



IN THE HIGH COURT OF KARNATAKA AT BENGALURU  
DATED THIS THE 23<sup>RD</sup> DAY OF OCTOBER, 2024

BEFORE

THE HON'BLE MR JUSTICE HEMANT CHANDANGOUDAR  
WRIT PETITION NO. 29299 OF 2013 (GM-RES)

**BETWEEN:**

MAHINDRA & MAHINDRA FINANCIAL SERVICES LTD  
HAVING ITS REGD. OFFICE AT  
GATEWAY BUILDING, APOLLO BUNDER,  
MUMBAI-400 001, BRANCH OFFICE AT NO. 46,  
GREESHMA PLAZA, 1ST MAIN,  
1ST STAGE, 3RD PHASE, GOKUL,  
YESHWANTPUR, BANGALORE-560 022  
REPRESENTED BY ITS POWER OF ATTORNEY  
HOLDER B.SURYANARAYANA  
ASSISTANT MANAGER LEGAL.

...PETITIONER

(BY SRI. ADITYA SONDHI, SENIOR COUNSEL A/W  
SMT. NEERAJA KARANTH, ADVOCATE FOR  
SRI. K SHRIHARI., ADVOCATE)

**AND:**

1. K V CHANDRASHEKAR  
FATHERS NAME NOT KNOWN, MAJOR,  
NO.2390, SAHAKARNAGAR E BLOCK,  
SAHAKARNAGAR, BANGALORE-560 092  
ALSO AT NO.3, THINDLU KODIGEHALLI MAIN ROAD,  
NEAR RAVALAKSHMI, HARDWARES,  
VIDYARANYAPURA POST,  
BANGALORE-560 097.
2. K. SANDEEP  
FATHERS NAME NOT KNOWN  
MAJOR, R/AT NO.7, 10TH MAIN,  
VYALIKAVAl, MALLESHWARAM,  
BANGALORE-560 003.

...RESPONDENTS

(BY SRI. MOHAMMED JAFFAR SHAH, AGA FOR R3;





V/O DATED 11.01.2016, SERVICE OF NOTICE TO R1 IS H/S;  
R2 SERVED - UNREPRESENTED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 24.04.2013 VIDE ANN-E PASSED BY THE XIX ADDITIONAL CITY CIVIL & SESSIONS JUDGE, BANGALORE CITY IN EX.NO.2830/2011 AND CONSEQUENTLY OVERRULE THE OFFICE OBJECTION REGARDING PAYMENT OF STAMP DUTY ON AWARD AMOUNT AND ETC.

THIS PETITION, COMING ON FOR FURTHER DICTATION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE HEMANT CHANDANGOUDAR

**ORAL ORDER**

The petitioner, a financial institution, entered into a loan agreement with respondents No. 1 and 2. When a dispute arose from the agreement and the respondents failed to repay the loan amount, the petitioner was compelled to initiate arbitration proceedings as outlined in the loan agreement. Although the loan agreement was executed within the jurisdiction of the State of Karnataka in accordance with the Karnataka Stamp Act, 1957, the terms of the agreement specified that the place of arbitration would be in Mumbai. The learned Arbitrator conducted the arbitration proceedings in Mumbai and subsequently issued an award dated 08.06.2011, directing the respondents, jointly and severally, to pay the petitioner a sum of Rs.1,19,678.

2. The petitioner filed Ex. No.2830/2011 before the learned XIX Additional City Civil and Sessions Judge, Bangalore City, to execute the award. Upon presentation, the office raised an



objection regarding the payment of stamp duty on the award amount. The executing Court upheld this office objection and directed the petitioner to pay stamp duty of Rs.7,181 on the award amount, as per the order dated 24.04.2013. Taking exception to this order, the petitioner has filed the present petition.

3. Shri Aditya Sondhi, learned Senior Counsel representing the petitioner, argues that since the arbitral proceedings have been concluded with the issuance of an arbitral award for which execution is sought, the petitioner is not liable to pay the stamp duty as ordered by the executing Court. He contends that the final award should be construed as a decree and enforced under the Civil Procedure Code in the same manner as if it were a court decree. In support of this argument, he relies on the decisions of the Hon'ble Supreme Court in **Sundaram Finance Limited, represented by J. Thilak, Senior Manager (Legal) vs. Abdul Samad and Another [(2018) 3 SCC 622]** and the Kerala High Court in **Maharashtra Apex Corporation Ltd. vs. Balaji G. & Anr. [2011 SCC OnLine Ker 4039]**.

4. In response, the learned Additional Government Advocate for the State submits that an arbitral award in writing is subject to stamp duty when it is executed within the territories of the State of Karnataka. Under Article 11 of the Schedule to the Karnataka Stamp Act, 1957, the arbitral award is liable for stamp duty, except for awards related to certain specified purposes. Therefore, the



impugned order passed by the executing Court is in conformity with the law.

5. Heard the arguments advanced by the learned counsel for the parties.

6. The agreement between the petitioner and respondents No. 1 and 2 was made in Karnataka. According to the agreement, the arbitration took place in Mumbai. The arbitration proceedings were held and completed in Mumbai, and the award was stamped with a Rs. 100 non-judicial stamp according to the Bombay Stamp Act, 1958. Although the award was issued in Mumbai, it was brought to Karnataka for enforcement.. The Hon'ble Supreme Court in the case of **Sundaram Finance Limited v. Abdul Samad and Anr [(2018) 3 SCC 622]** has ruled in paras 18 and 19, which read as follows:

*"18. It is in this context that the view adopted by the Delhi High Court in Daelim Industrial Co. Ltd. v. Numaligarh Refinery Ltd. [2009 SCC OnLine Del 511 : (2009) 159 DLT 579] records that Section 42 of the Act would not apply to an execution application, which is not an arbitral proceeding, and that Section 38 of the Code would apply to a decree passed by the court. However, in the case of an award, no court has passed the decree.*

*19. The Madras High Court in Kotak Mahindra Bank Ltd. v. Sivakama Sundari [Kotak Mahindra Bank Ltd. v. Sivakama*



*Sundari, 2011 SCC OnLine Mad 1290 : (2011) 4 LW 745] referred to Section 46 of the said Code, which spoke of precepts but stopped at that. In the context of the Code, thus, the view adopted is that the decree of a civil court is liable to be executed primarily by the court, which passes the decree where an execution application has to be filed at the first instance. An award under Section 36 of the said Act, is equated to a decree of the court for the purposes of execution and only for that purpose. Thus, it was rightly observed that while an award passed by the Arbitral Tribunal is deemed to be a decree under Section 36 of the said Act, there was no deeming fiction anywhere to hold that the court within whose jurisdiction the arbitral award was passed should be taken to be the court, which passed the decree. The said Act actually transcends all territorial barriers."*

*(emphasis supplied)*

7. Furthermore, the Kerala High Court in **Maharashtra Apex Corporation Ltd. v Balaji G, 2011 (4) Kerala Series 451** has held at paras-6, 7 and 9, which read thus:

*" 6. The lower court relied on a decision in Cochin Shipyard Ltd. v. Hattigudur, 1980 KLT Case No. 125. It was a decision rendered under Section 19 of the Kerala Stamp Act and under Arbitration Act 1940 wherein it has been held that when an instrument is executed outside Kerala State and received for use in Kerala, under Section 19 of the Stamp Act, the additional stamp duty, if any, payable as per Kerala*



*Stamp Act has to be paid. But in my view, the principles laid down in the above decision do not apply to the facts of the present case. In that case, the award was passed under the Arbitration Act 1940. Section 17 of Arbitration Act 1940 provides that original award has to be produced before the court and a decree has to be drawn in accordance with the award. In this case, the award was passed under Arbitration and Conciliation Act 1996. Section 36 of Arbitration and Conciliation Act 1996 provides that the award itself is executable as if it were a decree and there is no requirement of producing it before any court to pass a decree so as to execute the same. The petitioners have produced the award before the District Court, Udupi and the said court has transferred the decree to the lower court for execution.*

*7. A Single Bench of this court in Ramaswamy v. Principal Subordinate Judge, 1997 (2) KLT 393 has held thus:*

*2. Section 17 of the Arbitration Act 1940 provided for a decree to be drawn by the court concerned. But S. 36 of the Arbitration and Conciliation Act, 1996 provides that the award shall be considered as a decree and shall be enforced under the Code of Civil Procedure 1908 in the same manner as if it were a decree of the Court.*

*3. In such case, the respondent court cannot insist for a decree to receive the execution application to its file.*



4. Under S. 36, the executing court is duty bound to accept the execution petition with a certified copy of the award. If the petitioner produces a certified copy of the award along with execution petition that shall be received and disposed of in accordance with law.

9. Thus, as such in this case, it is the decree of the District Court, Udipi that has been transferred to the lower court for execution. Only a copy of the award need be produced before the lower court for execution as provided under Rule 9 of the Kerala Arbitration and Conciliation (Court) Rules 1997 and as held by this court in Ramaswamy's case (supra). That being so, the lower court cannot insist for payment of stamp duty as is required under the Kerala Stamp Act. It follows that the impugned orders of the lower court directing the petitioner to pay the balance stamp duty as provided under the Kerala Stamp Act cannot be sustained and the same are hereby set aside. The lower court is directed to proceed with the execution of the said award."

(emphasis supplied)

8. Furthermore, the High Court of Chhattisgarh, at Bilaspur, placing reliance on the above decision of the Kerala High Court, in the case of **Cholamandlam Investment and Finance Co. Ltd. v. Ghanshyam Singh Rajput and Anr, 2021 SCC OnLine Chh 690**, concluded that an order directing payment of stamp duty on the award filed for enforcement in an execution petition before the learned District Court, Raigarh is erroneous and illegal.



9. However, the High Court of Madhya Pradesh in **Magma Fincorp Ltd. v. Omshanker and Anr. [2020 SCC OnLine MP 537]** distinguished the facts and issues considered in the decision of the Apex Court in the case of 'Sundaram Finance'. It held that the provisions of the Indian Stamp (M.P. Amendment) Act, 2014 are of a mandatory nature and binding with respect to instruments chargeable with stamp duty in the state of Madhya Pradesh, regardless of whether they are executed outside Madhya Pradesh, as provided in Section 48A of the said Act. The Court concluded that the core issue in 'Sundaram Finance' was whether the arbitral award could be directly enforced outside the executing state, following the provisions of Order 21 Rule 6 of the CPC. It further observed that the Apex Court had no occasion to address the applicability of stamp duty under state legislation on an arbitral award, as this issue was not raised by any of the parties before the Court.

10. It has been further held by the Apex Court in the case of **M. Anasuya Devi v. M. Manik Reddy, 2003 (8) SCC 565** that the issue of stamping of the award is not a relevant issue for the arbitral tribunal, or for a Court hearing an objection petition under Section 34 of the 1996 Act, but only when a party approaches the Court for enforcement of the award.

11. In a case relating to dispute in calculation of stamp duty in light of an increase in the duty payable by way of an amendment and dismissal of execution petition preferred for the enforcement of the arbitral award on grounds of failure to pay the deficit stamp



duty of 6%, a coordinate Bench of this Court in **Shriram City Union Finance Ltd. v. Donald Dayanand Donald in W.P. No. 205899/2019 : DD 27.6.2022** referring to the decision of the Apex Court in 'Anasuya Devi', and on conjoint reading of Sections 2(f), 17 and Article 11(b) of the Karnataka Stamp Act, 1957, concluded at paragraph (10) therein, as follows:

*“Therefore, it is very clear that the date for the purpose of quantifying the stamp duty payable on the instrument is the date on which the instrument was signed.”*

In this case, admittedly no stamp duty was paid on the arbitral award and the award was executed and sought to be enforced in the State of Karnataka. The Court however, referred to 'execution' as in Section 2(f) of the Karnataka Stamp Act, 1957 and concluded that execution in reference to instruments meant 'signed'.

12. On the issue of Arbitral awards involving monetary claims, a coordinate bench of this Court in **Karnataka State Highways Improvement Project v. M/s. KMC, in WP No. 29440/2019 : DD 11.09.2023**, in a challenge preferred against the order of dismissal of interlocutory application seeking impounding of the arbitral award for non-payment of stamp duty, having made in a Section 34 objection petition under the 1996 Act, the High Court opined that when the award of the arbitrator deals with movable property or immovable property, by virtue of the charging clause of Article 11 in the Karnataka Stamp Act 1957, such awards are bound to be stamped. But where the award does not deal with



either movable or immovable property, but only an award of liquidated damages payable in a construction contract there is no provision in the said Act to collect stamp duty on an award which deals with award of damages and that courts cannot supplement a *legislative casus omissus* by including an award which deals with grant of damages. It further repelled the contention that since the award deals with money it should be construed as a movable property as Article 11 of the said Act deals with only tangible properties and not something which is not tangible.

13. Where the decree holder while seeking enforcement of an arbitral award passed in respect of a dispute arising in the development of a premises on subject property (immoveable property) during the subsistence of an agreement to lease, had filed an execution petition and had voluntarily deposited the stamp duty which was accepted by the Executing Court, but thereafter the Court had imposed a penalty at the rate of ten times the duty payable under Section 33 of the Stamp Act 1957, and had further, impounded the award, a coordinate Bench of this Court in the case of **Shakeel Pasha v. M./s. City Max Hotels in WP No. 8352/2022 connected with WP No. 12935/2022 : DD 28.07.2023**, opined, “*All that the decree holder is required to do is pay the requisite stamp duty to enforce the arbitral award seeking recovery of money,*” and negated the contention that improperly stamped arbitral awards cannot suffer a penalty, as they are equated to decrees of a Court for purpose of enforcement only.



14. The above judgement however deals with arbitral award in respect of immovable property and hence is inapplicable to the facts of the case.

15. Article 11 of the Karnataka Stamp Act reads as follows:

*Article 11. Award - That is to say, any decision in writing by an arbitrator or umpire, not being an award directing partition on a reference otherwise than by an order of the Court in the course of a suit:*

*a) If the property, which is the subject matter of award, is immovable property:*

- The same duty as the conveyance under Article 20(1) on the market value of the property, or consideration, whichever is higher.*

*b) If the property, which is the subject matter of award, is movable property:*

*1) Where the amount or market value of the property, as set forth in the award does not exceed Rupees fifty lakhs*

- $\frac{3}{4}$  % of the amount or market value.*

*2) Where the amount or market value of the property exceeds Rupees fifty lakhs but does not exceed Rupees five crores*

- Rupees thirty seven thousand five hundred plus  $\frac{1}{2}$  % of the amount or market value exceeding Rupees fifty lakhs.*

*3) Where the amount or market value of the property exceeds Rupees five crores.*



- *Rupees thirty seven thousand five hundred plus two lakhs twenty five thousand plus  $\frac{1}{4}$  % of the amount or market value exceeding Rupees fifty crores.*

16. The ratios enunciated in the above decisions of this Court and other High Courts can be summarised as follows -

- i. An arbitral award transcends all territorial barriers and is equated with a decree of the jurisdictional court which may have passed the decree for the sole purpose of enforcement only.
- ii. The stamp duty payable is to be calculated and payable as on the date of the execution of the instrument, i.e., the date of the passing of the arbitral award and that directions to the award holder to pay balance stamp duty at the time of enforcement of the award in accordance with the provisions of State stamp acts is erroneous.
- iii. An arbitral award involving monetary claims, such as damages or recovery of monies advanced as loans cannot be construed to be a movable property for purpose of Article 11 under the Karnataka Stamp Act, 1957 as the said Article envisages only tangible properties as movable properties.



- iv. Courts cannot fill in gaps in the law that the legislature has left out when exercising their powers of judicial review.

17. In the instant case, a loan of INR 2,25,000/- was advanced towards the purchase of a car, and upon breach of the loan agreement, the petitioner herein preferred an arbitration. The arbitrator allowed the claim petition and awarded a sum of INR 1,19,678/-, plus interest at 3% per month and further interest @ 18% per annum from the date of award till payment, with costs of INR 10,000/-, vide order dated 08.06.2011.

18. The same was executed in Mumbai and was sought to be enforced in Bangalore, vide Ex.No.2830/2011 for a total amount of INR 2,07,870/-, on 01.12.2011. The Execution Court, vide order dated 24.04.2013, upheld the office's objection and directed payment of stamp duty to the tune of INR 7,181/-, as contemplated under Article 11 of the Karnataka Stamp Act, 1957.

19. A bare reading of the impugned order dated 24.04.2013 indicates that the learned Judge has erroneously applied the stamp duty applicable on immovable property. At best, the learned Judge could have charged the arbitral award directing recovery of money as movable property.

20. However, in light of the ratios summarised above, the instant arbitral award granting recovery of the loans advanced does not qualify as an instrument chargeable under Article 11 of the Karnataka Stamp Act, 1957.



21. An arbitral award should not be subject to any stamp duty under the broad provisions of Section 3(b) when read with Sections 19(a) and (b) due to its unique intangible nature and legislative oversight, which distinguishes an award from other instruments enumerated in the Schedule of the Act, which, if executed outside the State of Karnataka and then enforced in the State, would typically incur the stamp duty.

22. Thus, I am of the view that the award holder cannot be subjected to the payment of the impugned stamp duty.

**ORDER**

- i) The instant Writ Petition is allowed.
- ii) The impugned order passed by the Executing Court dated 24.10.2013 is set aside.

**Sd/-**  
**(HEMANT CHANDANGOUDAR)**  
**JUDGE**

HR  
MSR