$~15(Original Side)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ O.M.P. (COMM) 359/2021, I.A. 16339/2021 & I.A.16340/2021

SNG DEVELOPERS LIMITED ..... Petitioner

Through: Mr. Dharmesh Mishra & Mr. Prateek Gupta, Advs.

versus

VARDHMAN BUILDTECH PRIVATE LIMITED ..... Respondent

Through: Mr. Sanjeev Kumar Dubey, Sr. Adv. with Mr. Ashish Khurana, Mr. Amit Bhatia, Mr. Manmay Sarawagi & Mr. E Krishna Dass, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (ORAL)

% 09.12.2021

1. This petition, under Section 34 of the Arbitration and Conciliation Act, 1996, ("the 1996 Act"), calls into the question the legality of an interim award dated 1st November, 2021, passed by the learned Arbitral Tribunal, presently *in seisin* of the disputes between the parties.

2. The impugned award addresses two objections, raised by the petitioner (who was the respondent before the learned Arbitral Tribunal), to the copy of an Agreement to Sell dated 4th April, 2011, which was sought to be presented in evidence by the respondent (who was the claimant before the learned Arbitral Tribunal).

3. The impugned award addresses the objections of the petitioner, to the admissibility of the aforesaid document. As such, given the limited scope of controversy, it is not necessary to refer to the disputes between the parties, forming subject matter of consideration in arbitration.

4. The learned Arbitral Tribunal was constituted by this Court *vide* order dated 4th April, 2019. The Statement of Claim was filed on 21st May, 2019 and Statement of Defence was filed on 8th July, 2019.

5. Consequent to the learned Arbitral Tribunal entering on reference, the first sitting of the learned Arbitral Tribunal took place on 9th May, 2019. On the said date, the learned Arbitral Tribunal set out the following schedule for the arbitral proceedings and also chalked out the procedure to be followed by it during the course of arbitration:

S. No.	Steps to be taken	Latest by date
1.	Statement of Claim to be filed by the Claimant, along with true copies of the documents to be relied upon	**23.05.2019**
2.	Statement of Defence and Counterclaim, if any, to be filed by the Respondent along with true copies of the documents to be relied upon.	**20.06.2019**
3.	Rejoinder to the Statement of Defence and reply to Counterclaim, if any, to be filed by Claimant	**11.07.2019**
4.	Rejoinder to the reply of the Claimant to the Counterclaim, if any, to be filed by the Respondent.	**25.07.2019**
5.	Affidavits of admission and/or denial of respective documents to be exchanged by the parties.	**01.08.2019**

6.	Proposed draft Points for Determination by the Arbitral Tribunal, to be exchanged by the parties	**08.08.2019**

6. Qua the procedure to be followed in respect of admission and denial of documents, Para 7.8 of the record of proceedings dated 9th May, 2019, read thus:

> "7.8 In the Affidavits of Admission/Denial, the parties will list and describe such of the documents the existence/genuineness of which are in dispute, setting out the reasons therefor in brief. In the absence of the same, the document shall be available for being read in evidence, dispensing with the need of formal proof thereof. However, the question of evidentiary value to be attached to the document shall remain open for consideration at the final hearing."

7. Affidavits in evidence were filed by the parties as directed by the learned Arbitral Tribunal, along with the documents on which they sought to place reliance. The respondent/claimant filed, with its affidavit in evidence, a copy of an Agreement to Sell dated 4th April, 2011.

8. It is an admitted position that, at the stage of admission and denial, the petitioner (as the respondent before the learned Arbitral Tribunal), admitted the said document without any reservation or caveat.

9. The consequences of the petitioner admitting the aforesaid document in evidence, without any caveat, would, in view of Para 7.8 of the record of proceedings/order dated 9th May, 2019, *supra*, be that the document would be available for being read in evidence. I am told that the order dated 9th May, 2019, has never been challenged, and the

legality and propriety of that order is not questioned in the present proceedings either.

10. On 9th August, 2019, issues were framed by the learned Arbitral Tribunal. No issue, regarding insufficient stamping of the Agreement to Sell dated 4th April, 2011, and consequently, its admissibility in evidence, was drawn up. The order dated 9th August, 2019, is also not called into challenge by the petitioner.

11. On 10th October, 2019, the petitioner objected to the aforesaid copy of the Agreement to Sell dated 4th April, 2011, on three grounds, viz., that (i) the original copy of the Agreement to Sell dated 4th April, 2011 had not been furnished, and a photocopy/typed copy alone was produced, (ii) the Agreement to Sell was insufficiently stamped, and (iii) the Agreement to Sell was not registered, as required by law.

12. The impugned award dated 1st November, 2021, rejects the second objection, i.e. that the document was not sufficiently stamped and relegates the third objection for being decided at the final stage of the arbitral proceedings.

13. Though the prayer in this petition is for setting aside the impugned order in totality, Mr. Dharmesh Mishra, learned Counsel for the petitioner, restricts his relief, on instructions, to the prayer for setting aside the impugned award qua the rejection of the petitioner's objection to the Agreement to Sell dated 4th April, 2011 being insufficiently stamped.

14. The learned Arbitral Tribunal has reasoned thus, in proceeding

to reject the aforesaid objection of the petitioner:

> "6. In the Statement of Defence, it has been categorically stated (see: Para C of Preliminary objections) that *"the claimant had entered ínto an Agreement to sell dated 04.04.2011 for purchase of 2.929 acres (Approx.) out of the 5 acres of the land..."*. The Respondent, relying upon clause 12 of the said Agreement, took the stand (see: Para D of Preliminary objections) that a registered sale deed and/or necessary documents were to be executed and the sale had to be concluded within 120 days of the payment of sale consideration *"within which period the claimant was to get the approval of bifurcation of the plot"*. The Respondent also took the plea of limitation based, inter alia, on the following averments contained in the Statement of Defence:-
>
> > "E. Thereby, entire transaction of sale and registration of sale deed was to take place strictly within a period of 120 days from the date of payment. The Claimant made the payment of the sale consideration on 20.05.2011, therefore, the execution and registration of sale deed was to be done strictly within a period of 120 days from 20.05.2011 i.e. by the date fixed 20.09.2011.
> >
> > F. Since the date of performance was fixed under the Agreement to sell dated 04.04.2011 as 20.09.2011, therefore, limitation began to run from that date i.e. 20.09.2011 and the present Arbitration invoked on 30/07/2018 within the meaning of Section 21 of the Arbitration and Conciliation Act, 1996 to specifically enforce the Agreement dated 04.04.2011 is blatantly barred by the law of limitation.
> >
> > G. It would not be out of place to mention here that the present arbitration invoked and/or claim made is a mere afterthought. The claimant gave up their right in the transaction/plot and amount. The possession of the plot was also reverted and continues with the respondent."

Based on such pleas, Issue 1 was framed on the question of limitation and Issues 2 & 3 were framed on the question of whose responsibility was it to get the property in question bifurcated. Issue 4 related to the effect of non-bifurcation of the property. Issue 5 raised the question of what was the "essence" of the Agreement and its alleged extinguishment as pleaded in ground Z of the Statement of Defence, which reads as follows:-

> Z. Vide the said e-mail communication dated 13.05.2013 the respondent refusing to perform the agreement unequivocally notified the claimant that the agreement cannot be performed as essence of the agreement is extinguished and the same is null and void."

Issue 6 pertains to the claimant's claim of specific performance of the said Agreement. Issues 7 & 8 are with respect to the alternative claim of the Claimant for refund of the sum of Rs 7.5 crores with interest. Issue 9 concerns the Claimant's claim for compensation. Issue 10 concerns the plea taken by the Respondent that the Claimant had abandoned the said Agreement and had waived its rights thereunder. It is, therefore, clear that all these issues relate to the said Agreement. The said Agreement has been admitted by the Respondent in the pleadings as also in the evidence affidavits of its witnesses. In fact, the pleas of the Respondent are also sought to be founded on the said Agreement.

7. In the affidavit of Mr Ravindra Kumar (authorized representative of the Respondent) dated 08.08.2019, the 'copy of the Sale Agreement dated 04.04.2011', as indicated in serial no. 1 of the table therein, has been 'admitted' without any reservation. This is in line with the pleas taken by the Respondent in its Statement of Defence where also the said Agreement has been admitted. Certain other documents have also been admitted, some with qualifications such as "Admitted subject to pleadings" (Sl. Nos. 4 & 6), "Receipt Admitted Contents denied" (Sl. No. 10) and some without any

reservation "Admitted" (S1. Nos 11 and 12). So, it is clear that the said Agreement has been admitted by the Respondent without any reservation as to its genuineness, existence or contents.

8. At this juncture, it would be necessary to set out paragraph 7.8 of the Order dated 09.05.2019, which provided for the manner of carrying out admission/denial of documents and the effect thereof:

> "7.8 In the Affidavits of Admission/Denial, the parties will list and describe such of the documents the existence / genuineness of which are in dispute, setting out the reasons therefore in brief. In the absence of the same, the document shall be available for being read in evidence, dispensing with the need of formal proof thereof. However, the question of evidentiary value to be attached to the document shall remain open for consideration at the final hearing."

Since, the said Agreement is admitted by the Respondent and is not disputed, it is available for being read in evidence. This being the position, section 36 of the Indian Stamp Act, 1899 would come into play. The said provision reads as under:

> "**36. Admission of instrument where not to be questioned.-**Where an instrument has been admitted in evidence, such admission shall not, except as provided in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.
>
> The exception of section 61 does not apply in the present case, therefore, as the said Agreement has already been admitted in evidence, such admission cannot be called in question at any stage of the present proceeding on the ground that the instrument has not been duly stamped. In ***Shyamal Kumar Roy v. Sushil Kumar Agarwal,*** **(2006) 11 SCC 331,** the Supreme Court held the said section 36 to be a

"stand alone" clause which categorically prohibited a court of law [and consequently an Arbitral Tribunal] from reopening the matter of sufficiency or otherwise of the stamp duty paid on an instrument in the event the same has been admitted in evidence. The relevant extracts of the said decision are as under:

"14. Section 36, however, provides for a "stand alone" clause. It categorically prohibits a court of law from reopening a matter in regard to the sufficiency or otherwise of the stamp duty paid on an instrument in the event the same has been admitted in evidence. Only one exception has been made in this behalf viz. the provisions contained in Section 61 providing for reference and revision. In a case where Section 33 of the Act, as amended by the West Bengal Act would be applicable, the proviso appended to sub-section (5) carves out an exception that if no action would be taken after a period of four years from the date of execution of the instrument (*sic*).

xxxx xxxx xxxx

16. The said decision, therefore, is an authority for the proposition that Section 36 would operate even if a document has been improperly admitted in evidence. It is of little or no consequence as to whether a document has been admitted in evidence on determination of a question as regards admissibility thereof or upon dispensation of formal proof therefor. If a party to the *lis* intends that an instrument produced by the other party being insufficiently stamped should not be admitted in evidence, he must raise an objection thereto at the appropriate stage. He may not do so only at his peril.

xxxx xxxx xxxx

17. Objection as regards admissibility of a document, thus, specifically is required to be

> taken that it was not duly stamped. On such objection only the question is required to be determined judicially.
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> xxxx xxxx xxxx
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> **20.** If no objection had been made by the appellant herein in regard to the admissibility of the said document, he, at a later stage, cannot be permitted to turn round and. contend that the said document is inadmissible in evidence."
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> **9.** In view of the foregoing discussion, the objection raised by Respondent in connection with the improper stamp duty on said Agreement, is not tenable and is rejected."

15. A reading of the afore-extracted paragraphs from the impugned award reveals that the learned Arbitral Tribunal has noted that,

(i) the petitioner had, in its Statement of Defence, admitted the execution of the Agreement to Sell dated 4th April, 2011, by the respondent, for purchase of 2.929 acres of land,

(ii) the petitioner had further relied on Clause 12 of the said Agreement, to contend that a registered Sale Deed and/or the necessary documents were to be executed and Sale Deed was to be concluded within 120 days of the payment of sale consideration, within which period the respondent was to get approval by bifurcation of plot,

(iii) in support of its plea that the claims of the respondent were barred by time, too, the petitioner had placed reliance on the aforesaid Agreement to Sell dated 4th April, 2011, stating that limitation would be begin to run from 20th September, 2011, being the date fixed for performance under the said Agreement to Sell,

(iv) nearly all the issues framed by the learned Arbitral

Tribunal on 9th August, 2019 were relatable to the Agreement to Sell dated 4th April, 2011,

(v) Mr. Ravinder Kumar, the authorised representative of the petitioner had, in his affidavit dated 8th August, 2019, admitted a copy of Agreement to Sell dated 4th April, 2011, without any reservation,

(vi) this was in stark contrast to the conditional admission of some other documents, which were admitted, "subject to pleadings", or admitted only in respect of receipt while denying the contents,

(vii) by operation of para 7.8 of the order dated 9th May, 2019, *supra*, passed by the learned Arbitral Tribunal, the copy of the Agreement to Sell dated 4th April, 2011, as filed by the respondent, was thereby rendered "available for being read in evidence, dispensing with the need of formal proof thereof", reserving the issue of evidentiary value of the document open for consideration at the stage of final hearing,

(viii) the copy of the Agreement to Sell dated 4th April, 2011, filed by the respondent, having been admitted by the petitioner without any caveat or reservation, was, therefore, available for being read in evidence, and

(ix) this directly brought into operation Section 36 of the Indian Stamp Act, 1899, which proscribed the calling into question of the admission in evidence of the copy of the Agreement to Sell dated 4th April, 2011, as filed by the respondent on the ground of insufficient stamping.

16. The learned Arbitral Tribunal also placed reliance on the judgment of the Supreme Court in ***Shyamal Kumar Roy v. Sushil Kumar Agarwal***[1], as is apparent from the paragraphs of the impugned award extracted hereinabove.

17. Mr. Mishra, learned Counsel for the petitioner, vociferously challenges the legality of the impugned award. According to Mr. Mishra, ***Shyamal Kumar Roy***[1] was not applicable to the facts of this case as, in that case, the objection of insufficient stamping of the document in question was taken at the stage of final arguments after evidence had been completed and the document had, in fact, been admitted in evidence. He submits that, in the present case, the learned Arbitral Tribunal erred in treating the copy of the Agreement to Sell dated 4th April, 2011 as having admitted in evidence, whereas, in fact, it had yet to be admitted in evidence. He submits that admission in evidence is an exercise to be undertaken by the judicial/ arbitral forum dealing with the dispute, and cannot be stated to be completed merely because one or the other party may admit the document at the stage of admission and denial. After admission of the document at the stage of admission and denial, submits Mr. Mishra, the document has to be formally introduced in evidence by exhibiting of the document. It is only thereafter that the document can be stated to have been admitted in evidence. This exercise not having taken place in the present case, he submits that the learned Arbitral Tribunal fell seriously in error in refusing to adjudicate on the petitioner's objection regarding insufficient stamping of the Agreement to Sell dated 4th April, 2011,

[1] **(2006) 11 SCC 331**

on the ground that the objection had not been taken at the appropriate stage. Section 36 of the Stamp Act, 1899, he submits that, has no applicability to the present case, and, therefore, Section 35 would apply, rendering the copy of the Agreement to Sell dated 4th April, 2011, inadmissible in evidence.

18. Mr. Mishra has also invited my attention to the judgment of the Supreme Court in ***Jupudi Kesava Rao v. Pulavarthi Venkata Subbarao***[2]**.** He places especial reliance on paras 14 and 15 of the said decision, which read thus:

> "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.
>
> 15. The above is our view on the question of admissibility of secondary evidence of a document which is unstamped or insufficiently stamped, as if the matter were res integra. It may be noted, however, that the course of decisions in India in the Indian High Courts, barring one or two exceptions, have consistently taken the same view."

[2] **(1971) 1 SCC 545**

19. Having heard Mr. Mishra at considerable length, I do not find myself inclined to interfere with the impugned award.

20. Section 36 of the Indian Stamp Act, 1899, clearly prohibits calling into question the admission of any document in any suit or proceeding once the document has been admitted in evidence, on the ground that it has not been duly stamped. In arbitral proceedings, it is well-settled that strict rules of the Code of Civil Procedure, 1908, would not apply and that the learned Arbitral Tribunal is entitled to chalk out its own procedure. In doing so, the governing consideration has to be an expeditious resolution of the disputes between the parties, without subjecting the arbitration to the lengthy and cumbersome rigours of procedure as otherwise contained in the CPC, 1908. Once the parties agree to the procedure as formulated by the learned Arbitral Tribunal, the parties are bound by such procedure. The Court sitting in judicial review over the decision of the learned Arbitral Tribunal, cannot, therefore, ordinarily interfere with the order on the ground that it does not follow, strictly the procedure envisaged by the CPC.

21. While setting out the procedure to be followed by it, the learned Arbitral Tribunal, in para 7.8 of its order dated 9th May, 2019, *supra*, worked out a procedure by which, in the affidavits of admission and denial to be filed, the parties would "list and describe such of the documents the existence/genuineness of which are at dispute, setting out the reasons therefor in brief". If, therefore, the existence or genuineness of any document was in dispute, as per the procedure prescribed by the learned Arbitral Tribunal, both the parties were required, in their affidavits of admission and denial, to particularise

the objection taken to the document as well as the ground for taking such objection. This was a procedure to which both parties, including the present petitioner (as the respondent before the learned Arbitral Tribunal), consented. The petitioner was, therefore, bound by this procedure.

22. It is not denied by Mr. Mishra that, in the affidavit of admission and denial, filed by his client before the learned Arbitral Tribunal, the copy of the Agreement to Sell dated 4th April, 2011, as filed by the respondent, was admitted without any reservation or demur. No objection was raised to the document; far less was any reason for objecting to the admission of the document in evidence cited, as required by para 7.8 of the order dated 9th May, 2019. The inexorable *sequitur*, as per the said para, was that the copy of the Agreement to Sell dated 4th April, 2011, as filed by the respondent was, *available for being read in evidence*. Even on this sole ground, I am unable to find any infirmity, far less patent illegality, in the view taken by the learned Arbitral Tribunal that, by operation of Section 36 of the Indian Stamp Act, 1899, the petitioner had foregone its right to call into question, the admission of the Agreement to Sell dated 4th April, 2011, on the ground that it was insufficiently stamped. That apart, the learned Arbitral Tribunal has correctly noted that the petitioner in its affidavit of evidence, not only admitted the execution of the aforesaid Agreement to Sell dated 4th April, 2011, but had relied on the said document, more often than once. It was clearly for this reason that, even at the stage of framing of issues, no issue was framed, regarding admissibility in evidence of the Agreement to Sell dated 4th April, 2011, on the ground of its being insufficiently stamped or, for that

matter, for any other reason. The order framing issues, has also not been called into question by the petitioner.

23. It is only thereafter, at the stage of recording of evidence, that the petitioner belatedly raised the contention that the copy of Agreement to Sell dated 4th April, 2011, as filed by the respondent was insufficiently stamped. The learned Arbitral Tribunal has, in these circumstances, taken the view that the opportunity for raising such a contention had been allowed, by the petitioner itself, to go abegging in view of Section 36 of the Stamp Act, 1899. This opinion, which has been taken after consideration of the provisions, all the facts of the case and the course of the proceedings, is clearly outside the purview of interference by this Court, in exercise of its jurisdiction under Section 34 of the 1996 Act. It suffers from no illegality, patent or otherwise, much less any perversity on the face of the record.

24. The reliance, by the learned Arbitral Tribunal, on the judgment of the Supreme Court in ***Shyamal Kumar Roy***[1] can also not be treated as misguided. While, in that case, it may be correct that the objection to admission, into evidence, on the ground of insufficient stamping of the document, was taken at a much more belated stage, the fact of the matter is that the Supreme Court clearly disapproved raising this contention, where it was not raised at the stage of admission and denial of documents. An objection regarding admissibility of the document in evidence is axiomatically required to be taken at the stage of admission and denial of the documents. The petitioner having admitted the copy of the Agreement to Sell dated 4th April, 2011, at the stage of admission and denial, without any reservation, ***Shyamal***

Kumar Roy[1] would also operate as a fetter to the petitioner raising this contention at a later stage, as correctly observed by the learned Arbitral Tribunal.

25. ***Jupudi Kesava Rao***[2], on which Mr. Mishra relies, was a case in which the issue before the Supreme Court was different, as is apparent from the very first paragraph of the report, which identifies the question before the Supreme Court as "whether reception of secondary evidence of a written agreement to grant a lease is barred by the provision of Section 35 and 36 of the Indian Stamp Act, 1899". That was a case in which, *ab initio*, the admissibility of the copy of the agreement in issue, as filed, was questioned by the opposite party on the ground that the original document had not been produced. For that reason, oral evidence of the document was permitted to be led. Once oral evidence had been led, the parties sought to raise a contention that the document had been insufficiently stamped. It was in these circumstances that the Supreme Court held that the applicability of Section 36 could not be extended to secondary evidence adduced or sought to be adduced in proof of the contents of document which was insufficiently stamped. Mr. Mishra has not been able to point out, to me, from the aforesaid decision, that the genuineness of the document in question in that case, had been accepted by the opposite party at the stage of admission and denial of documents, as was done by the petitioner in the present case.

26. Even otherwise, as I have already noted hereinabove, the rigours of procedure which attach to civil proceedings under the CPC and the Evidence Act, would not apply, *proprio vigore*, to arbitral

proceedings. The proceeding before the learned Arbitral Tribunal was governed by para 7.8 of the order dated 9th May, 2019, which was accepted by both parties. That being so, if the learned Arbitral Tribunal, took the view that the petitioner, having admitted the copy of the Agreement to Sell dated 4th April, 2011, as filed by the respondent, at the stage of admission and denial of documents, without reservation, could not be allowed to raise the ground of insufficient stamping at a later stage, that view does not call for interference by this Court in exercise of its jurisdiction under Section 34 of the 1996 Act.

27. For the aforesaid reasons, this petition is dismissed with no orders as to costs.

28. Needless to say, this order merely examines the correctness of the impugned award passed by the learned Arbitral Tribunal, *qua* the rejection of the objection of the petitioner to the admissibility, into evidence, of the copy of Agreement to Sell dated 4th April, 2011, on the ground that it was insufficiently stamped. It does not opine, one way or the other, on any other issue of which the learned Arbitral Tribunal is *in seisin*, far less on the merits of the controversy between the parties.

C.HARI SHANKAR, J

DECEMBER 9, 2021
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