

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

ARBITRATION APPLICATION No.145 of 2022

Between:

Suripalli Prasad Rao

... **Petitioner**

And

Mr Anand Mallipudi

... **Respondent**

JUDGMENT PRONOUNCED ON: 18.07.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. **Whether Reporters of Local newspapers may be allowed to see the Judgment? : yes**
2. **Whether the copies of judgment may be marked to Law Reporters/Journals? : yes**
3. **Whether Their Lordships wish to see the fair copy of the Judgment? : yes**

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

ARBITRATION APPLICATION No.145 of 2022

% 18.07.2023

Between:

Suripalli Prasad Rao

..... Petitioner

And

\$ Mr Anand Mallipudi

... Respondent

< Gist:

> Head Note:

! Counsel for the Petitioners : Mr Omar A Pasha

^ Counsel for Respondent : Mr M/s Unnam Law Firm

? Cases Referred:

1. 2023 SCC online SC 495

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**ARBITRATION APPLICATION No.145 of 2022****ORDER:**

Heard the learned counsel for the Petitioner and learned counsel for the respondent

2. This Arbitration Application is filed praying to appoint a Sole Arbitrator to adjudicate the claims and disputes between the Applicant and Respondent Pursuant to the Agreement of Sale dated 27.09.2018.

3. The case of the Petitioner, in brief, is as follows:

a) The Applicant and the Respondent entered into an unregistered Agreement of Sale dated 27-09-2018 for the land admeasuring Acres 0.20 Gts as well as residential house admeasuring 4000 sq. Ft bearing House No. 3 forming part of the total land belonging to the Respondent herein admeasuring Ac. 2.39 Gts forming part of Sy. No. 680/1 and 680/2 (Ac. 2-20 gts in Sy. No. 680/1 & Ac. 0.19 Gts in Sy. No. 680/2) of JanwadaGrampanchayath, Sankarpally Mandal, Rangareddy District, Telangana.

b) As per the Agreement of Sale, the Applicant had paid an amount of Rs. 1,25,00,000/-at the time of entering the Agreement of Sale and later the Applicant had Rs. 50,00,000/-on various dates through various mode of transfers and cash.

c) As per the terms of the Agreement of Sale, the Respondent herein has agreed to complete the construction of residential house and the same shall be completed in eighteen months i.e. on or before March, 2020 with a grace period of 3 months but the Respondent failed to adhere to terms of the agreement and no construction work has even been started at the time of filing of this case.

d) The Respondent herein without following terms of the Agreement of Sale is clandestinely trying to sell the Schedule Property illegally to the third parties and the Respondent is also entering into multiple agreements for illegal second sale of the Schedule Property.

e) It came to the Applicant's knowledge that the Respondent is in financial trouble and is illegally trying to dispose of the entire property out of which 2420 Sq Yds

belongs to the Applicant. Since the Respondent herein has constructed no house or structure till date and applicant did part payment, the property in question now belongs to the Applicant.

f) The Agreement of Sale dated 27-09-2018, clause No. 10 states as under: "Any dispute arising out of this agreement shall be settled through arbitration under the provisions of Arbitration and Conciliation Act, 1996. The venue of the arbitration shall be Hyderabad"

g) However, the Respondent refused to settle the dispute amicably and thus the Applicant, was forced to file an Arbitration Original Petition No.1/2022 and Court was pleased to pass a Status Quo order dated 26.04.2022, directing the Respondent herein not to sell or modify the Schedule Property, till the dispute is settled.

h) Subsequently, on 27.06.2022, the Applicant has sent notice 2 to the Respondent, requesting him to send a list of nominees of the appointment of an arbitrator, however, there has been no response from with regard to the same. Hence this Arbitration Application.

4. The case of the respondent, in brief, is as follows

a) The purported Agreement of Sale dated 27.09.2018, is a sham document which was never intended to be acted upon by the Parties. No consideration whatsoever is paid in lieu of the fabricated transaction recited in the said sham Agreement of Sale. The Statement of Accounts that are filed in support of the case to demonstrate payment of consideration, also categorically establish that the said payments were made to a third-party entity, in respect of a business conducted by the Petitioner's son along with one Mohit Korpai.

b) The amount was paid by the Applicant on behalf of his son Saripalli Karthik for entering into a business named and styled as 'Penalty Box', which is run by Mr. Mohit Korpai. The said Penalty Box was supposed to pay 25% of its Revenue generated from restaurant sales and party sales to the respondents, as consideration for occupying the Respondent's land.

c) The Petitioner's son, Karthik had entered into a partnership with Mohit Korpai and in that context, the said amount of Rs.13,00,000/- shown in the bank statements

were remitted into the Respondent's Company account called M/s. Oro Sports Village, which is accounted towards 25% Revenue generated in Penalty Box.

d) In the said Penalty Box, Mohit and Karthik were equal partners and when the Petitioner's son had opted to exit from the said Partnership business, by surrendering his 50% share to Mohit Korpai, then Mohit offered Rs. 1,00,00,000/- towards the purchase of Karthik's share. In that context, as Mohit did not have the said amount readily to pay-out Karthik, he had requested the Respondent to stand-in on his behalf, and got the Respondent's signatures on a sham document for the purpose of postponing the payment obligation of Mohit.

e) Subsequently, the respondent was defrauded into signing a fabricated and sham document purportedly named as "Agreement of Sale" in respect of a land and house. In reality, there is no intention or offer or consideration between the parties with respect to sale of an immovable property and the said document is invalid. However, now, the Petitioner is trying to enforce such an invalid and sham document by invoking arbitration through misrepresentation of facts.

f) The Applicant also approached the IX Addl. District and Sessions Judge, RR District, under Section 9 of the Arbitration and Conciliation Act, seeking a relief of injunction pending disposal of the Arbitration. The said interim application in Arbitration O.P. No.419 of 2022 is also dismissed by the lower court, against which the petitioner preferred an appeal, vide CMA No. 165 of 2023, which is pending adjudication as on date.

g) Council for Respondent places reliance on the constitutional bench judgment of the Supreme Court, **M/s. N.N. Global Mercantile Put. Ltd. vs. Indo Unique Flame Ltd (Date of Judgment – 25.04.2023) and Garware Wall Ropes Limited v. Coastal Marine Constructions and Engineering Limited [(2019) 9 SCC 209]**, wherein it is held that the Court dealing with applications under Section 11 for appointment of Arbitrator cannot appoint the Arbitrator when the contract containing the Arbitration clause is insufficiently stamped and unregistered. Hence, the application is without merits and is liable to be dismissed.

5. Interim Orders Passed by this court in Arb.A. No.

145 of 2022 dated 26.08.2022, reads as under:

“This arbitration application has been filed under section 11(5) & (6) of the Arbitration and Conciliation Act, 1996, for the appointment of Arbitrator.

Issue Notice.

Application to serve the respondent through the Court process as well as through personal service and thereafter file proof of service.”

PERUSED THE RECORD

DISCUSSION AND CONCLUSION

6. Counter affidavit filed on behalf of the respondent, in particular, paras 2, 3, 6, 7 and 8 read as under:

“2. At the outset I submit that the present application under Section 11 of the Arbitration Conciliation Act is not maintainable, specifically in the light of the recent **law laid down by the Constitutional Bench of the Supreme Court in the case of M/s. N.N. Global Mercantile Pvt. Ltd. vs. Indo Unique Flame Ltd., whereunder it is categorically held that Arbitration Agreement/ Clause under an unstamped and unregistered Contract is not enforceable, even at the stage of an application under Section 11(6) of the Arbitration and Conciliation Act.**

3. It is also submitted that the Contract, i.e., the purported Agreement of Sale Dt.27/09/2018, is a sham document which was never intended to be acted upon

by the Parties. No consideration whatsoever is paid in lieu of the fabricated transaction recited in the said sham Agreement of Sale. The Statement of Accounts that are filed in support of the Applicant's case to demonstrate payment of consideration, also categorically establish that the said payments were made to a third-party entity as pay-outs to me in respect of a business conducted by the Petitioner's son along with one Mohit Korpai.

6. Therefore, such an Agreement of Sale Dt.27/09/2018 is a sham and invalid document and there is no valid consideration between the parties to make it enforceable and therefore no rights can flow from thereunder. And now, the Petitioner is making an attempt to enforce such an invalid and sham document by invoking arbitration through misrepresentation of facts.

7. It is further submitted, that the Applicant also approached the IX Addl. District and Sessions Judge, RR District, under Section 9 of the Arbitration and Conciliation Act, seeking a relief of injunction pending disposal of the Arbitration. The said interim application in Arbitration O.P. No.419 of 2022 is also dismissed by the lower court, against which the petitioner preferred an appeal, vide CMA No. 165 of 2023, which is pending adjudication as on date.

8. However, it is submitted that the purported Agreement of Sale Dt.27/09/2018 is unstamped and

unregistered and therefore in the light of the recent law laid down by the Constitutional Bench of the Supreme Court in the case of "M/s. N.N. Global Mercantile Pvt. Ltd. vs. Indo Unique Flame Ltd." (Date of Judgment - 25/04/2023). The - 'majority' in the constitutional bench of the Supreme Court in the above case, upheld the ratio of "Garware Wall Ropes Limited v. Coastal Marine Constructions and Engineering Limited" **[reported in (2019) 9 SCC 209]**, wherein it is held that the Court dealing with applications under Section 11 for appointment of Arbitrator, cannot appoint the Arbitrator when the contract containing the Arbitration Clause is insufficiently stamped and unregistered.

7. Learned counsel for the petitioner also brings on record through memo dated 11.07.2023 and seeks a prayer to permit the applicant to submit the original agreement of sale dated 27.09.2018 for impounding of the agreement and consequently for payment of the stamp duty. Learned counsel for the petitioner pleads that the petitioner is entitled for the grant of relief as prayed for in the said Memo dated 11.07.2023 and relies on **Para 86 of the Five Judge Bench Judgment dated 25.04.2023 reported in 2023 SCC online SC 495 in N.N.Global Mercantile Private Limited v**

Indo Unique Flame Limited and others, which reads as under:

“Section 7(3) (b) of the Act contemplates that an exchange of letters, telex, telegrams or other means of telecommunication, including communication through electronic means, which provide a record of the agreement, would constitute an Arbitration Agreement in writing within the meaning of Section 7(3) of the Act. We may notice that the proviso (c) to Section 35 of the Stamp Act reads as follows:

“(c) 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.”

8. Learned counsel for the petitioner also placed reliance in the judgment dated 08.06.2023 passed in A.P.No.186 of 2023 passed by the High Court of Calcutta in Chandan Chatterjee and others v Gita Sundararaman and others, in particular, paras 52, 58, 59 and 61, which read as under:

“52. The sanction for non-filing of the same, however, finds place in Clause 7 which deals with rejection of such a request under Clause 3. The first sentence

thereof provides that the Chief Justice or his designate "may" reject the application if it is not in accordance with the provisions of the Scheme. Hence, an element of discretion has been introduced and it is not always mandatory to reject such an application on such score alone.

58. In any event, a bare reading of [Section 8](#) in conjunction with [Section 11](#) of the Arbitration Act shows that there is no provision in [Section 11](#) corresponding to the negative clause in sub-section (2) of [Section 8](#) which stipulates that the application under [Section 8](#) "shall not be entertained" unless it is accompanied by an original arbitration agreement or a duly certified copy thereof. In absence of the same, the intention of the legislature is very clear.

59. Hence, at the worst, non-filing of the original or a certified copy of the agreement may render the application under [Section 11](#) irregular at the worst, but not outright unlawful.

61. Hence, within the limited scope of Section 11 (6A) of the 1996 Act and the tenor of the judgment of the Supreme Court in Vidyawati Gupta (supra), the application under Section 11 ought not to be dismissed on technical and/or procedural grounds."

9. Learned counsel for the respondent, on the other hand, placed reliance in paras 98, 99, 100, 101, 104, 105, 111 and 112 of the Five Judge Bench Judgment dated 25.04.2023 reported in 2023 SCC online SC 495 in N.N.Global Mercantile Private Limited v Indo Unique Flame Limited and others, which read as under:

"98. It is nobody's case that if the contract which contains the arbitration clause is an instrument within the meaning of the Stamp Act is produced before the court under Section 11 of the Act, and it is found to be **unstamped on the face of it**, that Sections 33 and 35 and other allied provisions of the Stamp Act would have no play. In fact, in .N. Global (supra), this Court directed the work order (the contract containing the arbitration clause) to be impounded. Section 11 (GA) of the Act which requires the court to examine whether an arbitration agreement exists, was the need realized and articulated by Parliament to curb the court from straying into other areas highlighted in National Insurance (supra). In other words, proceeding on the basis that an 'unstamped agreement exists, it would not deflect the court of its statutory duty to follow the regime under Sections 33 and 35 of the Stamp Act.

99. This Court pointed out to the existence of the Scheme prepared by the Supreme Court in exercise of the powers under Section 11(10). Paragraph 2(a) of the Scheme, inter alia, reads as follows:

"2. Submission of request. –

The request to the Chief Justice under subsection (4) or sub-section (5) or sub-

section (6) of section 11 shall be made in writing and shall be accompanied by-

(a) the original arbitration agreement or a duly certified copy thereof."

100. Thereafter, when the curtains were about to be rung down on the hearing, the learned Amicus brought the following aspect to notice of the Court. He pointed out that under the Scheme, the applicant need produce only the certified copy of the Arbitration Agreement. He would draw support from the Judgments of this Court in **Jupudi Kesava Rao v. Pulavarthi Venkata Subbara and Hariom Agrawal (supra)** to contend that even applying Sections 33 and 35 by the Court at the stage of Section 11 of the Act, the certified copy cannot be impounded. He, thus, sought to take the wind out of the sail of the appellant's contention, by contending that in most of the cases, since certified copies are alone being filed and they cannot be impounded, and as after reference to the Arbitrator based on the certified copy, the Arbitrator is competent, in law, under Sections 33 and 35 of the Stamp Act to do the needful, this court may bear this aspect in mind. Thereupon, Shri Gagan Sanghi, would point out that even in the certified copy, the factum of payment of the stamp duty must be entered. The said aspect, in fact, engaged the attention of this court in SMS Tea Estates (supra).

101. Reference has been made to Lupudi Kesava Rao (supra), to contend that a copy of an instrument, cannot be treated as an instrument under the Stamp Act for the purpose of Sections 33 and 35 of the Stamp Act. A copy cannot be impounded under Section 33, it is pointed out. Therefore, section 33, which mandates

impounding of an unstamped instrument, would not apply to a certified copy, which is permitted to be produced under the Scheme. Reliance has been placed on paragraphs-13 and 14 of Jupudi Kesava Rao (supra):

13. The first limb of Section 35 clearly shuts out from evidence any instrument chargeable with duty unless it is duly stamped. The second limb of it which relates to acting upon the instrument will obviously shut out any secondary evidence of such instrument, for allowing such evidence to be let in when the original admittedly chargeable with duty was not stamped or insufficiently stamped, would be tantamount to the document being acted upon by the person having by law or authority to receive evidence. Proviso (a) is only applicable when the original instrument is actually before the Court of law and the deficiency in stamp with penalty is paid by the party seeking to rely upon the document. Clearly secondary evidence either by way of oral evidence of the contents of the unstamped document or the copy of it covered by Section 63 of the Indian Evidence Act would not fulfil the requirements of the proviso which enjoins upon the authority to receive nothing in evidence except the instrument itself. Section 25 is not concerned with any copy of an instrument and a party can only be allowed to rely on a document which is an instrument for the purpose of Section 35. "Instrument" is defined in Section 2as including every document by which any right or liability is, or purports to be created, transferred, limited, extended, extinguished or recorded. There is no scope for inclusion of a copy of a document

as an instrument for the purpose of the Stamp Act.

14. If Section 35 only deals with original instruments and not copies Section 36 cannot be so interpreted as to allow secondary evidence of an instrument to have its benefit. The words "an instrument" in Section 36 must have the same meaning as that in Section 35. The legislature only relented from the strict provisions of Section 35 in cases where the original instrument was admitted in evidence without objection at the initial stage of a suit or proceeding. In other words, although the objection is based on the insufficiency of the stamp affixed to the document, a party who has a right to object to the reception of it must do so when the document is first tendered. Once the time for raising objection to the admission of the documentary evidence is passed, no objection based on the same ground can be raised at a later stage. But this in no way extends the applicability of Section 36 to secondary evidence adduced or sought to be adduced in proof of the contents of a document which is unstamped or insufficiently stamped."

104. The submission appears to be that the Scheme provides for a certified copy of the Arbitration Agreement and if the Arbitration Agreement is a part of the contract, which is either not stamped or insufficiently stamped and, since, it cannot be impounded under Section 33 of the Stamp Act, cannot be validated. All that the Court has to look into is, whether an Arbitration Agreement exists.

105. It is, no doubt, true that under the Scheme, an applicant can produce, either the Original or the certified copy.

What is a certified copy? A certified copy is to be understood in the light of Section 76 of the Indian Evidence Act, 1872 (hereinafter referred to as, 'the Evidence Act', for short). It reads as follows:

"76. Certified copies of public documents. - Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies. - Every 3 public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies." Explanation. -Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section."

106. This necessarily would take us to Section 74 of the Evidence Act, which defines what is a 'public document'. Section 74 reads as follows:

"74. Public documents. -The following documents are public documents:

(1) Documents forming the acts, or records of the acts-

(i) of the sovereign authority,
(ii) of official bodies and tribunals,
and

(iii) of public officers, legislative, judicial and executive, of any part of India or of the Commonwealth, or of a foreign country; of any part of India or of the Commonwealth, or of a foreign country;

(2) Public records kept in any State of private documents."

107. We have already noticed that Section 35 of the Stamp Act interdicts the registration of an instrument unless it is duly stamped.

108. The interplay of the Evidence Act, the Stamp Act and the Registration Act is to be understood as follows.

In regard to an instrument, which is executed in India and which is liable to be stamped, then, stamping has to take place before or at the time of the execution of the instrument. It is after the instrument is stamped that it can be presented for registration. Section 17 of the Registration Act provides for documents, which are compulsorily registrable. Section 18 permits registration of other documents at the option of the persons concerned. An instrument which is registered, necessarily involves, it being duly stamped before it is so registered. This result is inevitable, having regard to the impact of Section 35 of the Stamp Act. In fact, an instrument, which is not duly stamped and

which is produced before the Registering Authority, would be liable to be impounded under Section 33 of the Stamp Act. What Section 74 read with Section 76 of the Evidence Act provides for is, the issuance of certified copies. Certified copies can be issued only in respect of public documents. Section 62 inter alia of the Evidence Act defines primary evidence as the document itself produced for the inspection of the court. Section 63 of the Evidence Act defines 'secondary evidence' as meaning and including, inter alia, 'certified copies under the provisions hereinafter contained'. The provisions 'hereinafter contained' referred to in Section 63 must be understood as Section 74 read with Section 76. A certified copy can be given, no doubt, of 'public records kept in any State of private documents'. Thus, if a sale deed between two private parties comes to be registered, instead of producing the original document, a certified copy of the sale deed, may qualify as secondary evidence and a certified copy can be sought for and issued under Section 76 of the Evidence Act. The expression 'public records kept in any State of a private document' in Section 74 is not confined to documents, which are registered under the Registration Act. A private document, which is kept as a public record, may qualify as a public document. What is important is, to bear in mind that in view of Section 33 of the Stamp Act, an instrument, which is not duly stamped, if it is produced before any Public Office, it would become liable to be impounded and dealt with as provided in the Stamp Act. Let us assume a case where a contract, which contains an Arbitration Clause, is registered. As we have noticed, if the contract, in which the Arbitration Clause is contained, is exigible to stamp duty, then, registration cannot be done without the instrument being duly stamped. It is keeping the same in mind that in SMS Tea Estates

(supra), this Court held that, 'if what is produced is a certified copy of the agreement/contract/instrument, containing the Arbitration Clause, it should disclose that the stamp duty has been paid on the original'. This again is for the reason that a certified copy is a true copy of the document. The Officer, who certifies the document, must be the person having the custody of the public document. The public document in the case of public records of private documents, in the case of a registered document, would necessarily involve the document being stamped before registration. The Scheme framed by the Chief Justice, permits the production of a duly certified copy to relieve the party of the burden of producing the original but what is contemplated is only the production of the certified copy, which duly discloses the fact of payment of stamp duty. It is worthwhile to also notice paragraph-5 of the Scheme. It reads:

"5. Seeking further information. -The Chief Justice or the person or the institution designated by him under paragraph 3 may seek further information or clarification from the party making the request under thisScheme."

109. Therefore, it is not as if the Judge dealing with an Application under Section 11 of the Act, is bereft of authority to seek information or clarification so as to be satisfied that the certified copy satisfies the requirement as laid down in SMS Tea Estates (supra) that stamp duty payable has been paid.

111. The production of a copy of an instrument, may not lead to the impounding of the copy as Section 33, which mandates impounding, applies only in regard to the original, which alone is treated as an instrument under Section 2(14) of the Stamp Act. We must understand the context of the ruling in Jupudi Kesava Rao

(supra) and Hariom Agrawal (supra) to be that a party cannot validate an instrument by producing a copy and by getting it impounded and paying the duty and penalty. In fact, as observed in paragraph-13 of JupudiKesava Rao (supra), the Court cannot be invited to act upon a copy of an instrument, which is insufficiently stamped. Thus, such a copy, while it cannot be impounded under Section 33, it cannot also be acted upon under Section35. SECTIONS 33 AND 35 OF THE STAMP ACT; THE COURT OR THE ARBITRATOR TO ACT?

112. There was considerable debate at the Bar as regards the wisdom in relegating the issue relating to payment of stamp duty to the Arbitrator. On the one hand, the learned Amicus, supported by learned Counsel for the Respondent, would canvass that, bearing in mind the object of the Act, and in particular, Section 5 of the Act, prohibiting judicial interference, except as provided, questions relating to non-payment of stamp duty and the amount to be paid, are capable of being dealt with by the Arbitrator. The concern of the Court, that the interest of the Revenue is protected, is best balanced with the overwhelming need to fast track the arbitration proceedings and they are best harmonised by ensuring that the Arbitrator will look into the matter and ensure that the interest of the **Revenue is not jeopardised. On the other hand, the appellant and the intervener would point out that the Court cannot ignore the mandate of the law contained in Sections 33 and 35 of the Stamp Act and a view taken by this Court, on the said lines, will only encourage evasion of the law, whereas, if the Court follows the mandate of Sections 33 and 35 of the Stamp Act and adheres to what has been laid down in Garware (supra), not only would the law**

be observed, but, when the matter reaches the Arbitrator, the issue would have been given the quietus. Such a view would also encourage persons falling in line with the Stamp Act.

and contends that the arbitration application needs to be dismissed in view of the law laid down by the Apex Court.

10. This Court takes into consideration paras 111 and 112 of the Five Judge Bench Judgment dated 25.04.2023 reported in 2023 SCC online SC 495 in N.N.Global Mercantile Private Limited v Indo Unique Flame Limited and others (referred to and extracted above) and taking into consideration the fact as borne on record that the purported agreement of sale dated 23.09.2018 is unstamped and unregistered and therefore, the request of the petitioner for grant of relief in the present application cannot be entertained.

11. This Court opines that the contract in which the Arbitration Clause is contained is exigible to stamp duty, then, registration cannot be done without the instrument being duly stamped and as per the mandate of Section 3 of the Stamp Act and other connected provisions the document would have been impounded

unless it was originally stamped as per law. In so far as plea made by the petitioner vide memo dated 11.07.2023, the same cannot be granted in view of the discussion and the law and the law as laid down in the judgment of the Apex Court at paras 98, 99, 100, 101, 104, 105, 106, 107, 108, 109 and 111 of the Five Judges Bench Judgment dated 25.04.2023 reported in 2023 SCC online SC 495 in N.N.Global Mercantile Private Limited v Indo Unique Flame Limited and others, which in clear explicit terms at Paras 110 and 111, in particular held that the Court cannot be invited to act upon a copy of an instrument, which is insufficiently stamped. Since such a copy, while it cannot be impounded under Section 33 of the Stamp Act and it cannot also be acted upon under Section 35 of the Stamp Act. This Court opines that the Court cannot ignore the mandate of the law contained in Section 35 of the Stamp Act.

13. For all the reasons stated above, the Arbitration Application is dismissed. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SUREPALLI NANDA, J

Date: 18.07.2023

Note: L.R. copy to be marked

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