(2015) 07 KAR CK 0312

In the Karnataka High Court

Case No : Writ Petition No. 47811 of 2014 (GM-RES)

Dilli Babu APPELLANT

Vs

State of Karnataka and Others RESPONDENT

Date of Decision : 10-07-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 36
Civil Procedure Code, 1908 (CPC) — Section 47
Karnataka Stamp Act, 1957 — Section 17, 2(f), 34
Registration Act, 1908 — Section 17

Citation : (2016) 1 AKR 263 : (2015) ILR (Kar) 4336 : (2015) 5 KarLJ 177

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Advocate : Abhinav R. for Kumar and Kumar, for the Appellant; Pramodini Kishan, High Court Government Pleader and R. Srinivasa Gowda, Advocates for the Respondent

Final Decision : Disposed off

Judgement

A.S. Bopanna, J—The petitioner is before this Court assailing the order dated 23-8-2014 passed in Execution Case No. 1983 of 2014 impugned at Annexure-C to the petition. The petitioner in order to execute the award passed by the Arbitral Tribunal, had instituted the execution case in E.C. No. 1983 of 2014. The payment of stamp duty on the said document arose for consideration before the Executing Court in view of the note put up by the registry. The Executing Court, at the first instance, on hearing the learned Counsel for the petitioner, was of the view that the stamp duty of Rs. 2,05,972/- is payable keeping in view the provision contained in Article 11(b) of the Schedule to Karnataka Stamp Act, 1957. The petitioner has accordingly paid the stamp duty of Rs. 2,06,000/-. Subsequent thereto, the registry has once again raised an objection in that regard to indicate that the petitioner cannot derive benefit of the substitution to Article 11(b) which has been made on 1-3-2014 since the Arbitral award was passed on 8-11-2013 and the stamp duty provided for on that date in Article

11(b) is to be paid. The Executing Court has upheld the office note and has directed that the deficit of stamp duty be paid as per the office note under Article 20(1) of the Karnataka Stamp Act as Article 11(b) provided for the same. It is in that view, the petitioner is before this Court.

2. Heard the learned Counsel for the parties and perused the petition papers.

3. The undisputed facts are that the Arbitral award is dated 8-11-2013 and the petitioner has filed execution petition on 14-7-2014 to execute the same. The amendment made to Article 11(b) on substitution, by Act 19 of 2014 is with effect from 1-3-2014. Therefore, the question for consideration is as to the date on which the stamp duty, as provided under Article 11(b), is to be taken into consideration in the instant case viz., as to whether the date of the Arbitral award would be relevant or is it the date on which the execution petition had been filed?

4. The time of stamping instruments is as provided under Section 17 of the Karnataka Stamp Act, 1957 which reads as hereunder:

"17. Instruments executed in the State of Karnataka.--All instruments chargeable with duty and executed by any person in the State of Karnataka shall be stamped before or at the time of execution".

5. In order to arrive at a conclusion as to the time at which the award is to be appropriately stamped, the consideration made by the Hon''ble Supreme Court, in the case of M. Anasuya Devi and Another Vs. M. Manik Reddy and Others, (2003) 3 ARBLR 404 : (2004) 1 CompLJ 118 : (2003) 8 JT 276 : (2003) 9 SCALE 12 : (2003) 8 SCC 565 : (2003) 4 SCR 853 Supp : (2004) 1 UJ 389 , is relied on by the learned Counsel for the petitioner. Para 4 of the said judgment is relied with specific reference, which reads as hereunder:

"After we heard the matter, we are of the view that in the present case this issue was not required to be gone into at the stage of the proceedings under Section 34 of the Act. In fact, this issue was premature at that stage. Section 34 of the Act provides for setting aside of the award on the grounds enumerated therein. It is not in dispute that an application for setting aside the award would not lie on any other ground, which is not enumerated in Section 34 of the Act. The question as to whether the award is required to be stamped and registered, would be relevant only when the parties would file the award for its enforcement under Section 36 of the Act. It is at this stage the parties can raise objections regarding its admissibility on account of non-registration and non-stamping under Section 17 of the Registration Act, 1908. In that view of the matter, the exercise undertaken to decide the said issue by the Civil Court as also by the High Court was entirely an exercise in futility. The question whether an award requires stamping and registration is within the ambit of Section 47 of the Code of Civil Procedure, 1908 and not covered by Section 34 of the Act".

(emphasis supplied)

6. A perusal of the same would no doubt indicate that the Hon''ble Supreme Court has held that the date on which it would be relevant to consider the validity of stamping, is the date on which the award is sought to be relied upon or sought to be enforced or executed in accordance with law. However, the issue for consideration herein is the relevant date to apply and levy the stamp duty, if the stamp duty prescribed is not at the same rate on those two dates i.e., on the date of execution of the instrument and the date of its enforcement. In that light, a perusal of Section 17 of the Act extracted supra provides that it shall be stamped before or at the time of execution. Therefore, it is the option to be made by the party taking benefit of the instrument to pay the stamp duty either before or at the time of execution.

7. The question therefore would be with regard to the purport of the word "execution" as contained in Section 17 of the Act. The word "execution" is defined in Section 2(f) of the Act as follows:

"2.(1)(f) "Executed" and "Execution" used with reference to instruments, mean "signed" and "signature"".

8. From the above, it is clear what would be relevant for the purpose of quantifying the stamp duty payable on the instrument is the date on which the instrument was signed. However, the question or issue, as to whether the document is appropriately stamped will arise for consideration only when it is sought to be relied upon and is available to be executed under Section 36 of Arbitration and Conciliation Act, 1996 as held by the Hon''ble Supreme Court in the decision cited supra. Hence, it is clear though the question in that regard would arise for consideration when the parties seek enforcement as held by the Hon''ble Supreme Court in the cited decision, the amount of stamp duty payable would have to be computed with reference to the date on which the instrument was signed. In the instant case, the instrument is the Arbitral award.

9. If that be the position, in the instant case, as noticed, the execution petition no doubt was filed on 14-7-2014 seeking enforcement of the award, but the award was signed on 8-11-2013 itself. If that be so, the provision contained for payment of stamp duty subsisting as on 8-11-2013 would have to be taken into consideration. As noticed, the substitution to Article 11(b) was made on 1-3-2014, which date, though is prior to the date on which the execution petition had been filed, it was on a date after the award was signed. Hence, the subsequent order passed by the Executing Court on 23-8-2014 depicts the correct position as the stamp duty provided in Article 11(b) on the date of award is payable. The learned Counsel for the petitioner has alternatively contended, if that be the position, the change made in Article 11(b) in the Schedule is by way of substitution which should relate back to the date of the Act and as such, benefit of the same would be available as on the date of the award also. The said contention need not detain this Court for long. When a similar question was raised before this Court in relation to the substitution made to Article 6(1)(a) in the Schedule through Karnataka Act No. 8 of 2008, this Court by a detailed

consideration with reference to the decision of the Hon''ble Supreme Court has rejected such contention while disposing the petition in the case of Bamdev Nayak v State of Karnataka and Others (W.P. No. 8608 of 2007, disposed on 4-12-2013). In that view, I am unable to accept the contention in that regard.

Hence, for all the aforestated reasons, the order impugned does not call for interference. The petition is accordingly disposed of with no order as to costs.

