



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF SEPTEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE R. NATARAJ

WRIT PETITION NO. 29440 OF 2019 (GM-RES)

Between:

Karnataka State Highways
Improvement Project (KSHIP-II)
Represented by the Project Director,
Project Implementation Unit,
1st Floor, PWD Annexe Building,
K.R.Circle, Bengaluru-560001.

...Petitioner

(By Sri P.K.Shrikara, Advocate for
Sri George Joseph, Advocate)

And:

M/s. KMC - VDB(JV)
Door No.1-80/40/SP/58-65
Shilpa Homes Layout,
Hyderabad
Represented by its Executive Director

Corporate House
No.842/A, Binnamangala, 100ft Road,
Indiranagar, Bengaluru-560038.

...Respondent

(By Sri. Pramod Nair, Senior Advocate for
Smt. Disha Surpuriya, Advocate)

This WP is filed under Article 227 of the Constitution of India, praying to-set aside the order dated 25.06.2019 (vide Annexure-A) passed by the LXVI Additional City Civil and Sessions Judge, Bengaluru (CCH-67) in Execution Petition No.2867/2018 on Interlocutory Application No.1 filed by the petitioner herein, and reverse the same.





This Writ Petition, coming on for orders, this day, the court made the following:

ORDER

The petitioner has challenged an order dated 25.06.2019 passed by the 86th Additional City Civil and Sessions Judge, Bengaluru City in Ex.Case No.2867/2018, by which, it rejected an interlocutory application filed by the petitioner to impound the award of the arbitrator for non payment of stamp duty.

2. An arbitral award was passed at the instance of respondent against the petitioner awarding the following:

(i)	Over head expenses	Rs.15,13,18,776.00
(ii)	Loss of Profit	Rs.19,23,56,025.00
(iii)	Amount payable towards unbilled work remained unpaid	Rs.51,22,950.00
(iv)	Amount with held by the petitioner from the interim payments	Rs.44,46,983.00
	Total	Rs.35,32,47,734.00



3. The petitioner was directed to pay the aforesaid amount along with interest @ 9% per annum from the date of initiation of arbitration proceedings till the date of realization. A petition under Section 34 of the Arbitration and Conciliation Act, 1996 was filed by the petitioner herein, which is pending consideration in Com.A.S.No.115/2018. In the meanwhile, the respondent took steps to enforce the award of the arbitrator in Ex.Case.No.2867/2018. The petitioner entered appearance and filed an application to impound the award on the ground that the respondent had failed to pay the stamp duty as applicable. The executing court rejected the application by the impugned order on the ground that the liability to pay the stamp duty would arise only at the time of executing the award and thus the question of impounding the document under Section 33 of Karnataka Stamp



Act, 1957 would not arise. Being aggrieved by the aforesaid order, the present petition is filed.

4. Learned counsel for the petitioner submitted that for the purposes of the Karnataka Stamp Act, 1957, an award of an arbitrator is deemed to be an instrument as defined under Section 2(j) of the Karnataka Stamp Act. He submitted that by virtue of the award passed in favour of the respondent, a liability is cast upon the petitioner and therefore, it is necessary that stamp duty as prescribed under Article 11 of Karnataka Stamp Act, 1957 is paid. He further submitted that since the respondent has sought to enforce the award of the arbitrator he was bound to pay the stamp duty as prescribed and not doing so must necessarily result in impounding the document. In this regard he relied upon the judgment of the Apex Court in the case of **HINDUSTAN STEEL LIMITED V. DILIP**



CONSTRUCTION COMPANY¹, and contended that an order of the arbitrator is an instrument which is chargeable with duty.

5. Per contra learned counsel for the respondent submits that the stamp duty is payable on the arbitral award only at the time of executing the award as per judgment of a Co-ordinate Bench of this court in **W.P.No.8352/2022** and connected matters and therefore he submits that the question of impounding the document before executing the award does not arise. Further he contends that even as per Article 11 of the Karnataka Stamp Act, 1957 the stamp duty is payable only on an award when it deals with a movable or immovable property, while in the present case the award did not deal with either movable or immovable property, but the award is only for damages, which is an actionable claim which does not attract stamp duty. Further he

¹ (1969) 1 SCC 597



contends that notwithstanding these contentions, the respondent has already paid stamp duty and therefore question of impounding document would not arise.

6. I have considered the submissions made by the learned counsel for the petitioner as well as the respondent.

7. When the award of the arbitrator deals with a movable property or immovable property, by virtue of the charging clause contained in Article 11 of the Karnataka Stamp Act, 1957, such awards are bound to suffer stamp duty before it is brought for execution. In the case on hand, as rightly contended by the learned counsel for the respondent, the award does not deal with either movable property or immovable property, but it awarded liquidated damages payable to the respondent, arising out of a construction contract. Therefore, the award does not attract stamp duty



as no provision is made in the Karnataka Stamp Act, 1957 to collect stamp duty on an award which deals with award of damages and this court cannot supplement the omission in the legislation by including an award which deals with grant of damages.

8. The contention of the learned counsel for the petitioner that the impugned award deals with money which should be construed as a movable property is unacceptable as Article 11 of the Karnataka Stamp Act, 1957 dealt with only tangible properties and not something which is not tangible.

9. In that view of the matter, the question of impounding the document under Section 33 of the Karnataka Stamp Act, 1957 does not arise. The Executing Court has rightly rejected the application filed by the petitioner. There is no error in the reasoning of the executing court



warranting interference by this court under Article 227 of the Constitution of India. Hence writ petition is ***dismissed***.

**Sd/-
JUDGE**

KMV
List No.: 1 Sl No.: 17