

M. ANASUYA DEVI AND ANR.

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v.

M. MANIK REDDY AND ORS.

OCTOBER 16, 2003

[V.N. KHARE, CJ AND S.B. SINHA, J.]

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Arbitration and Conciliation Act, 1996:

Ss. 34 and 36—Award—Stamping and registration of—Application u/s 34 for setting aside award—On the ground inter alia that award was not stamped and registered—Held, an application for setting aside an award would not lie on any other ground which is not enumerated in s. 34—The question as to whether the award is required to be stamped and registered would be relevant only when parties would file the award for its enforcement u/s 36—It is at this stage the parties can raise objections regarding its admissibility on account of non-registration and non-stamping u/s 17 of Registration Act—At the stage of proceedings under s.34 the issue was premature—The question whether an award requires stamping and registration is within the ambit of s.47 CPC and not covered by s.34 of the Act—Registration Act, 1908—S.17—Code of Civil Procedure, 1908—s.47.

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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 7940-7942 of 2001.

From the Judgment and Order dated 7.8.2001 of the Andhra Pradesh High Court in C.M.A. Nos. 2671, 2672 and 2677 of 2000.

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Rakesh Dwivedi, G.R.K. Prasad, Md. Wasay Khan, Ms. Niranjana Singh and Abhishek Chaudhary for the Appellants.

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V.R. Reddy, P. Venkat Reddy, G. Prabhakar, Ms. Fatima, Rajender Reddy, S.U.K. Sagar, Prasanth P., Ms. Bina Madhavan and Ms. G. Indra for the Respondents.

The following Order of the Court was delivered :

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A The appellants and the respondents are the members of the joint family. It appears that certain disputes arose and as a result of which they entered into an agreement to refer the dispute to the Arbitral Tribunal for deciding the partition of the Joint Hindu properties. Although the agreement postulated the Arbitral Tribunal of five persons, it is not disputed that there were only four persons who comprised the Tribunal. The Tribunal gave an Award on 31st May, 1998, which was subsequently corrected on 10th June, 1998 by a clarification order. The respondents herein, who appears to have not satisfied with the Award filed two petitions under Section 34(1) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') for setting aside the Award, *inter alia*, on the following grounds:

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- (1) That the composition of arbitral tribunal was not proper and it is not in accordance with the provisions of Section 10 of the Arbitration and Conciliation Act, and, therefore, the award is without jurisdiction and invalid;
 - (2) That the respondents were not given proper notice of arbitral proceedings and opportunity to represent their case;
 - (3) That the Arbitrators have acted beyond the scope of reference of the matter referred for arbitration;
 - (4) That the Award is not supported by reason, as such, bad U/s. 31 of the Act;
 - (5) That the Arbitrators have not acted impartially and played fraud on the parties; and
 - (6) That the Award is inadmissible and unenforceable in law for want of proper stamp duty and registration.

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The Principal Sub-Judge, Hyderabad, by an order dated 4th August, 2000 rejected the said petitions. Aggrieved, the respondents filed the appeals before the High Court of Judicature at Andhra Pradesh under Section 37(1)(b) of the Act. The High Court was of the view that since the Award was not stamped and registered, it was, therefore, invalid and

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without jurisdiction. It is against the said judgment of the High Court, the appellants are in appeal before us. A

Shri Rakesh Dwivedi, learned senior counsel appearing for the appellants urged that a perusal of Award would show that it has not created any right or liability in favour of any party, but it requires a subsequent documentation by the parties. He submitted, in that view of the matter, the Award was not required to be stamped and registered and in fact subsequent documentation would definitely requires stamping and registration. However, Shri V.K. Reddy, learned senior counsel appearing for the respondents, urged that the Award did create rights in favour of the parties and as such it required registration and the view taken by the High Court is in conformity with law. B C

After we heard the matter, we are of the view that in the present case this issue was not required to be gone into at the stage of proceedings under Section 34 of the Act. In fact, this issue was pre-mature at that stage. Section 34 of the Act provides for setting aside of the Award on the ground enumerated therein. It is not dispute that an application for setting aside the Award would not lie on any other ground, which is not enumerated in Section 34 of the Act. The question as to whether the Award is required to be stamped and registered, would be relevant only when the parties would file the Award for its enforcement under Section 36 of the Act. It is at this stage the parties can raise objections regarding its admissibility on account of non-registration and non-stamping under Section 17 of the Registration Act. In that view of the matter the exercise undertaken to decide the said issue by the Civil Court as also by the High Court was entirely an exercise in futility. The question whether an Award requires stamping and registration is within the ambit of Section 47 of the Code of Civil Procedure and not covered by Section 34 of the Act. D E F

For the aforesaid reasons, the judgment under challenge deserves to be set aside. Consequently, it is set aside. G

The appeals are, accordingly, allowed. Since the High Court has not dealt with other objections raised under Section 34 of the Act, we remit H

- A** the matter to the High Court to decide the same. We make it clear that the issue with regard to the stamping and registration of the Award or documentation thereof, it would be open to the parties to raise the same before the Court at the stage of proceeding under Section 36 of the Act. The High Court may decide the matter expeditiously and also consider any
- B** interim prayer which may be made by the parties in the appeals. There shall be no order as to costs.

R.P.

Appeals allowed.