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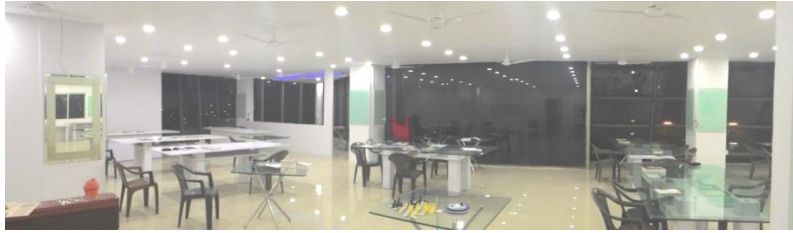
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ARBITRATION AWARDS, STAMP ACT & REGISTRATION ACT - BRIEF NOTES



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INTRODUCTION

ABSTRACT.

The present article and write-up is an attempt to describe one facet of the question —

SHOULD AN ARBITRATION AWARD BE REGISTERED AND STAMPED IN
ACCORDANCE WITH REGSITERED ACT, 1908

The intended audience for this article invariably would include —

1. Lawyers,
2. Jurists
3. Academia in the area of Law and other allied subjects
4. Other interested parties

A proper appreciation of this article would require at a minimum, basic understanding of

- The Constitution Of India, 1950
- The Arbitration and Conciliation Act, 1996
- The Indian Evidence Act, 1872
- The Registration Act, 1908
- The Indian Stamp Act, 1899

For the sake of reading and better understanding of the concept, the factual matrix presented herein is meant for illustrative purposes only, without any intention of prejudice towards anyone. Happy reading.

Vendors¹ (hereinafter “Complainant”) — Mendez, individually and as next friends of Praveen Babu (“Praveen”), filed an Arbitration Case against Vendee² (hereinafter “Defendant”) —Swamy Pollard Insurance Company represented by Swamy Narayan in the Arbitral Tribunal.

The matter in controversy was related to a business dispute that involved properties both movable and immovable.

The Arbitral Tribunal has issued an Award in favor of the Complainant. The Defendant took the plea that such an Arbitral Award was not stamped and registered, and hence was not enforceable. The High Court dismissed the plea of the Defendant. Aggrieved by the impugned Order, the Defendant filed an Appeal with the Hon’ble Supreme Court.

Please advice.

1 Collectively referred to herein as “the Complainant (s).”

2 Collectively referred to herein as “the Defendant (s)”

LIST OF ABBREVIATIONS

S No	Abbreviation	Full Form
1	&	And
2	§	Section
3	§§	Sections
4	¶	Paragraph
5	¶¶	Paragraphs
6	A.C.	Appellate Cases
7	A.P.	Andhra Pradesh
8	AIR	All India Reporter
9	All	Allahabad
10	Anr	Another
11	Bom	Bombay
12	CCR	Current Criminal Reports
13	Co	Company
14	Cri.L.J / CrLJ	Criminal Law Journal
15	CrI.A	Criminal Appeal
16	CrPC / CRPC	Criminal Procedure Code
17	Edn / Ed.	Edition
18	FIR	First Information Report
19	Govt	Government
20	HC	High Court
21	Hon`ble	Honorable
22	I.L.R	Indian Law Reporter
S No	Abbreviation	Full Form

S No	Abbreviation	Full Form
23	Id	<i>Ibid</i>
24	K.B.	King's Bench
25	L.J	Law Journal
26	Ltd	Limited
27	Mad	Madras
28	MP	Madhya Pradesh
29	Mr	Mister
30	n.	Note
31	No	Number
32	Ors	Others
33	Pg	Page
34	Pvt	Private
35	Raj	Rajasthan
36	Re	Reference
37	SC	Supreme Court
38	SCC	Supreme Court Cases
39	SCR	Supreme Court Reporter
40	Sd	Signed
41	Supp.	Supplementary
42	U.P.	Uttar Pradesh
43	U.S.	United States
44	UOI	Union Of India
45	v / Vs	Versus
46	Vol	Volume

JURISDICTION

IT IS HUMBLY SUBMITTED THAT THE SUPREME COURT OF INDIA HAS ORIGINAL JURISDICTION TO ENTERTAIN THIS WRIT PETITION NO.XXX OF 2017 ALONG WITH WRIT PETITIONS IN PUBLIC INTEREST UNDER ARTICLE 32 R/W ARTICLE 132-141 AND ARTICLE 226 OF THE CONSTITUTION.

STATEMENT OF FACTS

THE PETITIONER MOST RESPECTFULLY SHEWETH

1. THAT, the case at hand is related to a business dispute that involved properties both movable and immovable.
2. The Arbitral Tribunal has issued an Award in favor of the Complainant. The Defendant took the plea that such an Arbitral Award was not stamped and registered, and hence was not enforceable. The High Court dismissed the plea of the Defendant. Aggrieved by the impugned Order, the Defendant filed an Appeal with the Hon'ble Supreme Court.
3. The PETITIONER has therefore approached the Supreme Court for directions to remand the Orders from the High Court and the Arbitration Tribunal.

SYNOPSIS OF ISSUES

ISSUE – 1

Whether it is mandated that an Arbitral award be stamped and registered in accordance with the Stamp Act, 1899 and The Registration Act, 1908.

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STATUTES/ REGULATIONS/CONSTITUTIONAL PROVISIONS

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2. The Arbitration and Conciliation Act, 1996
3. The Indian Evidence Act, 1872
4. The Indian Stamp Act, 1899
5. The Indian Registration Act, 1908

CONSTITUTION OF INDIA, 1950

ART	DESCRIPTION
13	Laws inconsistent with or in derogation of the fundamental rights
14	Equality before law
19	Protection of certain rights regarding freedom of speech etc
20	Protection in respect of conviction for offences
21	Protection of life and personal liberty
22	Protection against arrest and detention in certain cases
32	Remedies for enforcement of rights conferred by this Part
132 – 136	ARTICLE 132 TO ARTICLE 136 deal with the Appellate Jurisdiction of the Supreme Court in the constitutional cases
137	ART. 137 gives the power to review of judgments or orders by the Supreme Court to review any judgment pronounced or order made by it
138	Enlargement of the jurisdiction of the Supreme Court
139	Conferment on the Supreme Court of powers to issue certain writs
140	Ancillary powers of Supreme Court
141	Law declared by Supreme Court to be binding on all courts
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<i>Dharam Pal v. Dinesh Industries</i> , (2010) 5 RAJ 440 (All).....	8
<i>Geo-Group Communications Inc v. IOL Broadband Ltd.</i> , 2010 1 SCC 562	10
<i>Harendra H. Mehta & Ors. v. Mukesh H. Mehta & Ors.</i> , 1999 0 AIR(SC) 2054	14
<i>Jamunabai v. Saradabai</i> , 1998 4 ALT 676	11

<i>Kottur Viswanadham v. Kottur Rajeswar</i> , 1999 2 ALT 204	10
<i>Lifetime Really v. Poddar Udyog</i> , 2012 5 RAJ 440 (All)	8
<i>M. S. Ram Singh V. Bijoy Singh Surana</i> , 1972 0 AIR (CAL) 190	12
<i>Mohinder Kaur Kochhar v. Punjab National Bank</i> , 1981 0 AIR(Del) 106	13
<i>Montey Appalaraju v. Kotteti Talupulamma</i> , 1993 3 ALT 21	11
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STAMP ACT VALID IN THE CONTEXT OF ARBITRAL PROCEEDINGS

In *Smt Kuldip Kaur v. Prakash Chandra*, 1983 0 AIR(DEL) 328= 1983 23 DLT 131= 1983 4 DRJ 80= 1982 0 RLR 62= 1982 0 SUPREME(DEL) 285, the claimant died during the pendency of arbitration proceedings. An application was made pursuant to **CPC O. 22 R. 3 et seq**, by his his ‘Legal Representatives’ to bring them on record through General Power Of Attorney, and for extension of time under old Sec (§) 28 of the Arbitration Act, 1940. The application was dismissed on the ground that GPA was not stamped. The Hon’ble Supreme Court has held —

“Dismissal was unjustified in the face of the provisions of **SEC. (§) 35 OF THE STAMP ACT, 1899.**”

NO FORMAL DOCUMENT IS REQUIRED

In *Associated Builders v. DDA*, 1994 (2) Arb. LR 161, the existence of the very contract containing the arbitration clause was questioned by the builders to seek release of their earnest money forfeited by D.D.A., when the Builder on getting the contract failed to undertake the work. The argument was that the granting of the contract was a ‘counter offer’ and not an acceptance as there was a change in the rate of rebate and **the agreement was not executed on stamp paper**. The court on facts —

“rejected the first ground. The second ground was not acceptable stating that execution of a formal agreement on stamp paper was not a condition precedent to a contract.”

In this context, in *State of U.P v. Combined Chemicals*, 2011 (1) ArbLR 91= 2011 (1) BBCJ (SC) 452= 2011 (2) CivCC 31= 2011 (2) RCR (Civ) 849 = 2011 2 SCC 151, it was held —

“Formal agreement is necessary only if the terms and conditions so required. Absence of formal agreement could not negative the agreement where ART. 289 OF CONSTITUTION was substantially complied with.”

In ***Punjab State v. Dina Nath***, 2007 (0) AIR(SC) 2157 = 2007 (0) AIR(SCW) 3694 = 2007 4 ALLMR(SC) 791= 2007 2 ArbLR 345= 2007 7 JT 229= 2007 5 MhLJ(SC) 333 = 2007 5 SCC 28= 2007 5 Supreme 502 = 2007 0 Supreme(SC) 726, it was held —

“ARBITRATION AGREEMENT is not required to be in any particular form. What is required to be ascertained is whether the parties have agreed that if any dispute arises, such a dispute shall be referred to arbitration.”

Reliance on the aforesaid principles can else be placed by referring to ***UOI v. Uttam Singh***, 1972 0 AIR(Del) 110 = 1971 0 Supreme(Del) 187 in which observations were made in ¶ 15, stating thus —

“ ... The law on the point has been laid down by **Lord Parker** in ***Von Hatzfeldt-Wilden-burg v. Alexander***, (1912) 1 Ch D 284 at pp. 288 and 289 as follows:

"it appears to be well settled by the authorities that if the documents or letters relied on as constituting a contract contemplate the execution of a further contract between the parties, it is a question of construction whether the execution of the further contract is a condition or term of the bargain or whether it is a mere expression of the desire of the parties as to the manner in which the transaction already agreed to will in fact go through. In the former case there is no enforceable contract either because the condition is unfulfilled or because the law does not recognize a contract to enter into a contract. In the latter case there is a binding contract and the reference to the more formal document may be ignored. The fact that the reference to the more formal document is in words which according to their natural construction import a condition is generally if not invariably conclusive against the reference being treated as the expression of a mere desire."

This dictum has been approved by the Privy Council in ***Shankarlal Narayandas Mundade v. The New Mofussil Co. Ltd.*** , AIR 1946 PC 97, and it represents the correct state of law which has been followed by a number of other authorities in this country.”

WHETHER STAMPING OF THE AGREEMENT IS REQUIRED

Reference may be made to *Lifetime Really v. Poddar Udyog*, 2012 5 RAJ 440 (All), in which *M/s. SMS Tea Estates Pvt. Ltd. v. M/s. Chandmari Tea Co. Pvt. Ltd.*, 2011 (7) SCALE 747, has been analyzed in detail in ¶ 11 and summed up in ¶ 12, in the light of procedure to be adopted where the arbitration clause is contained in a document which is not registered (but compulsorily registrable) and which is not duly stamped vis à vis Sections §§ 33 and 35 of the Central Stamp Act, 1899, as hereunder —

“therefore sum up the procedure to be adopted where the arbitration clause is contained in a document which is not registered (but compulsorily registrable) and which is not duly stamped:

(i) The court should, before admitting any document into evidence or acting upon such document, examine whether the instrument/document is duly stamped and whether it is an instrument which is compulsorily registrable.

If the document is found to be not duly stamped, Section 35 of Stamp Act bars the said document being acted upon. Consequently, even the arbitration clause therein cannot be acted upon. The court should then proceed to impound the document under Section 33 of the Stamp Act and follow the procedure under Section 35 and 38 of the Stamp Act.

If the document is found to be duly stamped, or if the deficit stamp duty and penalty is paid, either before the Court or before the Collector (as contemplated in Section 35 or 40 of the Stamp Act), and the defect with reference to deficit stamp is cured, the court may treat the document as duly stamped.

Once the document is found to be duly stamped, the court shall proceed to consider whether the document is compulsorily registrable. If the document is found to be not compulsorily registrable, the court can act upon the arbitration agreement, without any impediment.

If the document is not registered, but is compulsorily registrable, having regard to Section 16(1)(a) of the Act, the court can de-link the arbitration agreement from the main document, as an agreement independent of the other terms of the document, even if the document itself cannot in any way affect the property or cannot be received as evidence of any transaction affecting such property. The only exception is where the Respondent in the application demonstrates that the arbitration agreement is also void and unenforceable, as pointed out in para 8 above. If the Respondent raises any objection that the arbitration agreement was invalid, the court will consider the said objection before proceeding to appoint an arbitrator.

Where the document is compulsorily registrable, but is not registered, but the arbitration agreement is valid and separable, what is required to be borne in mind is that the Arbitrator appointed in such a matter cannot rely upon the unregistered instrument except for two purposes, that is (a) as evidence of contract in a claim for specific performance and (b) as evidence of any collateral transaction which does not require registration.”

In, *Dharam Pal v. Dinesh Industries*, (2010) 5 RAJ 440 (All) = 2010 1 ADJ 25; 2010 7 RCR(Civ) 996; 2009 0 Supreme(All) 3558, it was held —

“Arbitration Clause in an unregistered sale agreement is not NON EST”

In, *Aspire Investments Pvt. Ltd. v. M/s Nexgen Edusolutions Pvt. Ltd.*, (2010) 3 RAJ 668 (Del.), where arbitration agreement was contained in an unregistered house deed, the court answered various questions as under —

(i) NO LEGAL RELATIONSHIP, NO ARBITRATION AGREEMENT

“¶ 7 ... Court concluded that there was no defined legal relationship between the parties and hence, no valid arbitration agreement subsisted between the parties”

(ii) REGISTRATION AND STAMPING NOT COMPULSORY FOR ARBITRATION AGREEMENT —

“¶ 7.1 Fortuitously, my task has become easier - a further research has revealed, that a Division Bench of this Court in N.I.I.T. vs M/s West Star Construction Pvt. Ltd. & Anr, Arb.P.No. 244/2008 dated 27.04.2009 has accepted the view expressed in Gaajara International (supra) and Travel Finance Pvt Ltd (supra). The decision in Chemical Sales Agencies (supra) has been distinguished. The Division Bench has come to the conclusion, **after noticing Section 7 and Section 16(1)(b) of the Arbitration Act and Section 107 of the Transfer of Property Act, 1882, that an arbitration clause contained in a lease deed is a collateral term which would survive whether or not it is registered or properly stamped.**

¶ 7.2 Stamping like registration would effect the admissibility of the document, its absence cannot exclude the reliance on the parent contract for the purposes of triggering an arbitration. The Arbitration Act, which undoubtedly, is a special statute dealing with an arbitration should in my view take precedence over the provisions of both the Registration Act and the Indian Stamp Act, 1899. Respectfully following the Division Bench of this Court, I am of the view that even though the parent contract is neither registered nor stamped, the arbitration clause contained in the parent contract would survive. The arbitration agreement, in my view, is a collateral transaction which would fall within the proviso to Section 49 of the Registration Act, 1908.”

Thus, it can be said that REGISTRATION AND STAMPING OF ARBITRATION AGREEMENT IS NOT COMPULSORY BECAUSE ARBITRATION AGREEMENT IS A COLLATERAL TERM.

Moreover, in ***Ganga Ram v. Narayan Babaji*, ILR (1893) 19 Bom. 31**, it was held —

“Letters written and signed by the parties authorizing Arbitrator to arbitrate need not be required to be stamped.”

Again, in ***Geo-Group Communications Inc v. IOL Broadband Ltd.*, 2010 1 SCC 562 = 2009 4 ArbLR 308 = 2009 4 CCR(SC) 402 = 2009 14 JT 543 = 2010 1 RCR(Civ) 906 = 2010 6 RCR(Civ) 875 = 2009 14 Scale 175**, it was held —

“¶ 8. the plea that Arbitration agreement was not stamped and hence applicant was not entitled to relief held unacceptable”

ARBITRAL AWARDS — WHETHER STAMPING IS REQUIRED

In ***Kottur Viswanadham v. Kottur Rajeswar*, 1999 2 ALT 204 = 1999 2 ALD 301 = 1999 0 AIR(AP) 162 = 1999 1 APLJ 268 = 1999 2 CCC 167**, it was held —

“Arbitrator passing award in the dispute regarding partition of properties - Trial Court held that award is inadmissible evidence for want of Stamp Duty and Registration - If award creates or extinguishes rights in immovable property of value of more than Rs.100 it requires registration and also Stamp Duty - In the instant case Arbitrator allotted joint property belonging to both petitioners and respondents to respondents exclusively subject to payment of monies by him to petitioners - Award clearly purported to create rights in immovable property and is compulsorily registerable u/S.17 of the Registration Act - Contention that immediate intention of document is only material and not ultimate consequences or its collateral effects, cannot be accepted - Award must be read as a whole and effect of recitals has to be taken into consideration - Order passed by lower court - Sustainable.”

***P.Sadananda Reddy v. C.Venkata Ratnam*, 2000 3 ALT 229 = 2000 3 ALD 385 = 2000 0 Supreme(AP) 225**, it was held —

“¶ 45. Unregistered Document - Admissibility in Evidence - where an unregistered document received in evidence, always open for other party to contend that document is inadmissible in evidence.

xxx

Once the award is incapable of being received in evidence, having not been registered as required under Section 17 of the Act, it is always open for the party opposing passing of the decree to contend that the award was inadmissible in evidence apart from other objections that are available under law. Merely because it was a consent decree, it did not take away right of the contesting party to plead all the possible defences.”

Delving in the issue of Memo of Compromise, in *Jamunabai v. Saradabai*, 1998 4 ALT 676 = 1998 4 ALD 655 = 1999 1 CivCC 320 = 1998 2 LS 84 = 1998 0 Supreme(AP) 355, it was held —

“COMPROMISE MEMO - Terms of compromise not incorporated in the decree - Decree passed dismissing suit in view of compromise - Decree or order of Court not liable to be registered - In this case compromise falls under Sec.17(1)(b) of Registration Act and liable to be registered since it does not come within the exception.

SEC.36, STAMP ACT does not apply to secondary evidence - In this case certified copy of compromise memo filed in the court and not the original - Copy of document does not come under the purview of definition u/S. 2(14) - Plea that instrument having been admitted in evidence without objection cannot be questioned, is not applicable to secondary evidence - Since the compromise memo in question is only certified copy, Sec. 36 not applicable to such document.

COMPROMISE is inadmissible in evidence as it is unregistered and not enforceable and could not be looked into for any purpose.”

Again, in the matter of *Montey Appalaraju v. Kotteti Talupulamma*, 1993 3 ALT 21 = 1993 0 AIR(AP) 331 = 1993 1 LS 328 = 1993 0 Supreme(AP) 151, the Hon’ble Court delved into the meaning of INDIAN STAMP ACT, SECS. §§ 2(14) & 35 AND INDIAN REGISTRATION ACT, SECS. §§ 17 & 49 in the context of FAMILY SETTLEMENT, wherein it was held —

“¶ 3. Decision given by the elders - Document is compulsorily registerable - A private award requires registration before making it as a rule of court.

In ***M. S. Ram Singh V. Bijoy Singh Surana***, 1972 0 AIR (CAL) 190 = 1972 76 CalWN 217 = 1971 0 Supreme(Cal) 257, it was held that —

“¶ 18 . The instrument of surrender purports to extinguish the right of the tenant, valued at over Rs. 100/-, it is compulsorily registrable”

Thus, Instruments, viz, documents or awards which create any right or extinguish any rights require Registration.

ARBITRAL AWARD CREATING RIGHTS IN IMMOVABLE – REQUIRE REGISTRATION

In ***Ratan Lal Sharma v. Purshottam Harit***, 1974 0 AIR(SC) 1066 = 1974 1 SCC 671 = 1974 3 SCR 109 = 1974 0 Supreme(SC) 8 = 1974 1 UJ 185, while deciding on matters related to ARBITRATION ACT, 1940 : § S.13, § S.17 AND REGISTRATION ACT, 1908 : § S.17, it was held that —

“Award creating right in immovable property worth more than Rs 100/- — registration compulsory — held that unregistered award cannot be looked into for passing judgment in terms of award”

While it is true that an arbitral award has to be compulsorily registered, there arises a consequential issue as to whether such a defect can be curable. In ***Chelamayya and Anr v. Mattapalli Venkataratnam and Anr.***, 1972 0 AIR(SC) 1121 = 1972 3 SCC 799 = 1972 0 Supreme(SC) 35 = 1972 0 UJ 579, ¶ 13 states thus —

“the award in original was not engrossed on a stamp paper. What the arbitrators had done at the time of filing the award was to file the original award along with a true copy of it engrossed on stamp paper. It is not disputed that an instrument of this kind can be admitted in evidence after proper duty and penalty is paid. The High Court has rightly pointed out that the intention of the arbitrators is engrossing a copy of award on the stamp paper and producing the same attached to the original award was merely to show that the required stamp duty and penalty had been paid. It is not disputed that the actual value of the stamp used covers more than the stamp duty and penalty required for the document and, therefore, there is no difficulty in holding that the award is admissible in evidence and

cannot be rejected on the ground that the proper duty and penalty has not been paid.”

Therefore, it was held —

“¶ 13. Enforcing Part Of Award - Registration Of An Award - Stamp Duty – Award Can Be Admitted In Evidence After Proper Duty And Stamp Is Paid – An Award Reference To Partition Of Immovable Properties Is Not Compulsorily Registerable On Ground That It Embodies A Partition - Effect Of Non-Registration Of Award When Part Of It Requires Registration Which Is Severable From The Part Not Requiring Registration — Such An Award Is Admissible In Evidence - Unstamped Document — Arbitration Award – Inadmissibility In Evidence Can Be Corrected Upon Rectifying The Stamp Duty”

Moreover, in ***Mohinder Kaur Kochhar v. Punjab National Bank*, 1981 0 AIR(Del) 106 = 1981 19 DLT 41 = 1980 0 SUPREME(Del) 242**, the Hon’ble Court was deciding on matters related to **Cf. CONTRACT ACT : S.196, S.197 REGISTRATION ACT : S.17(1) ARBITRATION ACT : S.13, S.14, S.2(a), S.2(e), S.28, S.30 EVIDENCE ACT : S.114 PARTNERSHIP ACT : S.19(2)(a), *inter alia***. The Court in ¶ 12 observed —

“The award did not declare; as Appellant contended, any right or interest in immovable property of one hundred rupees or upwards, in terms of Section 17 (1) of the Registration Act. The word declare in Section 17 has to be read *ejusdem generis* with the words create , assign or limit . Now the words create , assign or limit imply a definite change of legal relation to a property and the expression declare therefore must also import a similar meaning. The distinction as such between a mere recital of a fact and something which in itself creates title in the property must be borne in mind. In the present case, no rights in the immovable property are being declared by the award. The reference to equitable mortgage was only a recital of fact. Award did not declare or create a mortgage of any immovable property. This plea, therefore, fails”

The Hon’ble Court held — “Award of Arbitration did not declare or create a mortgage of any immovable property and therefore does not require registration.”

Now, as to the procedure for registration, in ***Yanala Malleshwari and Ors. v. Ananthula Sayamma and Ors.*, 2006 6 ALT 523 = 2007 0 AIR(AP) 57 = 2007 1 CivCC 527 = 2007 5 RCR(Civ) 609 = 2006 0 Supreme(AP) 1228**, it was held —

“This Court has referred to relevant provisions of the Registration Act, which would reveal that under specific conditions only the registering officer can reject registration and if a document registered earlier is invalid, the registering officer can even re-register the document at the instance of the person who is entitled to execute and register the document. Further, as rightly pointed out by the learned counsel for the respondents, the registering officer can refuse registration only on grounds contemplated under law. When the legislature or subordinate legislature contemplates the circumstances and situations under which the registering officer can refuse registration, the Court cannot enlarge the scope by supplying *casus omissus*.”

STAMP PAPER — WHOSE NAME, IN

In *Municipal Corporation Of Greater Bombay V. Girjashankar R. Singh*, 1996 2 Arb. LR 553 = 1996 0 SUPREME (Mah) 125, it was held —

“¶ 8. Merely because the said award has been made on the sheet of paper with impressed stamp of Rs. 100/- issued in the name of the firm of the respondent, a party to the reference, the said award is made neither in contravention of the said **SECTION § 34 (OF THE REGISTRATION ACT, 1908)** as amended nor in inadmissible in evidence nor invalid nor bad in law.

xxx

In the instant case, this having been done, there is no infirmity in the procedure followed by the arbitrator in making the said award. In any event, this cannot be a ground for setting aside the said award under the provisions of **SECTION § 30** of the Act (THE ARBITRATION ACT, 1996).”

FOREIGN AWARDS DO NOT REQUIRE TO BE REGISTERED ORR STAMPED

In *Harendra H. Mehta & Ors. v. Mukesh H. Mehta & Ors.*, 1999 0 AIR(SC) 2054 = 1999 0 AIR(SCW) 1772 = 1999 3 CLT(SC) 139 = 1999 238 ITR(SC) 158 = 1999 4 JT 50 = 1999 2 RAJ 547 = 1999 3 Scale 641 = 1999 5 SCC 108 = 1999 5 Supreme 498 = 1999 0 Supreme(SC) 653, it was held —

“¶ 41. A foreign judgment does not require registration as the process of suit having been decreed on that basis will have to be gone through. When a decree is passed by the Court, it does not require registration in view of clause (vi) of sub-

section 2 of Section 17 of the Registration Act. A decree or order of a court affecting the rights mentioned in Section 17(1)(b) and (c) would not require registration. It would, however, require registration where the decree or order on the basis of compromise affects the immovable property other than that which is the subject matter of the suit or proceeding. Even a decree passed by the foreign court execution of which is sought under Section 44A of the Code of Civil Procedure would not require registration. That being the position, we are of the view that foreign award under the provisions of the Foreign Awards Act does not require registration under the Registration Act. (Para 41) ”

In the aforementioned case, Harendra H. Mehta (supra), reference was made in ¶ 38, to ***Mrs. Tehmi P. Sidhwa & Ors. v. Shib Banerjee & Sons Pvt. Ltd. & Anr.***, 1974 2 SCC 574 = 1974 0 AIR(SC) 1912 = 1974 0 BBCJ(SC) 919 = 1975 2 SCR 1 = 1974 0 Supreme(SC) 271, wherein it was observed —

“In ***Mrs. Tehmi P. Sidhwa & Ors. v. Shib Banerjee & Sons Pvt. Ltd. & Anr.*** (supra), the award under THE ARBITRATION ACT, 1940 directed partition of immovable property of the value of more than Rs. 1,00,000/-. The question was if it requires registration under SECTION 7(1)(B) OF THE REGISTRATION ACT. This Court after examining the award said that if the award related to partition of immovable property of the value exceeding Rs. 100/-, it would require registration but then it is to be seen if the award operated to create rights in immovable property or whether it merely created a right to obtain another document which would when executed create any such right. Since the award merely created a right to obtain another document, it would fall under SECTION 17(2)(V) and not under SECTION 17(1)(B) OF THE REGISTRATION ACT and would not require registration.”

TAKEAWAY — The Hon’ble Court ***Mrs. Tehmi P. Sidhwa & Ors. v. Shib Banerjee & Sons Pvt. Ltd. & Anr.*** (supra), has elaborated on the principles by deliberating upon Registration Act, 1908, Sec. 17 & 49 and Arbitration Act 1940, Sec 14 & 17 - Document when requires Registration, and has held —

“¶¶ 5 & 9 — Where the award merely creates a right in the parties to get another document, Sec. 17 (2) (v) of the Registration Act applies and the award is not - compulsorily registrable. But where the award creates, declares or extinguishes, whether in present or in future, any right title or interest, whether vested or contingent of the value of Rs. 100/-or more in respect of immovable property the case falls under section 17(1) b of the Registration Act. Such an award requires compulsory registration. (Paras 5 & 9)”

Thus, one may content that “Foreign Arbitral Awards do not need Compulsory Registration, whenever **SEC. 17 (2) (v) OF THE REGISTRATION ACT, 1908** applies.

APPENDIX

APPELLATE JURISDICTION OF THE SUPREME COURT

ARTS. 132 - 136

ARTICLE 132 TO ARTICLE 136 deal with the Appellate Jurisdiction of the Supreme Court in the constitutional cases. **ARTICLE 132** deals with Appellate Jurisdiction of Supreme Court in Appeals from the High Courts in certain cases. Article 133 deals with Appellate Jurisdiction of Supreme Court in Appeals from the High Courts in civil matters. **ARTICLE 133** deals with Appellate Jurisdiction of Supreme Court in regard to criminal matters. **ARTICLES 132, 133 AND 134** must be read with **ARTICLE 134-A** (Certificate for Appeal to the Supreme Court). **ART. 134-A** has been inserted in the Constitution vide Forty-Fourth (44TH) Amendment Act, 1978. **ART. 135** deals with Jurisdiction and powers of the Federal Court under existing law to be exercisable by the Supreme Court. **ART. 136** deals with Special Leave to appeal by the Supreme Court.

THE INDIAN EVIDENCE ACT, 1872

SECTION 58 IN THE INDIAN EVIDENCE ACT, 1872

SEC 58- FACTS ADMITTED NEED NOT BE PROVED. —No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings: Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

THE ARBITRATION AND CONCILIATION ACT, 1996

Part I of this act formalizes the process of Arbitration and Part III formalizes the process of Conciliation. (Part II is about Enforcement of Foreign Awards under New York and Geneva Conventions.)

SCHEME OF THE ARBITRATION AND CONCILIATION ACT, 1996

There are 86 Sections (§§) and three Schedules. In this statute, Section (§) 1 is the 'Preliminary' explaining 'short title, extent and commencement'. Remaining all the 85 Sections are housed in **Four Parts**.

Part-I deals with the provisions of ‘Arbitration’. More specifically, Part I contains §§ 2 – 43. These forty two Sections are housed in ten Chapters, viz, —

CHAPTER I (§§ 2 - 6)	GENERAL PROVISIONS OF ARBITRATION
CHAPTER II (§§ 7 - 9)	ARBITRATION AGREEMENT
CHAPTER III (§§ 10 - 15)	COMPOSITION OF ARBITRAL TRIBUNAL
CHAPTER IV (§§ 16 - 17)	JURISDICTION OF ARBITRAL TRIBUNALS
CHAPTER V (§§ 18 - 27)	CONDUCT OF ARBITRAL PROCEEDINGS
CHAPTER VI (§§ 28 – 33)	MAKING OF ARBITRAL AWARD AND TERMINATION OF PROCEEDINGS
CHAPTER VII (§ 34)	RECOURSE AGAINST ARBITRAL AWARD
CHAPTER VII (§§ 35 – 36)	FINALITY AND ENFORCEMENT OF ARBITRAL AWARDS
CHAPTER IX (§ 37)	APPEALABLE ORDERS
CHAPTER X (§§ 38 – 43)	MISCELLANEOUS PROVISIONS

Part II enunciates the provisions regarding ‘Enforcement of Certain Foreign Awards’. This part consists of two Chapters.

CHAPTER I (§§ 44 – 52) — FIRST SCHEDULE AND NEW YORK CONVENTION AWARDS

CHAPTER II (§§ 53 – 60) — SECOND AND THIRD SCHEDULES, PLUS PROVISIONS REGARDING ‘GENEVA CONVENTION AWARDS’

Part III (§§ 61 – 81) deals with **CONCILIATION**.

Part IV (§§ 82 – 86) narrates ‘**SUPPLEMENTARY PROVISIONS**’

THE STAMP ACT, 1899

An Act to consolidate and amend the law relating to Stamps,

SECTION § 35. INSTRUMENTS NOT DULY STAMPED INADMISSIBLE IN EVIDENCE, ETC

§ 35. INSTRUMENTS NOT DULY STAMPED INADMISSIBLE IN EVIDENCE, ETC

No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped :

PROVIDED THAT —

(a) any such instrument not being an instrument chargeable with a duty of one anna {Ins.by Act 5 of 1906, s.3.} [or half an anna] only, or a bill of exchange or promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion ;

(b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;

Where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;

nothing herein contained shall prevent the admission of any instrument in evidence in proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure 1898;

nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government, or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act.

THE REGISTRATION ACT, 1908

An Act to consolidate and amend the law, regarding the Registration of Instruments.

SECTION § 17. DOCUMENTS OF WHICH REGISTRATION IS COMPULSORY

§ 17. DOCUMENTS OF WHICH REGISTRATION IS COMPULSORY.—

(l) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—

- (a) instruments of gift of immovable property;
- (b) other nontestamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;
- (c) nontestamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and
- (d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;
- (e) nontestamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property

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SECTION § 34. ENQUIRY BEFORE REGISTRATION BY REGISTERING OFFICER

§ 34. ENQUIRY BEFORE REGISTRATION BY REGISTERING OFFICER.—

(1) Subject to the provisions contained in this Part and in sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the persons executing such document, or their representatives, assigns or agents authorized as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25 and 26: Provided that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee, in addition to the fine, if any, payable under section 25, the document may be registered.

(2) Appearances under subsection (1) may be simultaneous or at different times.

(3) The registering officer shall thereupon—

- (a) enquire whether or not such document was executed by the persons by whom it purports to have been executed;
- (b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and
- (c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.

(4) Any application for a direction under the proviso to subsection (1) may be lodged with a Sub Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

(5) Nothing in this section applies to copies of decrees or orders. State Amendments Tamil Nadu: In section 34,—

(1) in subsection (1), after the expression “persons executing such document”, the expression “and in the case of document for sale of property, the persons claiming under that document” shall be inserted;

(2) in subsection (3), in clause (b), after the expression “executed the document”, the expression “or they are claiming under the document” shall be inserted.

(3) after section 34, the following section insert:— “34A. Person claiming under document for sale of property also to sign document.—Subject to the provisions of this Act, no document for sale of property shall be registered under this Act, unless the person claiming under the document has also signed such document.”. [Vide Tamil Nadu Act 28 of 2000].

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