

(2019) 01 KAR CK 0001

In the Karnataka High Court

Case No : Criminal Petition No. 47897 Of 2018 (GM-CPC)

Mrs. Shaila Mathias And Ors

APPELLANT

Vs

Nitesh Estates Limited

RESPONDENT

Date of Decision : 02-01-2019

Acts Referred:

Arbitration and Conciliation Act 1996 — Section 11(6), 17, 37
Representation of People Act, 1951 — Section 77(1)
Income Tax Act, 1961 — Section 13A, 139(4B)

Citation : (2019) 01 KAR CK 0001

Hon'ble Judges : Alok Aradhe, J

Bench : Single Bench

Advocate : Dnyan Chinnappa, Vedanayakivivek Holla

Final Decision : Disposed Off

Judgement

1. In this petition under Article 227 of the Constitution of India, the petitioners have assailed the validity of the order dated 30.08.2018 passed by the Trial Court, by which memo filed by the respondent is allowed and the petitioners have been directed to pay stamp duty as prescribed under Article 11 of the Karnataka Stamp Act 1957 (hereinafter referred to as 'the Stamp Act') on the order dated 28.11.2017 passed by the Arbitrator under Section 17 of The Arbitration and Conciliation Act 1996 (hereinafter referred to as 'the Act'. On admitted facts, the issue which arises for consideration in this case is whether the expression 'award' as used by the legislature in Article 11 of 'the Stamp Act' would include an order passed by the arbitrator under Section 17 of 'the Act'.

2. Background facts leading to filing of this petition in nutshell are that the petitioners are owners of the plot in question. The petitioners entered into a Joint Development Agreement with respondent and executed a Power of Attorney in favour of respondent on 29.03.2011. In terms of the Joint Development Agreement, the respondent was required to complete the construction of the project and allot 5 flats to the claimant. The respondent delayed the execution of

the project. As per authorization, till handing over of the schedule property, the respondent was required to pay a sum of Rs.2 Lakhs per month to the petitioners from 01.10.2014 till date. The respondent committed breach of the terms and conditions of the Joint Development Agreement as well as the Power of Attorney, which led to dispute between the parties. The petitioners issued a notice invoking the arbitration clause. Thereafter, the petitioners filed an application under Section 11(6) of 'the Act' before this Court. A bench of this Court by an order dated 22.09.2017 appointed an Arbitrator to adjudicate the dispute between the parties.

3. The petitioners filed an application under Section 17 of the Act on 07.07.2017 before the Arbitrator seeking an injunction against the respondent restraining the respondent, its employees, men, representatives, agents or anybody claiming through it from alienating, encumbering/entering into agreements to sell with third parties or in any manner dealing with or creating third party rights over the schedule property and from restraining them from entering the schedule property. The respondent filed a reply to the aforesaid application. The Arbitrator after hearing the parties by an order dated 28.11.2017, directed the respondent to pay outstanding dues for a period from 01.10.2014 till 30.11.2017 to the petitioners subject to the result of the arbitration proceedings. The respondent was required to pay the outstanding amount on or before 24.12.2017 and to continue to make payment of the amount with effect from 01.12.2017 till final disposal of the Arbitration proceeding. Being aggrieved, the respondent filed an appeal under Section 37 of the Act in the Court of XXXVIII Additional City Civil and Sessions Judge in which no interim order has been passed till date.

4. The petitioners thereafter, filed a petition for execution under Order XXI of Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code' for short) before City Civil Court, Bangalore. Pending the execution proceeding, the petitioners made a prayer for attachment and sale of the movable properties of the respondent. The Executing Court by an order dated 27.04.2018 issued a warrant for attachment of movable properties of the judgment debtor. The respondent filed an application to recall the warrant, which was allowed by the Executing Court by an order dated 05.07.2018. The Executing Court heard the arguments of the counsel for the petitioners on the issue of inadequacy of payment of stamp duty on 02.08.2018. The respondent filed a memo dated 04.08.2018. The Trial Court by an order dated 30.08.2018 held that in view of the decision of the Supreme Court in *M.ANASUYA DEVI AND ANOTHER VS. M.MANIK REDDY AND OTHERS*', (2003) 8 SCC 565, the order passed by the Arbitrator on 28.11.2017 is an interim award and therefore, the stamp duty is required to be paid on it as provided under Article 11 of the Stamp Act.

5. Learned Senior counsel for the petitioners submitted that the order dated 28.11.2017 has been passed by the Arbitrator under Section 17 of the Act and the same is an interim 'order' and is not an 'award'. It is further submitted that Article 11 of the Stamp Act has to be read along with 'the Act' to ascertain

whether Article 11 would apply in respect of the order dated 28.11.2017. It is further submitted that the order dated 28.11.2017 is subject to final outcome of the Arbitration proceeding and cannot be treated as an interim award and in case Article 11 of the Stamp Act is read in isolation, it would amount to obstruction in execution of the order passed by the Arbitrator. In support of aforesaid submissions, reference has been made to decisions of the Supreme Court in 'SHAMARAO PARULEKAR VS. THE DISTRICT MAGISTRATE,

THANA, BOMBAY AND ORS.', AIR 1952 SC 324, 'STATE OF MADRAS VS. GANNON DUNKERLEY & CO. (MADRAS) LTD AND ORS' AIR 1958 SC 560, 'COMMISSIONER OF WEALTH TAX, ANDHRA PRADESH VS. OFFICER-IN-CHARGE (COURT OF WARDS), PAIGAH' 1976 (3) SCC 864 and 'SHRIRAM EPC LIMITED VS. RIOGLASS SOLAR S A', 2018 SCC ONLINE SC 1471.

6. On the other hand, learned counsel for the respondent while referring to the pleadings made by the petitioners before the Executing Court submitted that in the pleadings, the petitioners have accepted that the order dated 27.11.2017 is an interim 'award'. Therefore, the petitioners are estopped from contending that the order in question is not an award. It is further submitted that in order to ascertain the question of levy of stamp duty, the provisions of Article 11 have to be looked into and the order in question is a decision in writing by an Arbitrator and therefore is an 'award' within the meaning of Article 11 of the Stamp Act. It is also urged that the expression 'decision' includes an interim order. Attention of this Court is invited to Black's Law Dictionary. In support of the aforesaid submissions, reference has been made to decisions of the Hon'ble Courts in 'M.ANASUYA DEVI AND ORS. VS. M.MANIK REDDY AND ORS.,' (2003) 8 SCC 565, 'M/S WILSON & AMP; COMPANY PRIVATE LIMITED ETC. VS. K.S.LOKAVINAYAGAM AND ANOTHER', MANU/TN/0019/1992, 'OFFICIAL TRUSTEE, WEST BENGAL AND ORS. VS. SACHINDRA NATH CHATTERJEE AND ORS.', AIR 1969 SC 823, JAYALAKSHMI COELHO VS. OSWALD JOSEPH COELHO,', (2001) 4 SCC 181, 'NAGINDAS RAMDAS VS. DALPATRAM ICHHARAM ALIAS BRIJRAM & OTHERS', 1974(1) SCC 242, 'J.S.PARAMESH SIDDEGOWDA VS. SMT.INDRAMMA V. MURTHY', 2008 (5) KAR.L.K.502, 'COMMISSIONER OF INCOME TAX WEST BENGAL, CALCUTTA VS. RAJA BENOY KUMAR SAHAS ROY', AIR 1957 SC 768, and 'COMMISSIONER OF WEALTH TAX ANDHRA PRADESH VS. OFFICER-IN-CHARGE (COURT OF WARDS), PAIGAH', 1976 (3) SCC 864.

7. By way of rejoinder reply, Learned Senior Counsel for the petitioners has submitted that in the pleadings before the Executing Court, at several places the order passed by the Arbitrator has been described as an 'order' and the respondent himself has treated the order to be an order under Section 17 of the Act and therefore, has filed an appeal under Section 37 of the Act.

8. I have considered the submissions made on both sides and have perused the records. Before proceeding further it is apposite to take note of relevant statutory provisions. Article 11 of the Stamp Act reads as under:

"Art. 11. Award, that is to say, any decision in writing by an arbitrator or umpire, not being an award directing a partition, on a reference made otherwise than by an order of the Court in the course of a suit."

Section 17 of the Act reads as under:

"17. Interim measures ordered by arbitral tribunal. -

(1) A party may, during the arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with Section 36, apply to the arbitral tribunal, -

(i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or

(ii) for an interim measure of protection in respect of any of the following matters, namely, -

(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorizing for any of the aforesaid purpose any person to enter upon any land or building in the possession of any party, or authorizing any samples to be taken, or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the arbitral tribunal to be just and convenient. and the arbitral tribunal shall have the same power for making orders, as the court has for the purpose of, and in relation to, any proceedings before it.

(2) Subject to any orders passed in an appeal under Section 37, any order issued by the arbitral tribunal under this section shall be deemed to be an order of the Court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were an order of the Court."

It is pertinent to note that Article 11 of 'the Stamp Act' was substituted by an Act No.19 of 2014 with effect from 01.03.2014, whereas Section 17 of 'the Act' was substituted by Act No.3 of 2016 and came into force with effect from 23.10.2015. Thus, it is evident that Article 11 of 'the Stamp Act' came into existence before substitution of Section 17 of 'the Act'. Thus, Section 17 of 'the Act' has come into existence later in point of time.

9. Now, I may advert to certain well settled legal principles with regard to

interpretation of statutes. The Hon'ble Supreme Court in the case of 'COMMON

CAUSE, A REGISTERED SOCIETY vs. UNION OF INDIA', AIR 1996 SC 3081, has held that related provisions in different acts having bearing on same subject have to be read together. In the aforesaid decision, the Supreme Court interpreted Explanation (1) to Section 77(1) of the Representation of People Act, 1951, for interpreting the expression - "any expenditure incurred or authorized in connection with the election of a candidate by a political party - shall not be deemed to be expenditure in connection with the election incurred or authorized by the candidate" with reference to Section 13A and 139(4B) of the Income Tax Act, 1961. The aforesaid decision was referred to with approval in, 'UNION OF INDIA vs. ASSOCIATION FOR

DEMOCRATIC REFORMS AND ANOTHER' AIR 2002 SC 2112 and 'PEOPLES UNION FOR CIVIL LIBERTIES (PUCL) AND ANOTHER vs. UNION OF INDIA AND ANOTHER' AIR 2003 SC 2363. It is equally well settled legal proposition that while interpreting a statute, the doctrine that words of the statute has to be given the meaning, they would have received immediately after the enactment of the statute or it would be proper for the Court to adopt the current meaning of the words has its own limitations. The aforesaid doctrine which is generally known as 'doctrine of dynamic construction' has its own limitations in the sense that it does not mean that language of an old statute can be construed to embrace something which is conceptually different. (See: 'BIRMINGHAM CITY COUNCIL vs. OAKLEY', (2001) 1 ALL.E.R. 385).

10. In the case of 'STATE OF MADHYA PRADESH vs. G.S.DALL AND FLOUR MILLS', AIR 1991 SC 772, it was held that just as use of same language in a later statute was used in an earlier statute in pari materia is suggestive of the intention of the legislature that the language so used in the later statute is used in the same sense as in the earlier one, the change of language in the later statute in pari materia is suggestive that change of interpretation is intended. (Also See 'LALU PRASAD YADAV vs. STATE OF BIHAR' (2010) 5 SCC 1 and 'R(A) vs. CROYDON LONDON B.C.', (2010) 1 ALL.E.R. 469). (See: Principles of statutory interpretation by Justice G.P.Singh 13th edition page 313).

11. In the backdrop of aforesaid well settled legal position, the facts of the case may be seen. By substitution of Section 17 by Act No.3 of 2016 with effect from 23.10.2015, on order passed by the Arbitrator under Section 17 of 'the Act' was made subject to an appeal under Section 37 of 'the Act' and any order passed by the Arbitral Tribunal was made to be an order of the Court for all purposes and was made enforceable under the Code of Civil Procedure as if it were an order of the Court. Prior to substitution of Section 17 of the Act, the Stamp Act was substituted by an Act No.19 of 2014 with effect from 01.03.2014 and any decision in writing by an arbitrator or umpire, not being an award directing partition on a reference made otherwise by an order of the Court in the course of a suit, was made subject to levy of the Stamp duty as provided in Article 11 of 'the Stamp Act'. Thus, at the time of amending 'the Stamp Act', it can safely be

presumed that the State legislature could not have comprehended a situation where an order passed by an Arbitrator under Section 17 of 'the Act' is made appealable under Section 37 of 'the Act' and is made executable as an order of the Court. Therefore, the principle of dynamic construction would not apply to the fact situation of the case as the language of an earlier statute namely the Stamp Act cannot be construed to include something which is conceptually different than the award namely an order passed by the Arbitrator under Section 17 of 'the Act'.

12. Besides this, as stated supra, the related provisions in different Acts bearing on the same subject have to be read together. Therefore, Article 11 has to be read in conjunction with the provisions of the Act under which the order has been passed. The provisions of the Act carve out a distinction between the award and an order. The Court has been granted the powers to pass an order by way of interim measure under Section 9 of 'the Act', whereas the Arbitrator has been given the power to pass an order by way of an interim measure under Section 17 of 'the Act' and the order passed by the Arbitrator has been made enforceable under the Code of Civil Procedure as if it were an order of the Court. Thus, by way of legal fiction, an order passed by the Arbitrator has been treated as an order of the Court for the purposes of its execution. Thus, this distinction has to be kept in mind while interpreting the expression 'award' as it appears in the Stamp Act.

13. In the instant case, the relevant extract of the order dated 28.11.2017 passed by the Arbitrator reads as under:

"In addition, the respondent shall pay to the claimants the monthly amount (as was paid upto the end of September 2014), till 30.11.2017, on or before 24.12.2017 and shall continue to make the payment w.e.f 01.12.2017, on or before the 10th day of the succeeding month i.e., until the final disposal of this proceeding. "

Thus, it is evident that the aforesaid order passed by the Arbitrator is an interim order and is subject to the final disposal of the proceeding pending before the Arbitrator. Therefore, the same also cannot be treated as an interim award, as it does not decide the claim of the parties and is subject to the final award which may be passed by the Arbitrator.

14. In view of preceding analysis, the order dated 28.11.2017 passed by the Arbitrator does not fall within the purview of the expression 'award' as defined under the Stamp Act as the same can neither be treated as an award nor an interim award. It is an order passed under Section 17 of the Act which is subject to the final outcome of the proceeding before the Arbitrator.

15. So far as submission of learned counsel for respondent that since petitioners in proceeding before the Executing Court, have referred to the order dated 28.11.2017 passed by the Arbitrator as an interim award, therefore they are estopped from contending that the order in question is not an award, is

concerned, suffice it to say that construction of a document and interpretation of an expression used by the legislature are questions of law and any admission by a party on question of law does not bind it. Similarly the contention that the expression 'decision' includes an interim order, for which reference has been made to Black's Law Dictionary is concerned, it is trite law that when the word used by the legislature has a definite legal connotation, recourse to the Dictionary is not permissible and the statute must be construed with reference to scheme, context and to the legislative history. (See: 'COMMISSION OF INCOME TAX, ORISSA vs. N.C.BUDHRAJA AND CO.', 'AIR 1993 SC 2529'). The reliance placed by the Executing Court on the decision of the Supreme Court in M. ANSUYA BEVI AND ORS. supra is misplaced in the facts of the case, as the aforesaid decision is an authority for the proposition that parties can raise objection with regard to admissibility of an award on account of its non registration and its non stamping, at the time of its enforcement under Section 36 of the 'the Act'.

16. In view of preceding analysis and in the facts and circumstances of the case, the order dated 28.11.2017 passed by the Arbitrator cannot be treated as an award as defined under the Stamp Act. In the result, the impugned order dated 30.08.2018 passed by the Executing Court is hereby quashed and set aside and the Executing Court is directed to proceed with the execution proceedings in accordance with law expeditiously.

Accordingly, the petition is disposed of.