

**IN THE HIGH COURT OF UTTARAKHAND**  
**AT NAINITAL**

HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI

**09<sup>TH</sup> SEPTEMBER, 2022**

**ARBITRATION APPLICATION No. 70 OF 2018**

Between:

Yukti Construction Pvt. Ltd.

...Applicant

and

Mrs. Asha Sharma and another.

...Respondents

Counsel for the applicant. : Mr. Siddhartha Sah, the learned counsel.

Counsel for the respondents. : Mr. Avtar Singh Rawat, the learned Senior Counsel assisted by Mr. Raveendra Singh Bisht, the learned counsel.

**JUDGMENT :**

The applicant has preferred the present Arbitration Application, under Section 11(6) of the Arbitration and Conciliation Act, 1996 (the Act), to seek appointment of a sole arbitrator in terms of the Agreement dated 05.01.2016 entered into between the parties. A copy of the said agreement has been placed on record.

2. The said agreement dated 05.01.2016 is an agreement to sell an immovable property, whereunder the applicant was the agreement purchaser, and the respondents were the agreement seller. The said

agreement contains an arbitration clause in Clause 12, which reads as follows :-

12. यह कि, यदि उपरोक्तानुसार इस अनुबन्ध पत्र का अनुपालन करने में प्रथम पक्ष इंकार या आनाकानी करेगा। तो द्वितीय पक्ष को अधिकार होगा कि वह प्रथम पक्ष से अग्रिम धनराशि व उसकी दोगुनी धनराशि बतौर हर्जाना प्राप्त कर लें तथा उनके विरुद्ध हर प्रकार की कानूनी कार्यवाही, आविटेेशन सहित सक्षम न्यायालय में योजित करे तथा यदि नियत समयावधि में द्वितीय पक्ष अपने पक्ष में बैनामा अंकित नहीं कराते है तो बयाना राशि जब्त समझी जायेगी।

3. The applicant claims that disputes have arisen between the parties, as the respondents have failed to adhere to, and comply with the terms and conditions of the agreement. Consequently, the applicant invoked the arbitration agreement vide notice dated 20.08.2018. Since the parties could not mutually agree upon the arbitrator, the present application was preferred.

4. Upon service, the respondents have filed their reply.

5. The respondents do not dispute the factum of the parties having entered into an agreement itself. The respondents have, however, raised two objections. The first objection relates to the agreement not being duly stamped, and the second relates to the agreement not being registered, even though, the same is compulsorily registrable.

6. So far as the first objection is concerned, the applicant has filed a supplementary affidavit dated 25.09.2019. The applicant has stated that the applicant, on its own volition, submitted the Agreement to Sell, dated 05.01.2016, before the Sub-Registrar (II), Dehradun for the purpose of stamping. The Sub-Registrar (II), Dehradun placed the matter before the Collector Stamp/Additional District Magistrate (Finance and Revenue), Dehradun, who vide order dated 18.09.2019, found that the Agreement to Sell with possession would attract Stamp Duty @ 5% of the total consideration, which was Rs. 1,50,00,000/-. Thus, Stamp Duty of Rs. 7,50,000/- was payable on the document. The applicant was also subjected to penalty of Rs. 50,000/-. The applicant has, consequently, deposited Rs. 8,00,000/- in the Government Treasury vide Challan dated 23.09.2019, copy whereof has also been placed on record.

7. Consequently, the aforesaid objection regarding the agreement not being stamped does not survive.

8. So far as the other objection, with regard to the Agreement to Sell not being registered, is concerned, the learned counsel for the applicant has placed reliance on the judgment of the Supreme Court in ***SMS Tea Estates Private Limited v. Chandmari Tea Company Private Limited, (2011) 14 SCC 66***, and, in particular, on paragraph no. 16 thereof, which reads as follows :-

*"16. An arbitration agreement does not require registration under the Registration Act. Even if it is found as one of the clauses in a contract or instrument, it is an independent agreement to refer the disputes to arbitration, which is independent of the main contract or instrument. Therefore having regard to the proviso to Section 49 of Registration Act read with Section 16(1)(a) of the Act, an arbitration agreement in an unregistered but compulsorily registrable document can be acted upon and enforced for the purpose of dispute resolution by arbitration."*

9. On the other hand, the submission of the learned Senior Counsel for the respondents is that in the same judgment, the Supreme Court observed that, even though the applicant may be entitled to seek reference of disputes to arbitration under the arbitration agreement, since the Agreement to Sell is not registered, as required by law, the applicant cannot seek to enforce its rights under the said agreement. He has also sought to raise other issues with regard to the

agreement having come to an end, and the land in question not being transferable.

10. In the light of the aforesaid judgment in **SMS Tea Estates** (supra), I reject the submission of the learned Senior Counsel for the respondents that the disputes cannot be referred to arbitration. In fact, even in the said case, the Supreme Court remanded the matter back to the Chief Justice of the Gauhati High Court to make the appointment of the Arbitrator after deciding the issue of stamping. So far as the other issues raised by the respondents are concerned, they relate to the merits of the dispute, which can only be gone into by the Arbitrator, and not by me while deciding the present Application under Section 11(6) of the Act. Therefore, it would be open to the respondents to raise all its defenses before the Arbitral Tribunal.

11. In the light of the aforesaid, I am inclined to allow this application. Accordingly, I appoint Mr. Justice V.K. Bist, Retd. Chief Justice, High Court of Sikkim, to act as the sole Arbitrator to adjudicate all the disputes, which have arisen between the parties under the aforesaid agreement.

12. The present Arbitration Application stands disposed of in the aforesaid terms.

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**VIPIN SANGHI, C.J.**

Dt: 09<sup>th</sup> September, 2022  
Rahul