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2025:KER:15234

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 24TH DAY OF FEBRUARY 2025 / 5TH PHALGUNA, 1946

WP(C) NO. 28359 OF 2024

PETITIONERS/NA:

- 1 SAJAN VARGHESE
AGED 66 YEARS
S/O. LATE K.V. VARGHESE, NO. 9, SAJ HOUSE, KARIYAD
MATTOOR ROAD, SAJ EARTH RESORT, VAPPALASSERY P.O.,
ERNAKULAM, KERALA, PIN - 683572

- 2 MINI SAJAN VARGHESE
AGED 55 YEARS
W/O. K. SAJAN VARGHESE, NO. 9, SAJ HOUSE, KARIYAD
MATTOOR ROAD, SAJ EARTH RESORT, VAPPALASSERY P.O.,
ERNAKULAM, KERALA, PIN - 683572

BY ADVS. SANTHOSH MATHEW (SR.)
ANIL SEBASTIAN PULICKEL
ARUN THOMAS
VEENA RAVEENDRAN
KARTHIKA MARIA
SHINTO MATHEW ABRAHAM
LEAH RACHEL NINAN
MATHEW NEVIN THOMAS
KARTHIK RAJAGOPAL
KURIAN ANTONY MATHEW
JOE S. ADHIKARAM
APARNNA S.

RESPONDENTS/NA:

- 1 STATE OF KERALA
REPRESENTED BY THE INSPECTOR GENERAL OF
REGISTRATION, DEPARTMENT OF REGISTRATION, VANCHIYOOR
P.O., THIRUVANANTHAPURAM, KERALA, PIN - 695035

- 2 DISTRICT REGISTRAR
DISTRICT REGISTRAR OFFICE, 3RD FLOOR, PERIMBILLY
BUILDING, MG ROAD, SHENOYS,
ERNAKULAM, KERALA, PIN - 682011



:2:

2025:KER:15234

- 3 SUSHIL VIJOY ARORA
S/O. LATE SRI. KRISHNA VIJOY ARORA, 47/95, 4A1, JM
TOWERS, PALLIKAVU TEMPLE ROAD,
VADUTHALA, KOCHI, PIN - 682023
- 4 SANGEETHA VIJOY ARORA
W/O. SUSHIL VIJOY ARORA, 47/95, 4A1, JM TOWERS,
PALLIKAVU TEMPLE ROAD,
VADUTHALA, KOCHI, PIN - 682023
- 5 DISTRICT COLLECTOR
COLLECTORATE, CIVIL STATION, KAKKANAD,
ERNAKULAM, KERALA, PIN - 682030

BY ADVS.
REJI GEORGE R3 AND R4
NASEER MOIDU (K/367/2004)
ANUPAMA JOHNY (K/000498/2004)
SAISANKAR.S (K/002188/2021)
MOHAMED RAYYAN ALI (K/899/2024)
JOSEPH RAJU MATHEWS (K/002036/2024)
SMT.DEEPA V. GOVT.PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 19.11.2024, THE COURT ON 24.02.2025 DELIVERED THE FOLLOWING:



"C.R."

J U D G M E N T

This writ petition concerns the scope and ambit of Sections 31, 33, 39, 40, and 41 of the Kerala Stamp Act, 1959 (for short, 'the Stamp Act').

2. The petitioners are the directors of M/s.Saj Holdings Pvt. Ltd., a company incorporated under the Indian Companies Act, 1956. The petitioners entered into Ext.P5 agreement for sale with the 3rd and 4th respondents, whereby the former agreed to sell their share in the company in favour of the latter. Ext.P5 agreement contained an arbitration clause providing for arbitration between the petitioners and the 3rd and 4th respondents in case of dispute. According to the 3rd and 4th respondents, certain sums are due to them from the petitioners and the company in connection with the agreement. Therefore, they invoked the arbitration clause in the agreement and preferred AR No.150/2023 before this court, seeking the appointment of an Arbitrator to adjudicate the dispute. The petitioners herein were two of the respondents in AR No.150/2023. The petitioners brought to the notice of this court in AR No.150/2023 that Ext.P5 agreement was an insufficiently stamped document. This Court disposed of AR No.150/2023 appointing Justice.(Retd.) T.R.Ramachandran Nair as the sole arbitrator to adjudicate the



: 4 :

2025:KER:15234

dispute. Relying on the Seven Judge Bench decision of the Supreme Court in *In Re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899* [2023 SCC OnLine SC 1666], the question regarding the insufficiency of the stamping was left open to be decided by the Arbitrator.

3. The Arbitrator issued notice to the parties to the arbitration regarding the commencement of the arbitration. The petitioners entered appearance before the Arbitrator and filed Ext.P2 application seeking a direction to the 3rd and 4th respondents to produce the original of Ext.P5 agreement, impound the same, follow the procedure prescribed under the Stamp Act for insufficiently stamped documents and proceed with the adjudication of the arbitration case only after the 3rd and 4th respondents cured the defect relating to the insufficient stamp duty. Thereafter, the 3rd and 4th respondents filed their claim statement in the arbitration case. Along with the claim statement, they produced only a copy of Ext.P5 agreement. The petitioners then filed Ext.P4 application before the Arbitrator for the dismissal/ termination of the arbitration case on account of the non-production of the duly stamped original of Ext.P5 agreement. While so, the 3rd and 4th respondents produced before the Arbitrator the original of Ext.P5 agreement on 18/7/2024, which bore a certificate dated 17/7/2024 issued by the 2nd respondent under Section 41(1) of the Stamp Act. The certificate stated that the



: 5 :

2025:KER:15234

deficit stamp duty of ₹1,50,000/- and fine of ₹10,000/- have now been remitted. According to the petitioner, the certificate dated 17/7/2024 shown in Ext.P5 has been illegally and improperly issued by the 2nd respondent only to help the 3rd and 4th respondents. The writ petition has been filed to quash the certificate dated 17/7/2024 found in Ext.P5 and to give a direction to the 2nd respondent to reconsider the issue of stamp duty and penalty, if any, payable for Ext.P5 agreement in accordance with law.

4. I have heard Sri. Santhosh Mathew, the learned Senior Counsel instructed by Sri.Anil Sebastian Pulickel, the learned counsel for the petitioners, Sri.Reji George, the learned counsel for the 3rd and 4th respondents and Smt.Deepa V., the learned Government Pleader.

5. The learned Senior counsel Sri. Santhosh Mathew submitted that the certificate issued by the 2nd respondent under Section 41(1) of the Stamp Act is legally unsustainable for the reason that the 2nd respondent has no power to merely accept an insufficiently stamped document given to him by a party to a dispute, adjudicate it, accept stamp duty and penalty and certify that sufficient stamp and penalty have been remitted. The learned counsel further submitted that no notice or intimation has been given to the petitioners who are the executants as well as the first named party in Ext.P5 agreement by the 2nd respondent before



: 6 :

2025:KER:15234

ostensibly undertaking the process of determining the stamp duty and penalty payable in connection with the said agreement which has caused prejudice to them. The petitioners, who have not been given any notice of any proceedings before the 2nd respondent, have thus been deprived of reasons for the stamp duty and penalty which the 2nd respondent has ostensibly declared as payable. Such an unreasoned exercise of power by the 2nd respondent is unsustainable in law, submitted the Senior Counsel. The learned Senior Counsel further submitted that the 2nd respondent ought to have taken note of the fact that the issue regarding the insufficiency of the stamp duty of the agreement is pending consideration before the Arbitrator appointed by this Court and, in such circumstance, ought not to have adjudicated the sufficiency of the stamp duty without hearing the petitioners. It is also submitted that the action of the 2nd respondent was without authority since the instrument was not presented before him in the performance of any of his office functions, and consequently, he was not empowered to adjudicate and certify the instrument. The certificate issued by the 2nd respondent under Section 41(1) of the Stamp Act amounts to an unreasoned exercise of power by him, added the learned Senior Counsel.

6. On the other hand, the learned counsel for the 3rd and 4th respondents Sri.Reji George submitted that the 2nd respondent impounded Ext.P5 agreement and passed an order directing the 3rd



:7:

2025:KER:15234

and 4th respondents to pay the deficit stamp duty and endorsed the certificate on Ext.P5 agreement strictly in compliance with the statutory formalities and hence, the petitioners have no cause of action for filing the writ petition. The learned counsel further submitted that 3rd and 4th respondents have no intention to claim any amount from the petitioners towards the payment of stamp duty or penalty paid by them and hence the petitioners are in no way prejudiced by the adjudication of the stamp duty and penalty by the 2nd respondent. The learned counsel also submitted that the certification dated 17/7/2024 shown in Ext.P5 agreement under Section 41(1) of the Stamp Act is valid in all respects. There is no statutory requirement to issue notice to all parties to the instrument before impounding or adjudicating the stamp duty payable, added the Counsel.

7. It is not in dispute that Ext.P5 is insufficiently stamped. Chapter IV of the Stamp Act provides how instruments not duly stamped are to be dealt with. Section 33 specifically deals with the examination and impounding of instruments not duly stamped. Section 34 says that an instrument not duly stamped is inadmissible in evidence. The proviso to the said section clarifies that any instrument not duly stamped will be admitted in evidence on payment of the deficit stamp duty together with penalty. Section 39 speaks of the Collector's power to stamp instruments impounded



: 8 :

2025:KER:15234

under Section 33. Section 40 gives an option to a person to produce on his own motion any instrument not duly stamped before the Collector within one year from the date of its execution to pay deficit stamp duty in case the omission to duly stamp the instrument has been occasioned by accident, mistake or urgent necessity. Section 41 provides for endorsement of instruments on which duty has been paid under Sections 34, 39 or 40 of the Stamp Act. Section 31, which falls under Chapter III, deals with an altogether different situation where any person is permitted to produce any instrument, whether executed or not and whether previously stamped or not, before the Collector and seek his opinion as to duty, if any, with which it is chargeable. Sections 31, 33 and 40 operate in different fields and each Section is not controlled by the other.

8. The 2nd respondent issued the certification under Section 41(1) of the Stamp Act. Section 2(c) empowers the Government to appoint any officer as "Collector" for identified purposes under the Stamp Act. In exercise of the said power, the Government of Kerala has appointed District Registrars as "Collectors" for the purpose of Sections 31, 32, 37, 38(1), 39 and 41 of the Stamp Act as per Ext.P7 notification. Thus, the 2nd respondent has the power to issue a certificate under Section 41(1) of the Stamp Act. However, as per Section 41(1), such a certificate can be issued only when the duty and penalty, if any, leviable in respect of any instrument have been



: 9 :

2025:KER:15234

paid under Sections 34, 39 or 40. Section 40 deals with a person producing an insufficiently stamped instrument on his own motion within one year from the date of execution of the agreement. In this case, Ext.P5 was executed on 22/1/2022, and certification was made on 17/7/2024, which is beyond one year. Hence Section 40 is inapplicable. Similarly, Section 34 is also inapplicable. The provision for paying duty and penalty under Section 34 is only as per provisos (a) and (b) of Section 34. Proviso (a) of Section 34 is applicable only when an instrument is sought to be admitted in evidence. Here, Ext.P5 was not sought to be admitted in evidence before the 2nd respondent. Moreover, under proviso (a) of Section 34, the penalty necessarily has to be twenty times the amount of the deficient stamp duty. The quantum of penalty imposed by the 2nd respondent, as shown in Ext.P5, is only ₹10,000/- which makes it clear that the 2nd respondent did not act under Section 34. From a plain reading of Section 39, it is clear that the said provision can be triggered only by one of the following three situations; (i) When the Collector impounds any instrument under Section 33, (ii) When the Collector receives any instrument sent to him under Section 33A(2) and, (iii) When the Collector receives any instrument sent to him under Section 37(2). With respect to situation No. (ii), Section 33A(2) is attracted only when an instrument is sought to be registered. Since that is not the factual scenario in this case, situation (ii) is not



:10:

2025:KER:15234

applicable. Section 37(2) provides for a person impounding an instrument under Section 33 to send its original to the Collector. That is not the case here.

9. Section 33 consists of two parts. The first part empowers the person having by law or consent of parties authority to receive evidence to impound the instrument. The second part empowers a person in charge of a public office before whom the insufficiently stamped instrument is produced or comes in the performance of his office functions, to impound the instrument. The first part does not apply to the 2nd respondent. The learned counsel for the petitioners submitted that the 2nd part also does not apply in this case since the instrument was directly given to the 2nd respondent by the 3rd and 4th respondents and such a direct presentation of the instrument will not amount to a situation where the instrument has come to him “in the performance of his functions”. I cannot subscribe to the said argument. A plain reading of Section 33 makes it clear that the court/empowered person has the power to impound an insufficiently stamped instrument when the said instrument is produced before it or him. When an insufficiently stamped instrument comes to the notice of the court/empowered person, it is incumbent upon it or him under Section 33 of the Stamp Act to impound such an instrument, irrespective of the purpose for which it was produced. In other words, the mere production or casual appearance of an insufficiently



:11:

2025:KER:15234

stamped instrument before the court/empowered person is sufficient for invoking the power of impounding envisaged under Section 33 of the Stamp Act [See *Ramachandran K.P v. District Registrar (General) and Others* 2019 (3) KHC 136].

10. As stated already, a person can voluntarily produce an unduly stamped instrument before the Collector and offer to pay the proper duty or deficit duty invoking Section 40 of the Stamp Act only within one year from the date of its execution. However, in a case where an instrument is produced by a person voluntarily beyond one year, the Collector is not powerless. The Collector can very well invoke the power under Section 33 of the Stamp Act in such a situation and then proceed under Section 39 inasmuch as he has every power under the said provision to impound the document when it is produced before him, irrespective of the purpose for which it was produced. The 2nd respondent impounded Ext.P5 agreement under Section 33 of the Stamp Act, passed an order under Section 39 and directed the 3rd and 4th respondents to pay the deficit stamp duty and penalty and endorsed a certificate on Ext.P5 agreement invoking Section 41(1) of the Stamp Act. It cannot be said that the said action of the 2nd respondent was without any authority as alleged by the petitioners. However, the crucial question is whether the 2nd respondent could have exercised power under Section 33 to impound the document and pass an order under Section 39 without



:12:

2025:KER:15234

giving notice and an opportunity of hearing to the petitioners who are the executants of Ext.P5 agreement. The answer should be in the negative for the simple reason that the petitioners raised a specific contention before this court in AR No.150/2023 that Ext.P5 was an insufficiently stamped document and also filed Ext.P2 application before the Arbitrator seeking a direction to the 3rd and 4th respondents to produce the original of Ext.P5 agreement, impound the same, follow the procedure prescribed under the Stamp Act for insufficiently stamped documents and proceed with the adjudication of the arbitration case only after the 3rd and 4th respondents have cured the defect relating to insufficient stamp duty. That apart, a Division Bench of this court in *Ramachandran* (supra) has held that when an instrument is received under Section 37(2) for imposition of penalty under Section 39(1)(b), the District Collector shall issue notice to the parties to the instrument, examine the question of who is liable to pay the stamp duty and impose the penalty, if any, only on that person who is so liable. It was observed that the Collector under Section 39 could not merely impose the penalty on any person, but there must be an adjudication of liability after issuing notice to the parties to the instrument. Since the petitioners were executants of Ext.P5 agreement and they have specifically challenged the same on the ground that it was insufficiently stamped, the 2nd respondent ought to have given notice to them and



:13:

2025:KER:15234

heard them before exercising the power under Sections 33, 39 and 41. Hence, the certificate dated 17/7/2024 issued by the 2nd respondent under Section 41(1) of the Stamp Act, as shown in Ext.P5, is hereby quashed. The 2nd respondent is directed to reconsider the issue of stamp duty and penalty payable for Ext.P5 agreement after hearing the petitioners as well as the 3rd and 4th respondents. The 2nd respondent shall take a decision within two months from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above.

Sd/-
DR. KAUSER EDAPPAGATH
JUDGE

Rp



APPENDIX OF WP(C) 28359/2024

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE ORDER DATED 04.03.2024 IN A.R. NO. 150 OF 2023 BEFORE THIS HON'BLE COURT
- Exhibit P2 TRUE COPY OF THE APPLICATION DATED 15.04.2024 REGARDING IMPOUNDING SUBMITTED BY THE RESPONDENTS IN THE ARBITRATION CASE
- Exhibit P3 TRUE COPY OF THE OBJECTION TO I.A. NO. 2 OF 2024 FILED ON 28.05.2024 BY THE CLAIMANTS IN THE ARBITRATION CASE
- Exhibit P4 TRUE COPY OF THE APPLICATION DATED 28.06.2024 REGARDING THE NON-PRODUCTION OF THE ORIGINAL AGREEMENT FILED BY THE RESPONDENTS IN THE ARBITRATION CASE
- Exhibit P5 TRUE COPY OF THE AGREEMENT DATED 22.01.2022 BEARING THE CERTIFICATE DATED 17.07.2024 ISSUED BY THE SECOND RESPONDENT UNDER SECTION 41 (1) OF THE KERALA STAMP ACT, 1959
- Exhibit P6 TRUE COPY OF THE OBJECTION TO I.A. NO. 4 OF 2024 FILED ON 23.07.2024 BY THE CLAIMANTS IN THE ARBITRATION CASE
- Exhibit P7 TRUE COPY OF THE NOTIFICATION DATED 10.03.1960, AS SUBSTITUTED BY THE NOTIFICATION DATED 12.03.1962, ISSUED BY THE GOVERNMENT OF KERALA UNDER SECTION 2 (C) OF THE KERALA STAMP ACT, 1959

RESPONDENT EXHIBITS

- Exhibit R3(a) A TRUE COPY OF THE REJOINDER DATED 05.10.2024 FILED BY US BEFORE THE ARBITRAL TRIBUNAL