

This Writ Petition is filed under Article 227 of the Constitution of India, praying to call for records and issue a writ in the nature of certiorari and quash the order dated 06.07.2019 and 31.08.2019 passed by the I Addl. Dist. & Sessions Judge, Kalaburagi in E.P.No.134 of 2016, the certified copies of which are at Annexure-D & E respectively and etc.

This petition coming on for Preliminary Hearing this day, the Court made the following:

**ORDER**

This writ petition under Article 227 of the Constitution of India has been filed by the decree holder/plaintiff with a prayer to quash the order dated 06.07.2019 and 31.08.2019 passed by the Court of First

Additional District and Sessions Judge, Kalaburagi (for short 'Trial Court') in E.P.No.134/2016 vide Annesures-D and E respectively. The petitioner has also sought for a direction to the executing Court to calculate the stamp duty as provided under Article 11 (b) of the Karnataka Stamp Act, 1957.

2. Brief facts of the case as revealed from the records are that the petitioner - Company had initiated arbitration proceedings against the respondents herein for recovery of the overdue loan amount borrowed by them. The claim made by the petitioner was partly allowed by the arbitrator and a judgment and award was passed in favour of the petitioner herein on 23.04.2016 holding that the petitioner is entitled to recover a sum of Rs.8,10,251/- with interest at 18% per annum from the date of the award till realization with cost of Rs.5,000/-. The said award had attained finality.

3. The petitioner thereafterwards had filed an execution petition in E.P.No.134/2016 before the Court of First Additional District and Sessions Judge at Kalaburagi claiming the award amount with interest at 18% per annum, which totally amounted to Rs.8,87,975/-. After the judgment debtors were served, the executing Court heard the matter regarding payment of stamp duty on the award which was sought to be executed and on 06.07.2019 an order was passed holding that the petitioner is required to have pay the stamp duty at 6% on the valuation of the award amount and accordingly, directed the petitioner to pay the deficit stamp duty and the matter was adjourned to 14.08.2019. On 14.08.2019, the case was finally adjourned to 31.08.2019 for payment of the deficit stamp duty. On 31.08.2019, since the deficit stamp duty was not paid, the execution petition was dismissed. Being aggrieved by the orders dated 06.07.2019 and

31.08.2019, the petitioner/deGREE holder is before this Court.

4. The learned counsel for the petitioner submits that pursuant to the amendment to the Karnataka Stamp Act vide Karnataka Act No.19 of 2014, the petitioner is required to pay the stamp duty as provided under Article 11 (b) of the Schedule to the Karnataka Stamp Act. The Trial Court has failed to take note of this amendment and had erred in directing the petitioner to pay the stamp duty at 6% on the valuation of the award amount.

5. The learned High Court Government Pleader, who was directed to take notice for the respondents for the purpose of assisting the Court submits that the stamp duty is required to be paid, as may be applicable as on the date of drawing up of the award and not that may be applicable as on the date of initiating the

proceedings to execute the said award. He submits that in spite of sufficient opportunities being given to the petitioner, it had failed to pay the deficit stamp duty and therefore, no fault can be found in the order passed by the executing Court dismissing the execution petition.

6. I have given my anxious consideration to the arguments advanced by the learned counsel for the parties and also perused the material on record.

7. The procedure for enforcement and execution of the decrees in India is governed by the Code of Civil Procedure, 1908 while that of Arbitral Award in India is primarily governed by the Arbitration and Conciliation Act, 1996 as well as the Code of Civil Procedure, 1908. Section 36(1) of the Arbitration Act provides for execution of the arbitral award. The said Act does not expressly lay down any legal requirement that mandates the parties to an arbitration agreement to pay stamp

duties on an arbitral award. In the case of **M.Anasuya Devi vs. M.Manik Reddy** reported in **2003 (8) Scce 565**, the Hon'ble Apex Court has held that the objection as to non stamping of the arbitral award is required to be dealt with at the stage of enforcement of arbitral award and not at the stage of objections under Section 34 of the Arbitration Act, 1996. In paragraph No.4 of the said judgment, the Hon'ble Apex Court had observed as follows:

*"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 proceedings under Section 34 of the Act. In fact, this issue was pre-mature at that stage. Section 34 of the Act provides for setting aside of the Award on the ground enumerated therein. It is not 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. 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 and not covered by Section 34 of the Act."*

8. Section 17 of the Karnataka Stamp Act provides the time for stamping the instruments. The said provision read as follows:

*"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."*

9. A plain reading of the said provision of law makes it clear that instruments shall be stamped before or at the time of execution. Therefore, it is an option given to the parties in whose favour the arbitral award had been passed to pay the applicable stamp duty either before or at the time of execution. The word 'execution' has been defined in Section 2 of the Karnataka Stamp Act which reads as follows:

*"Section 2(f) 'executed' and 'execution' used with reference to instruments, mean 'signed' and 'signature'.*

10. 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 the case of **M.Anasuya Devi** (Supra), the



Hon'ble Apex Court has held that at the time of enforcement of the award under Section 36 of the Arbitration and Conciliation Act, the parties can raise objection regarding its applicability on account of non registration and also for non stamping under Section 17 of the Registration Act. Therefore, it is very clear that with regard to the deficiency of stamp duty paid, an objection can be always raised at the stage of execution of the said award. In the instant case, the arbitral award has been passed on 23.04.2016 and as on the said date, the amendment to Article 11(b) of the Schedule to the Karnataka Act substituted by Act No.19 of 2014 had already come into effect. The execution petition has been filed on 18.10.2016 and the Act No.19 of 2014 had come into effect from 01.03.2014. Since the amendment to Article 11(b) by Act No.19 of 2014 was already in force as on the date of passing of the award and as well as on the date of filing of the

execution petition, the stamp duty as provided under Article 11(b) of the Schedule to the Karnataka Stamp Act is required to be paid on the arbitral award which sought to be executed. The executing Court had failed to appreciate this aspect of the matter.

11. As per the amendment to Article 11(b) in the Schedule, the proper stamp duty that is required to be paid on the arbitral award is 3/4% of the value of the arbitral award i.e., 0.75% of the value of the arbitral award. The executing Court had directed the petitioner to pay the deficit stamp duty at 6% on the valuation of the award amount, since no stamp duty was paid on the arbitral award which is sought to be executed and the same was drawn on a plain paper. I am of the considered view that the executing Court had failed to take note of the amendment by way of substitution of Article 11(b) of the Schedule to the Karnataka Stamp Act and thereby had erred in directing the petitioner to

pay the stamp duty at 6% on the valuation of the award amount. The Executing Court had also further erred in dismissing the execution petition for non payment of stamp duty. Under the circumstances, the impugned orders passed by the executing Court in E.P.No.134/2016 dated 06.07.2019 and 31.08.2019 cannot be sustained. Accordingly, following:

ORDER

The writ petition is allowed. The impugned orders passed by the First Additional District and Sessions Judge at Kalaburagi in E.P.No.134/2016 dated 06.07.2019 and 31.08.2019 vide Annexures-D and E are set aside and the executing Court is directed to collect the stamp duty from the petitioner - Company as per the observations made by this Court hereinabove.

**Sd/-  
JUDGE**

Srt  
CT-SMP