

Yukti Construction Pvt. Ltd. Vs Asha Sharma And Another

Court: Uttarakhand High Court

Date of Decision: Sept. 9, 2022

Acts Referred: Arbitration And Conciliation Act, 1996 " Section 11(6), 16(1)(a)
Registration Act, 1908 " Section 49

Hon'ble Judges: Vipin Sanghi, CJ

Bench: Single Bench

Advocate: Siddhartha Sah, Avtar Singh Rawat, Raveendra Singh Bisht

Final Decision: Disposed Of

Judgement

Vipin Sanghi, CJ

1. 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 :-

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.