spent towards the tea estates, as a consequence of the respondents not selling the estates or not permitting the appellant to enjoy the lease for 30 years. If this claim is treated as a claim for damages for breach in not granting the lease for 30 years then it would be for enforcement of the terms of the lease deed which is impermissible under Section 49 of the Registration Act. If it is treated as claim dehors the lease deed then the arbitrator may not have the jurisdiction to decide the dispute as the arbitration agreement (clause 35) is available only to settle any dispute or difference arising between the parties in relation to or in any manner touching upon the lease deed and not in regard to disputes in general."

26. In this decision also lease deed was a compulsorily registrable as was for 30 years and was not registered and the Hon'ble Supreme Court has held that the terms of such deed cannot be relied to claim or enforce right under or in respect of such lease and even if Arbitrator is appointed he cannot rely upon or enforce any term of the lease. The Hon'ble Supreme Court has even held that even if claim could be considered in the absence of lease deed, then the Arbitrator may not have the jurisdiction to decide claim as the arbitration agreement is available only to settle any dispute or difference arising between the parties in relation to the lease deed. By considering this judgment, the learned Arbitrator

has held that it cannot enforce clause 4(d) of the lease deed Ex.C.2 and order for refund of the security deposit amount. The learned Arbitrator has also held that even if the plaintiff intend to move beyond the lease deed, by considering the evidence available on record admitting the security deposit available with the defendant, the Arbitrator cannot move beyond the lease deed as the arbitration is a creation of contract between the parties and this lease deed is a contract which enabled this arbitration. The learned Arbitrator has also held that even if the claim of the plaintiff could be delinked from the lease deed, even then the Tribunal would have no jurisdiction to adjudicate upon the dispute between the parties and jurisdiction is limited by the language of the arbitration clause and it is not wide enough to cover all and every dispute between the parties.

27. The learned senior counsel for the plaintiff has tried to distinguish the present case with that of the SMS Tea Estates. Learned senior counsel has submitted that as mentioned in para 23 of the judgment of the Hon'ble Supreme Court the arbitration agreement in the said case was not wide and did not provide for arbitration in regard to all and whatsoever disputes, but the arbitration agreement in Ex.C.2 is wide and does include any dispute or difference whatsoever arising between the parties and as such the learned counsel submitted that learned Arbitrator under the arbitration agreement Ex.C.2 has the power to go even beyond the lease

deed. On looking to the arbitration agreement of the present case, which is referred even by the learned Arbitrator in the award no doubt the word **“any dispute or difference whatsoever”** is appearing, but this is connected to the lease deed as it is stated that **“...any dispute or difference whatsoever arising between the parties out of or relating to the construction, meaning, scope operation, effect of this agreement or validity or breach thereof....”** Therefore though any dispute or difference whatsoever arising between the parties could be referred to the arbitration, but such dispute or difference should be connected to the agreement that is the lease deed. Therefore, the word 'whatsoever' used in this arbitration agreement do not in fact make the powers of the Arbitrator wide, but it give wide power to the Arbitrator within the scope of lease agreement. Since the learned Arbitrator was appointed by the order of the Hon'ble High Court in view of the Arbitration clause in the lease deed, learned Arbitrator would be having power to decide the dispute or difference arising between the parties out of or relating to the construction, meaning, scope operation, effect of this agreement or validity or breach thereof and not beyond that. Hence by considering arbitration clause it cannot be held that the decision in SMS Tea Estate is not applicable to the case.

28. The learned senior counsel for the plaintiff has also argued that in the said case prior to the lease there was offer to sell tea estate, but later the respondent evaded the appellant and subsequently appellant expressed its willingness to purchase the Tea Estate and in this background the Hon'ble Supreme Court has held that purchase of the Tea Estate was not relating to the lease deed and in the present case there is no such situation and as such the ratio of the said decision cannot be applied to the present facts. This argument also cannot be accepted for the reason that there is no dispute that the Arbitrator was appointed as per the arbitration clause and the arbitration clause gives wide power to the learned Arbitrator to decide the dispute arising between the parties in relation to the lease deed and it do not give any power to go beyond the lease deed. Even there is no agreement between the parties to confer power on the Arbitrator to decide any dispute even beyond the scope of the lease deed. In the absence of any such separate agreement giving wide power to the learned Arbitrator even to go beyond the lease deed, the ratio laid down by the Hon'ble Supreme Court would be aptly applicable to the present case also.

29. On looking to all these aspects as rightly held by the learned Arbitrator the decision of the Hon'ble Supreme Court in SMS Tea Estate Private Limited is aptly applicable to the present case. As held in the decisions cited by the plaintiff,

referred above, the payment of security deposit or the acknowledgement of security deposit available with the defendant could be considered as a collateral purpose, which do not require registration and could be relied. However, refund of the security deposit would be covered by the lease deed which is unregistered and not admissible in evidence and the clauses in the said deed cannot be enforced by the learned Arbitrator. Though the security deposit received by the defendant is even admitted and by virtue of Ex.C.2 the payment of security deposit is proved, the learned Arbitrator cannot order for refund of the said amount, as the learned Arbitrator cannot go beyond the lease deed, as this contract between the parties has created this arbitration and as the Arbitral Tribunal is a creation of contract between the parties and the Arbitrator cannot decide the dispute beyond the lease deed.

30. The refund of security deposit on the facts of the case cannot be ordered without relying on Ex.C.2 by the learned Arbitrator. Since the learned Arbitrator cannot go beyond the lease deed, the learned Arbitrator has no power to order for refund of the said amount. A civil court in a civil suit can even go beyond the unregistered document by considering the evidence lead by the parties and also by considering the payment of security deposit mentioned in Ex.C.2 as a collateral purpose and could have even ordered for refund of the said amount, by considering the admission,

pleadings and the documents produced by the parties. The Arbitral Tribunal though convinced about the payment of said security deposit by the plaintiff and liability of the defendant to return such amount after deduction of damages which is assessed by the third party, the Arbitral Tribunal which derive its power by the arbitration agreement appearing in the unregistered lease deed cannot order for refund, as such direction to the defendant would be enforcing of clause 4(d) of the lease deed which is unregistered. Even after giving widest possible interpretation to the arbitration clause in lease deed, the learned Arbitrator held that it is not wide enough to cover all and every dispute between the parties and it can adjudicate only such dispute related to the lease deed. The learned Arbitrator held that dispute regarding the refund of the interest free security deposit is directly linked to the lease deed and it cannot enforce the clauses of the lease deed because of the bar under Section 49 and also as held by the Hon'ble Supreme Court in SMS Tea Estate case. The learned Arbitrator has also held that the refund of security deposit could be by enforcing clause 4(d) of the lease deed and as this lease deed is unregistered it cannot issue such direction.

31. Even this court which is sitting U/S.34 of the Arbitration & Conciliation Act cannot go beyond the arbitration agreement entered into between the parties, which gives power to the Arbitrator to decide the dispute or difference between the parties in connection with the lease

deed. As stated above though this relief could have been granted by a civil court, the Arbitral Tribunal which is bound by the terms of agreement which created it cannot go beyond the said agreement and cannot give direction. As referred above the plaintiff was required to take steps for registration of lease deed, but has not taken steps to register the same as and when lease deeds were executed. From 2004, several lease deeds were executed in respect of different floors in the same building between the parties, but none of these lease deeds are registered. Due to non registration of a compulsorily registrable lease deed plaintiff is now suffering. For this unfortunate situation, the plaintiff can blame none other than itself. The learned Arbitrator has also kept option open to the parties to pursue such other remedy that may be available in accordance with law to recover the amount.

32. On going through the entire award, the learned Arbitrator has considered the applicable law of the land and the decision of the Hon'ble Supreme Court and has come to the right conclusion and rejected the claim of the plaintiff and counter claim of the defendant. On going through the decision cited by both the parties in the present case and also on going through the award there is no patent illegality found in the award and the award is not shown to be against the public policy of India. In view of the specific bar to consider the different clauses of the lease deed as the same is unregistered, the order of the learned Arbitrator cannot be

said to be against the public policy of India or is patently illegal. Hence, there are no grounds to set aside the award as prayed by plaintiff. Accordingly, point No.1 is answered **in the negative.**

33. POINT No.2 : For the discussion made on above point, following order is passed:

ORDER

Petition U/S.34 of the Arbitration & Conciliation Act to set aside the Arbitral Award dated 13/5/2019 in AC No.64/2018 passed by the learned Arbitrator is dismissed.

*[Dictated to the Judgment Writer; transcript thereof corrected, signed and then pronounced by me, in the Open Court on this the **23rd day of March 2021]***

[Ravindra Hegde]
LXXXIII Additional City Civil Judge.
BENGALURU.

