

27.02.2025
Ct. No. 237
Sl. No. 39
Moumita

**IN THE HIGH COURT AT CALCUTTA
Constitutional Civil Jurisdiction
Appellate Side**

CO 3916 of 2024

**GTL Infrastructure Ltd.
Vs
Kanan Karkun**

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

This application has been preferred against the order dated 8th May, 2023 and 20th March, 2024 passed by the learned Civil Judge, Senior Division, Second Court, Barasat. By the order impugned dated 8.5.2023 the court below held that the agreement of lease dated 24th July, 2007 does not bear proper stamp duty as per the Stamp Act and therefore the agreement of lease which contains arbitration clause cannot be taken into consideration even for collateral purpose. In this context he relied upon ***Garware Wall Ropes Ltd. Vs. Coastal Marine Constructions and Engineering Ltd. (Civil Appeal no. 3631 of 2019)***.

Accordingly, by the order dated 8th May, 2023 he impounded the agreement for lease dated 24th July, 2007 and thereafter by the second impugned order dated 20th March, 2024, he directed the defendant to make payment of the Deficit Stamp Duty by the next date,

otherwise the court below inclined to proceed with the suit.

Petitioner in this context submits that inadequate stamping of the lease deed is a curable defect and an objection as to the inadequate stamping cannot fall for determination under Section 8 of the Arbitration Act and the court is only to consider whether arbitration agreement prima facie exists or not and any objection in relation to the inadequate stamping of the lease agreement falls within the ambit of Arbitral Tribunal, which the court below has completely overlooked. He further submits that the court below has passed his order relying upon judgment passed in **Garware Wall Ropes case (supra)** but said judgment has been overruled by a subsequent judgment passed in **2024 (6) SCC 1 (Para 235)**.

Having heard learned Counsel appearing on behalf of the petitioner, it appears to this court that the petitioner has made out an arguable case which requires adjudication on merit. In such view of the matter further proceeding on Title Suit no. 178 of 2021, presently pending before the Civil Judge, Senior Division, Barasat is stayed for a period of eight weeks or until further order whichever is earlier.

Petitioner is directed to serve a copy of the application upon the opposite party through speed post

intimating the next date of hearing and to file affidavit-of-service on the returnable date.

Let the matter be listed under the heading “Contested Application” in the monthly list of April, 2025.

(Dr. Ajoy Kumar Mukherjee, J.)