

(2008) 03 KAR CK 0027
In the Karnataka High Court
Case No : Writ Petition No. 246 of 2008

Smt. N.S. Geetha

APPELLANT

Vs

Sri B. Raghuveer Acharya and State of Karnataka

RESPONDENT

Date of Decision : 14-03-2008

Acts Referred:

Arbitration Act, 1940 — Section 30 (4), 73, 74
Karnataka Stamp Act, 1957 — Section 34

Citation : (2008) ILR (Kar) 3850 : (2009) 1 KarLJ 169 : (2008) 4 KCCR 2492

Hon'ble Judges : H.G. Ramesh, J

Bench : Single Bench

Advocate : Vikram, for H.S. Dwarkanath, for the Appellant; Manjunatha Udupa, for R1, for the Respondent

Final Decision : Dismissed

Judgement

H.G. Ramesh, J.—This writ petition by the decree holder is directed against an interlocutory order dated 15.12.2007 (Annexure-A) passed by the Executing Court - the Court of the Additional City Civil Judge, Bangalore in Execution Case No. 1697/2007. By the impugned order, the Executing Court, in exercise of the power u/s 34 of the Karnataka Stamp Act, 1957 (the Stamp Act), has directed the petitioner to pay Rs. 73,788/- towards duty and penalty on the settlement agreement dated 24.11.2000 (Annexure-B) effected as per Section 73 of the Arbitration and Conciliation Act, 1996 ("the Arbitration Act").

2. I have heard the learned Counsel appearing for the parties and perused the impugned order at Annexure-A.

3. The question of law that arises for determination in this petition is as to whether a settlement agreement effected as per Section 73 of the Arbitration Act attracts duty under the provisions of the Stamp Act?

It is stated that the parties had arrived at a settlement relating to a certain dispute before the Conciliator and a settlement agreement as per Annexure-B

was effected as per Section 73 of the Arbitration Act. If it be so, in view of Section 74 r/w Section 30(4) of the Arbitration Act, the settlement agreement shall be deemed to be an arbitral award under the Arbitration Act and hence, it attracts duty under Article 11 of the Schedule to the Stamp Act. It is relevant to refer to Section 74 of the Arbitration Act which reads as follows:

74. Status and effect of settlement agreement.? The settlement agreement shall have the same status and effect as if it is an arbitral award on agreed terms substance of the dispute rendered by an arbitral tribunal u/s 30.

(Underlining supplied)

Section 30(4) of the Arbitration Act states that an arbitral award on agreed terms shall have the same status and effect as any other arbitral award.

4. In my opinion, a settlement agreement effected as per Section 73 of the Arbitration Act shall be deemed to be an arbitral award for all purposes as it shall have the same status and effect as any other arbitral award in view of the legal fiction created by Section 74 r/w Section 30(4) of the Arbitration Act and consequently is chargeable with duty as indicated in the schedule to the Stamp Act. Learned Counsel for the petitioner fairly submits that if the settlement agreement at Annexure-B is to be treated as an arbitral award, the calculation made by the Executing Court with regard to the amount of duty and penalty is correct.

5. In view of the above, I find no legal infirmity in the impugned order to warrant interference by this Court. However, on payment of duty and penalty by the petitioner and after the Court below sends the document to the Deputy Commissioner as per Section 37(1) of the Stamp Act, the petitioner is at liberty to apply u/s 38 of the Stamp Act for refund of the penalty. If such an application is made, the Deputy Commissioner shall consider the same in accordance with law.

6. Petition dismissed.