2026:DHC:7351

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 11.08.2026
Judgment pronounced on: 01.09.2026

\# **CNR No. DLHC010313232026**

\+ OMP (ENF.) (COMM.) 155/2026

M/S URC CONSTRUCTION (P) LTD .....Decree Holder

Through: Mr. Vikas Mehta and Ms. Nitika Grover, Advs.

versus

AIRPORTS AUTHORITY OF INDIA .....Judgement Debtor

Through: Mr. Digvijay Rai, Standing Counsel with Mr. Archit Mishra, Adv. Ms. Aakriti, DGM and Ms. Sonali Singh, Senior Manager.

CORAM:
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT

% **01.09.2026**

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1. This execution petition filed under Section 36 of the Arbitration and Conciliation Act, 1996[1] seeks enforcement of the Arbitral Award dated

[1] "Arbitration Act" hereinafter

26.03.2019, corrected *vide* order dated 07.05.2019 under Section 33 of the Arbitration Act, whereby the Decree Holder was awarded a sum of Rs.2,59,07,248.60/- crores along with *pendente lite* and future interest at 10% per annum.

2. Upon a perusal of the record, it is observed that initially the stamp duty affixed on the aforesaid arbitral award was Rs. 100/-; however, subsequently the Decree Holder paid the deficient stamp duty amounting to Rs.25,850/- on 29.07.2026.

3. Accordingly, this Court raised a query as to the mechanism for payment of stamp duty on the arbitral award and the process of remedying the deficit stamp duty, along with payment of any penalty (if any), in light of the Indian Stamp (Delhi Amendment) Act, 2010[2] and invited submissions of the parties to the present execution petition as well as other stake holders on the said aspect.

SUBMISSIONS

4. Given the aforesaid backdrop, Mr. Vikas Mehta, the learned Counsel appearing for the Decree Holder in the present case submitted that they have paid the requisite stamp duty on the arbitral award in terms of Article 12 to Schedule I[3] of the Act. It was further submitted that since payment of stamp duty is a curable defect, the need to impound under Section 33 of

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[2] "Act" or "Stamp Act" alternatively; except Schedule IA, this Act is *pari materia* to the Indian Stamp Act 1899
[3] Schedule IA as applicable in NCT of Delhi

the Act or the payment of penalty thereof does not arise in cases where the deficit amount is willingly deposited. According to him, once the adequate duty stands deposited, the objective of the Stamp Act i.e., collection of revenue stands satisfied, hence, there exists no impediment for the enforcement of the arbitral award.

5. Mr. Mehta urged for harmonious and purposive interpretation of both statutes. It was vehemently submitted that a strict import of the Stamp Act will defeat the very purpose of the Arbitration Act.

6. It was submitted that stamp duty becomes payable only when enforcement of the arbitral award is sought. Reliance was placed on ***Mohini Electricals Ltd. v. Delhi Jal Board***[4] to submit that the Court in that matter was also seized with a similar situation whereby the Judgment Debtor raised an objection that penalty was not paid along with deficit stamp duty and hence the award was liable to be impounded. However, the Court repelled the said objection by placing reliance on ***M. Anasuya Devi v. M. Manik Reddy***[5]**,** to hold that the Arbitration Act casts no duty upon the Tribunal or the parties to ensure that stamp duty is paid at the time when the award is rendered; it is only when the award is to be enforced under Section 36 of the Arbitration Act that the parties become obligated to ensure that stamp duty is deposited. Therefore, in light of the aforesaid decision, Mr. Mehta averred that the arbitral award came to be acted upon

[4] **2021 SCC OnLine Del 3506**
[5] **(2003) 8 SCC 565**

for the first time in these enforcement proceedings, whereupon it deposited the adequate stamp duty.

7. To further buttress his submission, reliance was also placed on ***Punita Bhardwaj v. Rashmi Juneja***[6] , whereby this Court relied on ***Mohini Electricals (supra)*** to hold that there was no need to impound the instrument since adequate duty was already deposited. The Court clarified that an instrument may be impounded if the Court finds that an instrument is insufficiently stamped; however, if the decree holder deposits the deficit duty without any such finding of the Court, the award cannot be impounded. In this regard, reliance was also placed on ***Sharma Fabricators and Erectors Pvt. Ltd. v. Bilt Graphic Paper Products Ltd.***[7]

8. It was further contended that the delay in payment of stamp duty was due to the pending Section 34 petition and the Respondent itself had challenged the award, hence, it cannot, at this stage, raise an objection on such delay.

9. Mr. Mehta highlighted that there exists friction amongst the two statutes and their respective timelines, i.e., the one-month time period stipulated under proviso (a) to Section 32(3) of the Stamp Act is not in consonance with Section 36 of the Arbitration Act. Section 36 of the Arbitration Act provides that enforcement can be sought only after the

[6] CM(M) 3640/2024 & CM. APPL. 61217-61218/2024 as decided on 18.10.2024
[7] 2025:DHC:4591

Section 34 period expires[8], and that stamping is not a requirement in Section 34 proceedings. In contrast, the Stamp Act requires duty to be paid within one month from the execution of the award, which means that a decree holder ought to approach the concerned authority and pay stamp duty even before the last date for filing a Section 34 objection lapses. Therefore, according to Mr. Mehta, while the Arbitration Act permits stamping to be done at the later stage of enforcement under Section 36, which undoubtedly is more than one month, the Stamp Act does not provide such relaxation. This inconsistency, according to him, does violence to the Arbitration Act and therefore cannot be allowed to stand.

10. In support of the aforesaid contention, Mr. Mehta placed reliance on Section 5 of the Arbitration Act which envisages minimal judicial intervention in the arbitral process. It was argued that the objective of speedy resolution must be borne in mind and that the Stamp Act should not be read in isolation. It was further argued that this tenet of expeditious adjudication is present throughout Part I of the Arbitration Act, of which Section 36 is also a constituent. Therefore, even Section 36 proceedings must be expeditious, which would be impossible if the rigours of the Stamp Act are followed i.e., if an award is impounded for want of stamp duty and/or penalty thereof.

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[8] **34. Application for setting aside arbitral award**. — ***(*3*) An application for setting aside may not be made after **three months** have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:
Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a **further period of thirty days**, but not thereafter.

11. In this light, Mr. Mehta submitted that ***In Re: Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899***[9], the Supreme Court categorically held that the Arbitration Act would prevail over the Stamp Act and the Contract Act since it is a special law and hence Section 5 therein must be given due regard, which envisages minimal judicial intervention. It was averred that while this decision was rendered with respect to Sections 8 and 11, the underlying principle shall also prevail at the stage of enforcement, else such hyper-technical approach will defeat the purpose of the Arbitration Act. Otherwise, if Section 33 of the Stamp Act is to be strictly applied, then the same would be applicable at the stages of Section 8, 11 and 34, which is already held to be impermissible by the Supreme Court.

12. It was also emphasised that there is no mandate under the Arbitration Act requiring deposit of stamp duty. Section 31 of the Arbitration Act was relied upon in this regard to submit that it was also not incumbent on the Tribunal to ensure deposit of stamp duty. No doubt, Section 17 of the Stamp Act provides that the arbitral award shall be duly stamped before or at the time of execution, however, if the Act is to be construed strictly, then it would be the Tribunal's duty to ensure that the award is duly stamped. Accordingly, it would be the Tribunal that is liable for prosecution under Section 32 read with Section 62 of the Stamp Act. It was again reiterated that Section 17 ought not to be applied strictly since a

[9] **(2024) 6 SCC 1: 2023 SCC OnLine SC 1666**

decree holder can only "act upon" or enforce an award till the time to file an objection petition under Section 34 does not expire.

13. Thereafter, Mr. Mehta referred to the Stamp Act and placed reliance on Section 42 therein to submit that the 30-day period was not for stamping but for a different purpose i.e., to deliver back the instrument to the impounding authority. It was submitted that this provision is titled *"Endorsement of instruments on which duty has been paid under sections 35, 40 or 41"* and it does not stipulate the one month period for endorsing an instrument under Sections 35, 40 or 41. Further, with respect to Section 33, it was submitted that since the decree holder has paid the requisite duty, the question of impounding does not arise since no insufficiently stamped instrument is placed before the competent authority, which is a pre-condition to Section 33 of the Act.

14. It was further submitted that proviso (a) to Section 32(3) would only be triggered if a party approaches the Collector for determination of the duty payable under Section 31. According to Mr. Mehta, it is a mere legal fiction that only after endorsement under this provision, does an instrument become "duly stamped".

15. It was reiterated that stamp duty is a curable defect i.e., it can be paid at any stage and that the Stamp Act itself provides for such "cure". In this regard, reliance was placed on Section 41 to contend that the component of penalty may be waived under certain circumstances stipulated in the said provision.

16. Thereafter, learned Counsel took this Court to the pre-2015 amendment Arbitration Act whereby mere filing of a Section 34 petition would operate as a stay on the operation and/or enforcement of the arbitral award. It was argued that to ask a party, who cannot enforce the award, to pay stamp duty would not be proper, just or fair. The 2015 Amendment Act was brought for speedy justice, as is evident from the Statement of Objects of the Act, therefore a strict construction of the Stamp Act will derail such objective of the legislature. To implement otherwise, Mr. Mehta argued, would be cumbersome and adversely impact the efficacy of the arbitral process since every time an enforcement petition is filed, the Court would inquire into stamp duty, the award may have to impounded and forwarded to Collector, who would thereupon adjudicate on the same, and such adjudication is not time-bound.

17. It was also averred that sufficient cause for the purposes of delay and/or limitation ought to be construed in accordance with the statute concerned. In the present case, the Arbitration Act is a special law providing for speedy resolution of disputes, hence, ancillary aspects surrounding the process such as stamp duty, should be implemented in that light. Accordingly, Mr. Mehta called for harmony between the two statutes.

18. Lastly, it was also argued that in the alternative, if the Court deems that the decree holder satisfied the stamp duty at a belated stage, even then penalty is not automatically attracted. Instead, it was submitted that the Court ought to examine whether non-payment was intentional or not.

Reliance was placed on ***Vodafone Idea Telecom Infrastructure Ltd. v. Chief Controlling Revenue Authority***[10].

19. *Per contra,* Mr. Digvijay Rai, learned Standing Counsel for the Judgment Debtor resisted the arguments advanced by Mr. Mehta and emphasised on the purport of the Stamp Act in black and white. It was contended that the Act and its scheme must be construed strictly since it is a fiscal statute.

20. At the outset, it was highlighted that the question isn't whether the decree holder can subsequently pay stamp duty or not but the rudimentary issue would be that whether mere payment of the deficit duty would be sufficient to remove the statutory bar under Section 35 of the Stamp Act. Mr. Rai stressed that the answer lies in the negative. According to him, it is only after the arbitral award is forwarded to the concerned Collector and penalty is paid along with deficit duty, can the defect be made good and merely curing the deficient duty would not serve the purpose and objective of the Stamp Act.

21. It was also submitted that no doubt an arbitral award comes within the ambit of the Stamp Act in light of the decisions in ***Mohini Electricals (supra)*** and ***Indsao Construction Pvt. Ltd. v. Collector of Stamps***[11]. However, it was argued that mere subsequent payment of stamp duty does not cure the statutory defect especially since Section 17 of the Act

[10] MANU/GJ/1917/2023; (2024) 2 GLR 1413
[11] W.P.(C) 886/2021, as decided on 08.11.2021

envisages that an instrument shall be stamped before or at the time of execution. It is argued that this means nothing except that the arbitral award must be stamped before or at the time it is signed, in light of the meaning of "execution" provided under Section 2(12)[12] of the Act.

22. It was further argued that by way of proviso (a) to Section 32(3), the mandate of stamping the instrument before or at the time of affixing signatures, is extended to up till one month from the date of such execution. After expiry of such time, machinery under the Act, i.e., Sections 33, 35, 38, 40 and 42 would be triggered. It was submitted in this regard that the time period under the Stamp Act pertains to execution of the instrument and is not restricted to enforcement of an instrument. Therefore, it cannot be shifted merely because Section 36 of the Arbitration Act provides a 3-month (and additional thirty days in certain cases) window to file for enforcement of the award. Thus, the time lines, according to Mr. Rai, cannot be conflated or shifted as per the Arbitration Act since the Stamp Act is an independent fiscal statute.

23. With respect to the duty of this Court under Section 33, Mr. Rai contended that this duty stood attracted the moment an insufficiently stamped award was placed before this Court and that such award must be dealt in accordance with Sections 33, 35 and 38 of the Stamp Act, as was affirmed in ***Mohini Electricals (supra)***.

[12] (*12*) **"Executed" and "execution".** — "executed" and "execution" used with reference to instruments, mean "signed" and "signature":

24. It was argued that Section 35 of the Act imposes a bar on any authority, including this Court, from acting upon the award unless the deficiency is cured. For such remedy, the provision further mandates in unequivocal terms that deficit duty and penalty must be paid. According to Mr. Rai, this position has been reaffirmed in ***In Re: Interplay (supra)***.

25. It was submitted that reliance placed on ***Mohini Electricals (supra)*** on behalf of the Decree Holder is of no avail since this decision is distinguishable on facts.

26. Mr. Rai also sought to contest the reliance placed on Section 41 by the Decree Holder. It was submitted that the power to waive penalty under Section 41 is only granted to the Collector and not to a Court of law, therefore, the Decree Holder ought to approach the concerned Collector for such exemption. It was also emphasised that penalty may only be excused if the specific conditions stipulated under Section 41 are met.

27. It was averred that the respective timelines under the Stamp Act and Arbitration Act are not contradictory, instead, they operate independently of each other. It was argued that Section 36 of the Arbitration Act only determines when the arbitral award becomes enforceable as a decree and it does not confer any exemption whatsoever from the independent statutory requirement under the Stamp Act. Accordingly, it was submitted that there exists no conflict requiring one statute to yield to the other. The Stamp Act, in explicit terms, makes an award liable to be stamped within

one month of its execution and this chargeability is not dependant on enforceability.

28. It was emphasised that the Decree Holder initially produced the original arbitral award without adequate stamp and only thereafter cured the defect by depositing the deficit portion, which is not permissible under the Act. Therefore, Mr. Rai submitted that the Decree Holder is statutorily obligated to approach the Collector of Stamps in order to remedy the defect in stamp duty for the purposes of the present enforcement proceedings.

29. In support of his submissions, Mr. Rai relied on ***State of A.P. v. P. Laxmi Devi***[13], ***M/S Agrawal Construction Company v. Executive Engineer***[14], ***A. Karuppanna Pillai v. Nallathambi***[15]***, M/s. MV Omni Projects v. Union of India***[16], ***Neeraj Arya v. Rakesh Arya***[17]***, M.P. Power Generation Co. Pvt. Ltd. v. Ansaldo, Energia Sps***[18], ***Jitender Mohan Malik v. Ravi Bhushan Malik***[19], ***Eider Pwi Paging Limited v. Union of India***[20], ***Rajeswaran Nair v. District Collector, Trivandrum***[21] and ***In Re: Interplay (supra)***[22].

30. In course of proceedings, Dr. Amit George also ably assisted this Court on this particular issue.

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[13] **(2008) 4 SCC 720, Paras 16-19**
[14] Misc. Petition No. 702 of 2026, Paras 7 – 11
[15] **1999 SCC OnLine Mad 931 Para 10**
[16] OMP (ENF.) (COMM.) 213/2023 (Order dated 15.01.2024)
[17] **2023 SCC OnLine Del 7816, Paras 8-9, 22-26**
[18] **2016 SCC OnLine MP 12126, Paras 20 & 21**
[19] **2008 SCC OnLine Del 748, Paras 29 & 30**
[20] **2010 SCC OnLine Del 410, Paras 6 – 14**
[21] **2009 SCC OnLine Ker 2436, Paras 10 & 11**
[22] **Paras 38, 39-48, 65-66 & 205-206**

31. Dr. George submitted that instruments ought to be stamped before or at the time of execution in view of Section 17 of the Stamp Act by placing reliance on ***Piyush Aggarwal v. State (NCT of Delhi)***[23] and ***G.T.M. Builders & Promotors Pvt. Ltd. v. State of U.P.***[24]

32. Dr. George placed reliance on ***Uno Minda Ltd. v. Revenue Department***[25] to highlight that proviso (a) to Section 32(3) precludes the Collector from endorsing an instrument after one month from its execution.

33. Further, to highlight the procedure to be adopted after impounding of an instrument under Section 33 of the Stamp Act along with limitations on the power of delegation exercised by a Judge of the High Court under Section 33(2)(b) of the Act, reliance was placed on ***Splendor Landbase Ltd. v. Aparna Ashram Society***[26] and ***Black Pearl Hotels (P) Ltd. v. Planet M. Retail Ltd***[27]. Furthermore, emphasis was laid on the underlying scheme of the Act as held by the Supreme Court in ***Seetharama Shetty v. Monappa Shetty***[28] to contend that Chapter IV of the Stamp Act is both mandatory and regulatory and that the objective of the statute is to obtain revenue.

34. Mr. Jayant Mehta, learned Senior Counsel also extended his valuable assistance to this Court in this respect.

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[23] **2005 SCC OnLine Del 242**
[24] **2020 SCC OnLine All 10**
[25] **2023 SCC OnLine Del 3598**
[26] **2023 SCC OnLine Del 5148**
[27] **(2017) 4 SCC 498**
[28] **2024 SCC OnLine SC 2320**

35. At the outset, Mr. Mehta reiterated that an arbitral award is indeed an instrument within the meaning of the Stamp Act, however, the aspect of stamping only becomes relevant when the award is sought to be enforced at the stage of Section 36 of the Arbitration Act. Therefore, according to him, an arbitral award must bear adequate stamp duty for enforcement of such award. In this respect, reliance was placed on ***M. Anasuya Devi (supra)***.

36. It was submitted that while Sections 33 to 42 of the Stamp Act lay down a mechanism whereby an insufficiently stamped award may be impounded and only upon payment of the deficit portion can the award be admissible, however, this procedure is not absolute in light of Section 36 of the Stamp Act, which provides that if an insufficiently stamp award has been admitted in evidence, the same cannot be questioned at a later stage.

37. It was also submitted that non-stamping of an arbitral does not render it void, it only affects its admissibility. Reliance in this regard was placed on ***M/s Tarini Prasad Mohanty v. M/s Sunflag Iron and Steel Co. Ltd.***[29]

38. Mr. Mehta emphasised that the consequence of non-stamping is not the invalidity of the underlying instrument as it does not go the root of the arbitral award so as to create an absolute bar on enforcement proceedings. In this regard, it was submitted that ***In Re: Interplay (supra)*** categorically

[29] **2026 INSC 566**

held that stamp duty is a curable defect and the effect of not paying duty or inadequately paying duty renders an award inadmissible and not void. This position has been reaffirmed in ***Krishnavathi Sharma v. Bhagwandas Sharma***[30].

39. It was also contended that Section 31 of the Stamp Act is an enabling provision whereunder parties may seek opinion of the Collector on the requisite stamp duty, however, this provision is not mandatory. Further, Section 32 lays down the procedure to be followed once a Section 31 application is preferred. Proviso (a) to Section 32(3) bars the Collector from endorsing an instrument after 30 days of execution of the award. This, according to Mr. Mehta, is not to be construed as a bar on parties from depositing stamp duty without recourse to Section 31.

40. The learned Senior Counsel submitted there might be situations wherein the arbitral award is voluntarily satisfied without it being enforced under Section 36 of the Arbitration Act, then the question of stamping will altogether not arise for adjudication before an executing Court. Reliance was placed on ***Mohini Electricals (supra)***.

41. Mr. Mehta further sought to draw a parallel with Section 49 of the Registration Act of 1908 by contending that unlike the Registration Act, no absolute bar exists in the Stamp Act and even Section 49 permits use of the instrument for a collateral purpose.

[30] **Civil Appeal No. 3476/2026, rendered on 23.03.2026**

42. Reliance was placed on ***Hari Om Aggarwal v. Prakash***[31]**,** and ***Ashok Kamal Capital Builders v. State***[32]**,** to contend that the Stamp Act does not envisage impounding a copy of the award. It is only the original which can be impounded and this Court does not have the power to summon the original instrument in case a copy is filed.

43. The learned Senior Counsel also advanced that one should not miss the woods for the trees, i.e., if every award is to be presented to the Collector for determination of stamp duty, it would dilute the purpose of the Arbitration Act of ensuring speedy justice and it would only result in delaying enforcement proceedings. It was emphatically stressed that if the same is allowed, it would become a tool in the hands of unscrupulous Judgment Debtors, as it would give them another ground to delay and/or escape liability.

44. In an attempt to harmoniously read the Stamp Act and the Arbitration Act, it was submitted that ***In Re: Interplay (supra)*** provided that Courts were not required to deal with the issue of stamping at the stage of granting interim measures under Section 9. Therefore, according to Mr. Mehta, it follows that a Court in enforcement proceedings can consider issuing interim measures of protection to preserve, protect and secure the subject matter of the award as well.

[31] **(2007) 8 SCC 514**
[32] **2009 SCC OnLine Del 2626**

ANALYSIS AND REASONING

45. I have heard the ardent submissions of the learned Counsel appearing in this matter. The Court also extends its gratitude to Mr. Jayant Mehta and Dr. Amit George, who extended their valuable assistance on this subject matter at the request of this Court.

46. There is no doubt as to the proposition of law that an instrument must be duly stamped before or at the time of execution as per Section 17 of the Stamp Act and the said time-period is extendable to a month after the execution of such instrument as provided by proviso (a) to Section 32(3) of the Stamp Act.

47. It is also equally settled that an arbitral award is an "instrument" under the Stamp Act. Therefore, for the purposes of enforcement, an arbitral award must bear adequate stamp duty in accordance with the provisions of the Stamp Act.

48. However, with respect to enforcement of arbitral awards, this Court has regrettably observed a growing trend where the mandatory nature of payment of stamp duty at the stage of enforcement has been diluted. A substantial number of enforcement petitions under Section 36 of the Arbitration Act have been filed before this Court with inadequately stamped arbitral awards. Thus, a very significant issue arises for consideration with respect to payment of stamp duty on arbitral awards sought to be enforced and the implications of non-payment thereof.

The Issue

49. As noted above, this Court has observed that controversy arises when the Arbitration Act and the Stamp Act operate together. Misinterpretation of judicial precedents and the statutory provisions also adds fuel to this fire, thereby giving rise to significant legal and practical issues. Therefore, this Court aims to arrive at a certain degree of harmony so that these statutes do not overshadow each other but exist in cohesion.

50. While a decree of the Court is enforceable from the day it is made, an arbitral award, which must be enforced as a decree as well, becomes enforceable only after three months (and additional thirty days if sufficient cause is shown) from passing of the award in light of Section 36 of the Arbitration Act.

51. The controversy further thickens in light of the legal position that the objection of insufficient stamp duty on an arbitral award is premature for setting aside the award at the Section 34 stage. ***M. Anasuya Devi (supra)*** explicitly provides that insufficient stamp duty on an arbitral award is not an impediment in Section 34 proceedings under the Arbitration Act.

52. Thus, the problem arises at a subsequent stage, i.e., under Section 36 for the enforcement of an arbitral award.

53. More often than not, this leads to a practical problem that by the time Decree Holders reach the enforcement stage, the award is still insufficiently stamped, which, even if curable, is undoubtedly an impediment for enforcement proceedings.

54. Accordingly, to remedy this defect, a Decree Holder may subsequently endeavour to make good the insufficient stamp duty when it seeks enforcement of the arbitral award, however, this comes at a belated stage, i.e., beyond one month from execution of the instrument/award, as required under the Stamp Act.

55. Therefore, the aforesaid position begs the question whether unilaterally depositing the adequate stamp by the Decree Holder at a belated stage, i.e., by circumventing the payment of penalty as envisaged under Sections 35 and 40 of the Act, is permissible and sufficient to cure the defect for the purposes of enforcement. Some ancillary questions would be whether this Court is empowered to do away with the penalty component and as to whether this Court is necessarily bound by Section 33 of the Stamp Act or not.

56. Consequently, to bring coitus to this issue, this Court finds it imperative to reiterate the legal framework governing stamp duty to ensure procedural compliance, statutory adherence, and to eliminate fundamental threshold objections to the enforcement of an arbitral award.

57. For this purpose, I shall aim to balance out the interests of parties and their autonomy, as safeguarded under the Arbitration Act along with the fiscal obligations under the relevant Stamp Act.

58. The Supreme Court in ***Hameed Joharan v. Abdul Salam***[33], cautioned that while the import of the Stamp Act is fiscal gain for the State, nevertheless, it need not be used as a means to defeat the operation of another statute operating in a different sphere. In ***Dr. Chiranji Lal (D) by LRs. v. Hari Das (D) by LRs.***[34], the Supreme Court cautioned that the Stamp Act is not to be used as a weapon of technicality by a litigant to defeat the case of his opponent.

59. That said, my focus in this endeavour would be to avoid any interpretation or inference which may do unwarranted violence to the statute or lead to absurdity or destroy the legislative intent behind it.

Arbitration and Conciliation Act of 1996

60. It is evident from Sections 5, 16 and 19 that the Arbitration Act envisages minimal judicial intervention and preserves autonomy of the parties and that of the Arbitral Tribunal.

[33] (2001) 7 SCC 573 : 2001 SCC OnLine SC 944
[34] (2005) 10 SCC 746

61. While Section 34 lays down specific grounds to assail an arbitral award within three months from the date of receipt of the award[35], Section 36 provides for its enforcement. Section 36 is reproduced thus:

> *"**36. Enforcement.**—(1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the Court.*
>
> *(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.*
>
> *(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:*
>
> *Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).*
>
> *Provided further that where the Court is satisfied that a Prima facie case is made out that,—*
>
> *(a) the arbitration agreement or contract which is the basis of the award; or*
>
> *(b) the making of the award,*
>
> *was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge under section 34 to the award.*

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[35] **34. Application for setting aside arbitral award**.— *** (*3*) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:
Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

Explanation.—For the removal of doubts, it is hereby clarified that the above proviso shall apply to all Court cases arising out of or in relation to arbitral proceedings, irrespective of whether the arbitral or Court proceedings were commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016).”

62. It is evident from the aforesaid provision that once the window to file an objection petition under Section 34 expires, an arbitral award becomes enforceable akin to a decree of the Court in accordance with the Civil Procedure Code of 1908[36].

63. In this light, it is trite that an instrument sought to be enforced must be adequately stamped in terms of the applicable Stamp Act. However, the question remains as to <u>when</u> the said obligation has to be fulfilled.

64. The Indian Stamp Act of 1899 was enacted to secure revenue on certain instruments executed within India or executed out of India and received in India. It is a fiscal statute and hence, it is mandatory in nature. Accordingly, it must be interpreted and construed strictly[37].

65. There is no quarrel with the position that an arbitral award is a chargeable instrument for the purposes of this Act, as is evident from Article 12 read with Article 15 to Schedule IA[38] which stipulates a 0.1% *ad valorem* rate of stamp duty on arbitral awards. It is also clear that such

[36] “CPC” hereinafter
[37] Hindustan Steel Ltd. v. Dilip Construction Co., **(1969) 1 SCC 597**; Hameed Joharan v. Abdul Salam, **(2001) 7 SCC 573;** In Re: Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, **(2024) 6 SCC : 2023 SCC OnLine SC 1666**
[38] Indian Stamp (Delhi Amendment) Act, 2010

duty must be paid on the principal amount excluding the interest component in view of Section 23 of the Act[39].

Stamp Duty and Section 34 of the Arbitration Act

66. Before delving further into the Stamp Act itself, I deem it relevant to iron out the legal position, insofar as its application has been altered by judicial precedents.

67. The Supreme Court in ***M. Anasuya Devi (supra)***, was seized with the question of adequacy of stamp duty on an arbitral award in Section 34 proceedings under the Arbitration Act. One of the grounds undertaken therein to assail the arbitral award was that it was inadmissible and unenforceable for want of proper stamp duty and registration. The Supreme Court held as follows:

> *"4. 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 the proceedings under Section 34 of the Act. In fact, this issue was premature at that stage. Section 34 of the Act provides for setting aside of the award on the grounds enumerated therein.* ***It is not in 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*

[39] **23. Instruments reserving interest.**—Where interest is expressly made payable by the terms of an instrument, such instrument shall not be chargeable with duty higher than that with which it would have been chargeable had no mention of interest been made therein.

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****.*

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

6. The appeals are, accordingly, allowed. Since the High Court has not dealt with other objections raised under Section 34 of the Act, we remit 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 interim prayer which may be made by the parties in the appeals. There shall be no order as to costs."

(emphasis supplied)

68. It is thus evident from the above excerpt that the Court went on to hold that the question of adequate stamp duty was not one of the specific grounds stipulated under Section 34 to set aside an award and hence was premature for the purposes of Section 34. Instead, it was held that in view of Section 47 of the CPC, the question of adequacy of stamp duty would be relevant at the stage of enforcement of the award under Section 36 of the Arbitration Act.

69. Thereafter, a coordinate bench of this Court also raised the aforesaid question *suo moto* in Section 34 proceedings in ***Eider PW1 Paging Ltd. & Eider PW1 Communications Ltd. v. UOI***[40]. The learned Single Judge analysed Sections 33, 38 and 40 of the Indian Stamp Act, 1899 and placed reliance on the decisions of the Supreme Court in

[40] **2010 SCC OnLine Del 422**

Government of A.P. v. P. Laxmi Devi[41] and ***Ram Rattan v. Bajrang Lal***[42], which respectively provide that the Court under Section 33 of the Stamp Act is duty bound to impound an insufficiently stamped instrument and that no discretion can be exercised in this regard. Drawing from these judgments, the learned Single Judge observed as follows:

> *"8. In view of the aforesaid judgments, and the provision of Section 33, this Court is duty bound to mandatorily impound the Award which is unstamped. As per the Schedule 1A of the Stamp Act, as applicable to the Delhi, an Award as per Article 12 is to be stamped with the stamp duty as applicable to a Bond under Article 15. A conjoint reading of Articles 12 and 15 shows that the Award has basically to be stamped at 2% of the value of claims. In the facts of the present case, when the claim of the petitioner was for Rs 1325 crores, 2% of this amount comes to 26.5 crores. It is only on account of the deliberate act of the petitioner in failing to provide the necessary stamp papers to the arbitrator, that the Award had to be written on a plain paper and hence penalty has also to be paid. Ten times the penalty of Rs 26.5 crores therefore would come to Rs 265 crores per Award. prima facie, and subject to the decision of Collector under Section 40, of the Stamp Act, the total of the aforesaid two amounts is the amount which would be payable by the petitioner before the Award can be looked into by virtue of the provision of Section 33 of the Stamp Act."*

70. The Counsel for the Petitioner contested the *suo motu* inquiry in light of the binding precedent laid down in ***M. Anasuya Devi (supra)***, which was dealt with by the learned Single Judge in the following manner:

> *"10. In my opinion, though the observations in para 4 of the aforesaid judgment seem to go in favour of the petitioner, however,* ***this judgment is of a Bench of two Judges of the year 2003 and wherein the earlier judgment of three Judges in the case of Ram Rattan (Supra), which holds that impounding is mandatory has not been considered****. A* ***decision of the Supreme Court of a three-Judge Bench prevails over the decision of a two-Judge Bench*** *vide Union of India v. Raghubir Singh, (1989) 2 SCC 754. Further, there is* ***now a later 2009 decision***

[41] **(2008) 4 SCC 720**
[42] **(1978) 3 SCC 236**

<u>of the Supreme Court whereby the provision of Section 33 of the Stamp Act has been held to be mandatory</u> *viz. of P. Laxmi Devi (supra). The* ***<u>aspect of whether the provision of Section 33 is Directory or mandatory was not considered by the Supreme Court in the case of M. Anasuya Devi's case (supra), and in fact, Section 33 of the Stamp Act has not even been adverted to in the said judgment</u>***. *The Supreme Court in the case of N. Bhargavan Pillai v. State of Kerala, (2004) 13 SCC 217 has laid down that* ***<u>when any judgment, even of a Supreme Court, does not advert to a direct provision of law then, the judgment is to be treated as having been rendered per incurriam</u>***. *Para 14 of the judgment in the case of M. Bhargavan Pillai is relevant and the same reads as under:*

> *"14. Coming to the plea relating to benefits under the Probation Act, it is to be noted that Section 18 of the said Act clearly rules out application of the Probation Act to a case covered under Section 5(2) of the Act. Therefore, there is no substance in the accused-appellant's plea relating to grant of benefit under the Probation Act. The decision in Bore Gowda case 2 does not even indicate that Section 18 of the Probation Act was taken note of. In view of the specific statutory bar the view, if any, expressed without analysing the statutory provision cannot in our view be treated as a binding precedent and at the most is to be considered as having been rendered per incuriam. Looked at from any angle, the appeal is sans merit and deserves dismissal which we direct."*
>
> *(Emphasis supplied)*

11. There is another reason, in my opinion, why the decision of M. Anasuya Devi's case does not apply to the facts of the present case and hence may not be binding. ***<u>This is because facts of each case are different and it is now settled law that difference of even one vital fact would change the ratio of a judgment.</u>*** *The Constitution Bench of the Supreme Court has said so in the case of Padma Sundara Rao v. State of Tamil Nadu, (2002) 3 SCC 533. para 9 of this judgment is relevant in this regard and the same reads as under:*

> *"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to*

be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in British Railways Board v. Herrington 9. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.

(underlining added)"

***

14. Finally I may add that whereas till recently the Award was to be stamped only on a fixed nominal amount of stamp duty of Rs 75, however this position has changed inasmuch as Article 12 of the Stamp Act with respect to the state of Delhi was amended w.e.f. from the year 2001 and whereby now the fixed stamp duty has been done away with and now an Award has to be stamped with ad valorem stamp duty of 2% of the value of the disputes. ***I prima facie feel that if a litigant is deliberately allowed to flout the requirements of payment of the necessary stamp duty as per Articles 12 and 15 of the Stamp Act as applicable to Delhi, then, the intention of the legislature in requiring payment of the higher stamp duty will be set at naught in cases where an Award dismisses the claims of claimants and there is no insistence of payment of stamp duty because it can be claimed on the basis of M. Anasuya Devi's case that such issue should be taken up at the stage of execution, whereas in these cases where the claims are dismissed, there is in fact no issue of execution at all****."*

(emphasis supplied)

71. Thus, the learned Single Judge observed that ***M. Anasuya Devi (supra)*** was not binding in view of the decision of a larger Bench and one other more recent Supreme Court judgment rendered on the same issue. It was also held that ***M. Anasuya Devi (supra)*** was *per incuriam* as per the ratio in ***N. Bhargavan Pillai (supra)*** since it did not directly advert to the relevant provisions of the Stamp Act. The learned Single Judge then proceeded to distinguish the decision on facts from the case at hand before him.

72. It was further reasoned that there may be cases whereby there is no enforcement of the arbitral award at all and therefore, to hold that the requirement of stamp duty may be done away with at the time of Section 34 proceedings is a view which overlooks the intent behind levy of stamp duty in the first place.

73. In view of the foregoing, the learned Single Judge deemed it appropriate to frame certain questions for the consideration of a larger Bench of this Court. These questions are reproduced as thus:

> *"(i) Whether a Court cannot exercise power of impounding an unstamped or an insufficiently stamped document, although, it is so empowered under Section 33 of the Stamp Act, 1899 and also as so held by the Supreme Court in the judgments of Government of A.P. v. P. Laxmi Devi, (2008) 4 SCC 720 and Ram Rattan v. Bajrang Lal, (1978) 3 SCC 236 because such power can only be exercised at the stage of enforcing of the Award under Section 36 of the Arbitration & Conciliation Act, 1996?*
>
> *(ii) Whether the decision in M. Anasuya Devi v. M. Manik Reddy, (2003) 8 SCC 565 takes away the power of the Court to impound insufficient or unstamped documents under Section 33 of the Stamp Act if the Court seeks to suo moto exercise the power, and which is, in fact, a duty of the Court as per Section 33 of the Stamp Act and the aforesaid judgments in the cases of Govt. of A.P. v. P. Laxmi Devi and Ram Rattan v. Bajrang Lal (supra)?*
>
> *(iii) Can the decision in M. Anasuya Devi (supra) apply where a claim petition including one for recovery of a monetary amount is dismissed and there would therefore not arise any question of execution proceedings of such an Award and therefore also the requirement of consideration of this issue of the requirement of stamp duty on the Award at the stage of execution?*
>
> *(iv) Is the decision of M. Anasuya Devi, which has been rendered without considering the relevant provisions including Section 33, 38 and 40 of the Stamp Act, 1899 is per incurriam as per the ratio of the*

decision of the Supreme Court in N. Bhargavan Pillai v. State of Kerala, (2004) 13 SCC 217?

(v) Will such interpretation of Section 33 of the Stamp Act that the requirement of impounding of unstamped Award can be taken only at the execution stage, not negate the intention of the legislature in amending Article 12 of the Stamp Act whereby the stamp duty on the Award was enhanced from a fixed lump sum nominal amount to an ad valorem duty of 2% of the value of the claims?"

74. These questions were placed before a Division Bench of this Court, which called for the opinion of the Collector of Stamps on the issue.

75. The Collector of Stamps placed reliance on a decision of another Division Bench of this Court in ***M/s Rajasthan Builder v. UOI & Ors.***[43], whereby it was clarified that stamp duty ought to be paid on awarded amount and not the amount so claimed, in the following words:

"8. Another objection raised was that the stamp paper did not bear a proper stamp. Item 12 of Schedule 1 to Stamp Act provides that where the amount of award does not exceed 1,000/- the same duty as Bond (No.15) for such amount is to be paid. Now item 15(bond) provides that where the amount or value does not exceed Rs. 100/-, 2 annas stamp is to be paid. In the present case no amount has been awarded, and a stamp of even 2 annas would have been sufficient. Mr. Aggarwal of course, however, suggests that as the claim of the appellant was over a lakh of rupees the stamp duty should have been calculated on that amount. We find the argument unacceptable. The award has to bear the stamp duty with reference to the amount awarded and not the claimed amount. Award was therefore properly stamped."

76. By placing reliance on ***M/s Rajasthan Builder (supra)***, the Division Bench opined that the learned Single Judge did not take into

[43] FAO (OS) 46/1971, decided on 01.09.1980

consideration the aforesaid ratio which essentially rendered the questions so referred *purely academic*. Accordingly, the Court remanded the matter to the learned Single Judge.

77. Therefore, the questions preferred by the learned Single Judge remain unanswered on account of the decision in ***M/s Rajasthan Builder (supra)***, which notably pertains to the pre-amendment Arbitration Act of 1940.

78. Subsequently, a co-ordinate Bench took a divergent view in ***M. Sons Enterprises (P) Ltd. v. Suresh Jagasia***[44] with respect to the ratio of ***M. Anasuya Devi (supra)***, as follows:

> *"10. The recent judgment of the Supreme Court in Anasuya Devi (supra) cannot be brushed aside as per-incuriam or as sub-silentio on the provisions of the Stamp Act. The Supreme Court was very much conscious of the said provisions and it is not as if it pronounced the judgment in ignorance of the same or that the provisions of the Stamp Act have been given a go by. What the Supreme Court has held, examining the scheme of the Arbitration Act, 1996, is that the objections on account of deficiency in stamping and registration fall outside the ambit of Section 34 of the Act. It is not as if, the Supreme Court by adopting the said procedure has contravened the mandatory provisions of the Stamp Act; it is not as if benefits have been permitted to be derived under an insufficiently stamped award. The Supreme Court however has held that the said objection has to be taken at the time of enforcement of the award. In my humble opinion, this is but a pragmatic approach. The common thread running through the 1996 Act is of expediency. If objections under the Stamp Act or the Registration Act were to be permitted to be taken at the stage of Section 34, it would indefinitely delay the disposal of the said proceedings. The Supreme Court thus held that the objections under Section 34 be decided expeditiously without reference to the said pleas. In this manner, the rights of persons against whom the award is pronounced have been preserved. If they are able to establish that on account of insufficiency in stamping of the award or*

[44] **2011 SCC OnLine Del 82**

non-registration of the award, the person in whose favour the same is made is not entitled to benefit thereof, the award would not be enforced against them. I, therefore, do not find any merit in the contention of the petitioners of the award being liable to be set aside for the said reason and the same is dismissed."

79. More recently, a Division Bench of this Court in ***NCS Sugars Ltd. & Anr. v. PEC Ltd.***[45], placed reliance on ***M. Anasuya Devi (supra)*** by holding thus:

> *"11. As rightly noted by the learned Single Judge, insufficiency, if any, concerning stamp duty, is an aspect which gains legal significance only at a stage of enforcement of the award i.e., the execution.*
>
> *12. As far as the right of a litigant to challenge an award within the prescribed period for limitation is concerned, it gets triggered the moment the award is rendered.*
>
> *13. The learned Single Judge, in our view, has rightly appreciated the principles enunciated by the Supreme Court in M. Anasuya Devi v. M. Manik Reddy, (2003) 8 SCC 565.*
>
> *14. The said judgment of the Supreme Court, in no uncertain terms, states that insufficiency of stamp duty is not one of the grounds provided in Section 34 of the Act for setting aside the award and therefore, this aspect of the matter, as observed hereinabove, will have weight only at a stage when an execution action is filed for enforcement of the award by taking recourse to the provisions of Section 36 of the 1996 Act.*
>
> *15. Therefore, the submission advanced by Mr. Kalra and Mr. Kislay that the trigger point for commencing of limitation as prescribed under Section 34 of the 1996 Act would be the date when the award bearing the requisite stamp duty was served is completely untenable."*

80. Therefore, the position of law as enunciated in ***M. Anasuya Devi (supra)*** echoes till today.

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[45] **2024 SCC OnLine Del 2252**

81. In my considered view, the words employed in ***M. Anasuya Devi (supra)***, "*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",* cannot, in any manner, be construed to mean that stamp duty was not required to be paid at the stage of Section 34 or that stamp duty may only be paid when a Decree Holder files for enforcement. In fact, the Supreme Court has merely deferred the time to take such objections regarding the payment of adequate stamp duty to the stage of enforcement only. According to this Court, these words *only* mean that insufficient stamp duty is not a ground to set aside an arbitral award under Section 34 of the Arbitration Act and *nothing more*. The Supreme Court has not, in any manner, created an exception to Section 33 of the Stamp Act.

82. Instead, it is the misinterpretation of this legal position, in my view, that has led to the instant aberration of non-payment of adequate stamp duty on the arbitral awards at the envisaged time, thus leading to a situation wherein these awards remain insufficiently stamped at the enforcement stage.

83. Therefore, the anomaly existing today is that while Courts are proscribed from inquiring into adequacy of stamp duty at the Section 34 stage, the issue of adequate stamping of an arbitral award becomes a question for enforcement under Section 36. However, this comes at a belated stage as per the Stamp Act.

Stamp Duty and Section 36 of the Arbitration Act

84. Having delineated the legal position of stamp duty with respect to Section 34 proceedings for completeness, the next decision relevant to this discourse is enforcement of an arbitral award under Section 36 of the Arbitration Act. In this regard, a co-ordinate Bench of this Court in ***Jitender Mohan Malik v. Ravi Bhushan Malik***[46], returned the following findings:

> *"25. As observed by the Supreme Court in Dr. Chiranji Lal v. Hari Das: (2005) 10 SCC 746, the Stamp Act is a fiscal statute with the object of securing revenue for the State on certain classes of instruments. The stringent provisions of the Act are conceived in the interest of the revenue. Once that object is secured according to law, the party staking his claim on the instrument will not be defeated on the ground of initial defect in the instrument. The Supreme Court also observed that the Stamp Act has not been enacted to arm a litigant with a weapon of technicality to meet the case of his opponent. In the present case, the judgment debtor is attempting to use the Stamp Act as a weapon of technicality to delay and defeat the execution of the decree. The present case has to be considered in the backdrop of the observations made by the Supreme Court.* ***The Court must ensure that the interest of the revenue does not suffer while, at the same time, enabling the decree holder to reap the benefits of the decree and prevent the judgment debtor from defeating the decree.***
>
> ***
>
> *29. The argument that the award is not required to be stamped because there is no provision for paying stamp duty on an award under the Arbitration and Conciliation Act, 1996, only needs to be stated to be rejected. Stamp duty is provided under the Indian Stamp Act, 1899 and not under the Arbitration and Conciliation Act, 1996. The further argument of Mr. Qayam-ud-din that though Section 35 of the Indian Stamp Act, 1899 relates to inadmissibility in evidence of an unstamped or an insufficiently stamped instrument, the same is not applicable in*

[46] **2008 SCC OnLine Del 748**

the present case because the award in question is not being admitted in evidence. He submitted that under the Arbitration Act, 1940, an award had to be admitted in evidence before it was made a rule of the Court and, therefore, Section 35 of the Indian Stamp Act, 1899 was relevant. His contention was that under the new Act (1996 Act), Section 35 of the Indian Stamp Act became irrelevant inasmuch as an award by itself became executable by virtue of Section 36 of the Arbitration and Conciliation Act, 1996. This argument, though attractive, unfortunately does not advance the case of the decree holder. This is so because, even for the sake of argument, if Section 35 of the Indian Stamp Act, 1899 is kept aside for the time being, ***Section 33 of the said Act casts a duty upon every person having by law or consent of parties, authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, to, if it appears to him that such instrument is not duly stamped, impound the same. Therefore, de hors the question of its admissibility in evidence, when an instrument which is not duly stamped is produced before an authority as referred to in Section 33, it is the duty of such authority to impound the same. It cannot be denied that the original award has been produced before this Court for the purposes of execution. If it appears to this Court that the instrument (the award in question) is not duly stamped, then this Court is duty bound under the provisions of Section 33 of the Indian Stamp Act, 1899 to impound the same.*** *It has already been discussed above that the award in question was required to be stamped in accordance with Article 45 of Schedule I to the said Act. The award has been made on stamp paper of only Rs. 100/-. This is clearly inadequate. Although the value of the property is not indicated, a clue can be taken from the fact that the difference in the cost of land divided amongst the decree holder and the judgment debtor itself has been computed in the award as Rs. 15,20,000/-. Demonstrably, the stamp duty of Rs. 100/- paid on the award is insufficient. In such a case, the only course of action is to impound the same. Consequently, the award is impounded.*

30. *As indicated in Harish Chander Sharma v. Smt. Priti Sharma, etc.: ILR (1976) 1 Del 142****, the next step for this Court is to send the impounded instrument in original to the Collector in terms of Section 38(2) of the Indian Stamp Act, 1899. It is ordered accordingly. The Collector shall follow the procedure as specified in Section 40 of the said Act and after he has dealt with it, the Collector shall return the original instrument to this Court for further proceedings****.”*

(emphasis supplied)

85. It is evident from the above that the learned Single Judge rightly understood the responsibility bestowed upon an executing Court with respect to striking a balance between safeguarding the public exchequer and the right of a decree holder to reap benefits of the decree. The learned Judge further held that it is the duty of a Court under Section 33 of the Stamp Act to impound an insufficiently stamped instrument.

86. Subsequently, again with respect to enforcement of an arbitral award, this Court in ***Mohini Electricals (supra)*** held as follows:

> *"19. The plain language of these provisions show, as rightly contended by the JD, that whenever an instrument is tendered before the Court, it is the duty of the Court to examine whether the same invites payment of duty and, if it does, see if it has been duly stamped. Section 35(a) is unambiguous and states that if an instrument produced before the Court is found to be not duly stamped, the same can neither be admitted in evidence nor can it can be acted upon, irrespective of its purpose. In case the instrument is not stamped as required, the Court must impound the same and has absolutely no discretion in this regard. The JD is therefore correct to contend that in case an instrument is found to be inadmissible for not being stamped, the only way the defect can be cured is by impounding the instrument under Section 33, and then sending it to the Collector as per Section 38 of the Act whereafter it is for the Collector to assess the stamp duty applicable as also the penalty leviable for the initial lapse in paying the requisite duty*
>
> *20. An award passed at the conclusion of arbitration is an 'instrument' within the meaning Section 2(14) of the Indian Stamp Act read with Entry 12 of Schedule 1 thereof and, therefore, Sections 33 to 38 of that Act would necessarily be applicable to an arbitral award when it is sought to be enforced. In fact, this procedural necessity of duly stamping an award has also been extended by the Court to one of the most preliminary stages of an arbitration proceeding, viz. arbitration clauses sought to be invoked and contained within agreements which are statutorily required to be stamped. In SMS Tea Estates P. Ltd. v. Chandmari Tea Co. P. Ltd., (2011) 4 SCC 66, relied upon by the respondent/applicant, the Supreme Court held that an arbitration clause*

seated within an agreement which is not duly stamped was unenforceable unless it was impounded. Reference in this regard may be made to the observations in paragraph 22 of the decision in SMS Tea Estates....”

87. The Court proceeded to discuss Sections 33, 35 and 38 of the Indian Stamp Act, 1899 to hold that the Court was duty-bound under Section 33 to impound an insufficiently stamped award and cannot exercise any discretion in this regard. It was held that the only way to cure the defect was to impound the instrument and forward it to the concerned Collector, who will then assess the applicable stamp duty and penalty thereof. To buttress, the Court held that the aforesaid proposition was also made applicable at the pre-referral stage by the decision in ***SMS Tea Estates P. Ltd. v. Chandmari Tea Co. P. Ltd.***[47], and was followed in ***Garware Wall Ropes Ltd. v. Coastal Marine Constructions & Engg. Ltd.***[48]

88. Further, in the aforesaid matter, the learned Arbitrator had permitted payment of stamp duty on the award at a belated stage, i.e., well after the 30-day period expired. In this regard, two contentions were raised on behalf of the Decree Holder that since the (i) Arbitration Act does not stipulate a time period within which the award shall be stamped and also (ii) does not impose any duty on the Tribunal to stipulate or ensure such payment, such an act by the Arbitrator was not permissible. The Court in its reasoning placed reliance on Sections 31, 35 and 36 of the Arbitration Act to hold as follows:

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[47] **(2011) 14 SCC 66**
[48] **(2019) 9 SCC 209**

*"30. The extracted provisions hereinabove show that the **sole duty cast on the arbitral tribunal at the time of passing the award is to ensure that a signed copy of the award is delivered to each party**, but there is **no obligation on the tribunal to ensure that the requisite stamp duty payable thereon stands paid at the time of passing of the award**. Section 36 of the Arbitration Act dealing with enforcement of the award also proceeds to clarify that a domestic arbitral award shall be treated as a decree of the Court and, subject to the outcome of any challenge thereupon under Section 34 of the Arbitration Act, it can be simply enforced as a decree of the Court in accordance with the provisions of the Code of Civil Procedure, 1908 without any statutory requirement of making it a Rule of Court, unlike Section 17 of the Indian Arbitration Act, 1940. **A combined reading of these provisions shows that let alone the arbitral Tribunal, there is no need even for the parties to file the award in Court and certainly no duty on their part to do so, unless they intend to initiate proceedings under Sections 34 or 36 of the Act***

*31. Interestingly, **I find that the Arbitration Act does not even create a legal obligation on the parties in arbitration to pay stamp duty on an award**. **It is only when they begin taking steps to enforce the award that the parties are obligated to ensure that the instrument has been duly stamped, at which point the Court shall be guided by the provisions of Sections 33, 35 and 38 of the Indian Stamp Act, 1899.** This position was reiterated by the Supreme Court in M. Anusuya Deviv. M. Manik Reddy 2003 Supp (4) SCR 853 when it held that the question whether an award is stamped or not is only relevant for enforcement proceedings, and not during the Section 34 proceedings because an arbitral award cannot be set aside on the ground of inadequate stamping. **Thus, the Arbitration Act envisages that the payment of requisite stamp duty on an award shall only be required when a party is seeking to get the same enforced under Section 36**.*

*32. Once the question whether proper stamp duty was paid on the award is precluded from being a valid ground to challenge the same under Section 34, **it is hard to imagine that the legislature intended to include the power to make substantive directions on the subject fall in the core jurisdiction of an arbitral tribunal**. In other words, the issue of stamping of the award is not the concern of the arbitral tribunal at all and has to be examined only when a party approaches the Court for enforcement of the award.*

*33. That being said, it is not necessarily true that every time a party decides to enforce an award, it needs to ensure that the same is duly stamped. For instance**, a situation may arise in which both parties in arbitration mutually decide to accept the award, thereby dispensing***

with the formality of instituting an enforcement petition. In such cases, there would be absolutely no occasion for any of the parties to pay the stamp duty.

34. That being said, when it comes to the question of paying stamp duty on an arbitral award, I am inclined to accept the legal position advanced by Ms. Salwan on behalf of the DH that the learned arbitrator did not have any statutory power to direct that the stamp duty must be paid within a specific period. ***Therefore, the direction of the learned arbitrator granting 30 days' time for payment of stamp duty on the award was a direction issued in excess of its powers under the Act****. As a result, a direction like this which was void could neither have created an obligation on the part of the DH nor can be used to call into question an act which was perfectly sustainable in the eyes of law, i.e. payment of the stamp duty in February 2020. Thus, I have no hesitation in rejecting the JD's contention that the payment of stamp duty applicable upon the award, on 07.02.2020 was illegal or improper in any manner."*

(emphasis supplied)

89. Therefore, undoubtedly, the proposition that emerges out from this decision as well is that adequacy of stamp duty is a relevant factor at the stage of enforcement of an arbitral award and that the Arbitration Act does not impose a duty upon the Arbitral Tribunal to ensure payment of stamp duty. It was also held that there is no discretion granted to a Court under Section 33 and that what must be impounded is the original instrument, a copy/xerox thereof cannot be validated by paying deficit duty and penalty.

The Contours of In Re: Interplay (supra)

90. Before proceeding further, I deem it apposite to utilise this opportunity to delineate the legal position, as altered and clarified by the decisions rendered in ***SMS Tea Estates (supra)***, ***Garware Wall Ropes (supra)*** and ***In Re: Interplay (supra)***.

91. In ***SMS Tea Estates (supra)***, the Supreme Court gave certain guidelines on the procedure to be followed if an instrument containing the arbitral agreement was found to be insufficiently stamped. These guidelines were as follows:

> *"22. We may therefore sum up the procedure to be adopted where the arbitration clause is contained in a document which is not registered (but compulsorily registerable) and which is not duly stamped:*
>
> *22.1. The Court should, before admitting any document into evidence or acting upon such document, examine whether the instrument/document is duly stamped and whether it is an instrument which is compulsorily registerable.*
>
> *22.2. If the document is found to be not duly stamped, Section 35 of the Stamp Act bars the said document being acted upon. Consequently, even the arbitration clause therein cannot be acted upon. The Court should then proceed to impound the document under Section 33 of the Stamp Act and follow the procedure under Sections 35 and 38 of the Stamp Act.*
>
> *22.3. If the document is found to be duly stamped, or if the deficit stamp duty and penalty is paid, either before the Court or before the Collector (as contemplated in Section 35 or 40 Section of the Stamp Act), and the defect with reference to deficit stamp is cured, the Court may treat the document as duly stamped.*
>
> *22.4. Once the document is found to be duly stamped, the Court shall proceed to consider whether the document is compulsorily registerable. If the document is found to be not compulsorily registerable, the Court can act upon the arbitration agreement, without any impediment.*
>
> *22.5. If the document is not registered, but is compulsorily registerable, having regard to Section 16(1)(a) of the Act, the Court can delink the arbitration agreement from the main document, as an agreement independent of the other terms of the document, even if the document itself cannot in any way affect the property or cannot be received as evidence of any transaction affecting such property. The only exception is where the respondent in the application demonstrates that the arbitration agreement is also void and unenforceable, as pointed out in*

para 15 above. If the respondent raises any objection that the arbitration agreement was invalid, the Court will consider the said objection before proceeding to appoint an arbitrator.

22.6. Where the document is compulsorily registerable, but is not registered, but the arbitration agreement is valid and separable, what is required to be borne in mind is that the arbitrator appointed in such a matter cannot rely upon the unregistered instrument except for two purposes, that is (a) as evidence of contract in a claim for specific performance, and (b) as evidence of any collateral transaction which does not require registration."

92. It is borne out from a plain reading of the abovementioned excerpt that the Court treated insufficient stamp duty as an absolute bar to arbitral proceedings, in which case the arbitral award must be necessarily impounded under Section 33 and the procedure under Section 35 and 38 must be followed. Only upon curing this defect could the instrument be acted upon. Therefore, this decision permitted impounding of an instrument at the stage of Section 11 by holding that an insufficiently stamped arbitral agreement could not be acted upon by virtue of Section 35 of the Stamp Act. This decision was affirmed even after the 2015 amendment to the Arbitration Act in ***Garware Wall Ropes (supra)***. To harmonise the Stamp Act with the Arbitration Act, it was held that once an insufficiently stamped instrument containing the arbitral agreement is impounded, the concerned authority should expedite the process as far as possible, preferably within 45 days. Once the deficiency is cured, any of the parties could approach a competent Court, and the Court would also expeditiously hear and dispose of the Section 11 application. The aforesaid decisions were rendered by a two-Judge Benches of the Supreme Court. Subsequently, a three-Judge Bench in ***Vidya Drolia v. Durga Trading***

Corp.[49] cited ***Garware Wall Ropes (supra)*** to affirm that an arbitration agreement exists only when it is valid and legal.

93. The aforesaid decisions, while they were correct in their understanding and reasoning pertaining to the Stamp Act, they however increased judicial interference at nascent stage of arbitral proceedings.

94. Accordingly, a Bench of seven Judges of the Supreme Court overruled the proposition of law laid by ***SMS Tea Estates (supra)*** and ***Garware Wall Ropes (supra)***. The Court clarified the distinction between enforceability and admissibility and held that "the effect of not paying duty or paying inadequate amount renders an instrument *inadmissible and not void*". It was held that stamping is a curable defect and the Act itself provides ways to cure such defect. The Court emphasized on the severability of the arbitral agreement from the underlying instrument which contains it, along with the principles of minimum judicial interference under Section 5 of the Arbitration Act, competence-competence under Section 16 and party autonomy. It was reasoned that the Arbitration Act did not envisage a Court determining the validity of an arbitral agreement at a pre-arbitral stage.

95. The Court further called for harmonious construction between the Arbitration Act and the Stamp Act (and the Contract Act). It was held that the former statute, being a special law shall be granted primacy over the

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[49] **(2021) 2 SCC 1**

latter two legislations since they are of general nature. The relevant portion is hereinbelow:

> *"176. In the present reference, the challenge before this Court is to harmonize the provisions of the Arbitration Act and the Stamp Act. The object of the Arbitration Act is to inter alia ensure an efficacious process of arbitration and minimise the supervisory role of Courts in the arbitral process. On the other hand, the object of the Stamp Act is to secure revenue for state. It is a cardinal principle of interpretation of statutes that provisions contained in two statutes must be, if possible, interpreted in a harmonious manner to give full effect to both the statutes. [Jagdish Singh v. State (NCT of Delhi), (1997) 4 SCC 435] In providing a harmonious interpretation, this Court has to be cognizant of the fact that it does not defeat the purpose of the statutes or render them ineffective. [State of T.N. v. M.K. Kandaswami, (1975) 4 SCC 745] The challenge, therefore, before this Court is to preserve the workability and efficacy of both the Arbitration Act and the Stamp Act. [CIT v. Hindustan Bulk Carriers, (2003) 3 SCC 57]"*

96. The Court held that in view of Section 5 of the Arbitration Act, Sections 33 and 35 of the Stamp Act could not be allowed to operate at the stage of Section 11 or 8, as the case may be, in the following words:

> *"185. In the above segments, we have dealt with the scope of Section 5 of the Arbitration Act. It restricts the extent of judicial intervention in various matters governed by Part I of the Arbitration Act. [CDC Financial Services (Mauritius) Ltd. v. BPL Communications Ltd., (2003) 12 SCC 140; Empire Jute Co. Ltd. v. Jute Corpn. of India Ltd., (2007) 14 SCC 680; Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204; Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd., (2022) 1 SCC 75 : (2022) 1 SCC (Civ) 374] The non obstante clause in this provision is of particular significance. It indicates that the rule in Section 5 (and consequently, the provisions of the Arbitration Act) must take precedence over any other law for the time being in force. Any intervention by the Courts (including impounding an agreement in which an arbitration clause is contained) is, therefore, permitted only if the Arbitration Act provides for such a step, which it does not. Sections 33 and 35 cannot be allowed to operate in proceedings under Section 11 (or Section 8, as the case may be), in*

view of the non obstante clause in Section 5. This being the case, we are unable to agree with the decision in N.N. Global (2) [N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd., (2023) 7 SCC 1 : (2023) 3 SCC (Civ) 564] , that the Court in a proceeding under Section 11 must give effect to Sections 33 and 35 of the Stamp Act despite the interdict in Section 5…

186. Section 5 is effectively rendered otiose by the interpretation given to it in N.N. Global (2)[N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd., (2023) 7 SCC 1 : (2023) 3 SCC (Civ) 564]. ***The Court failed to provide a reason for holding that Section 5 of the Arbitration Act does not have the effect of excluding the operation of Sections 33 and 35 of the Stamp Act in proceedings under Section 11 of the Arbitration Act. The non obstante clause in Section 5 does precisely this. In addition to the effect of the non obstante clause, the Arbitration Act is a special law.*** *We must also be cognizant of the fact that one of objectives of the Arbitration Act was to minimise the supervisory role of Courts in the arbitral process. [Statements of Objects and Reasons, Arbitration Act.]"*

(emphasis supplied)

97. Therefore, it is clear from a cumulative reading of the above that the seven-Judge Bench held that insufficient stamp duty will not be an impediment whilst referring a dispute to arbitration or at the stage of appointment of an arbitrator.

98. The Court reasoned that Section 5 of the Arbitration Act contains a non-obstante clause which shall preclude the operation of Sections 33 and 35 of the Stamp Act. It was further held that for the purposes of Section 8 or 11, the word "shall" employed in Sections 33 and 35 of the Stamp Act shall be read as directory in order to preserve the scheme of the Act.

99. Thus, in essence, this decision aims to preserve the sanctity of the arbitral process and its objective of speedy resolution. The Court did away

with the possibility of prolonging the process of initiating arbitration and prevented the occurrence of another adjudication before the Collector in cases of impounding of the instrument.

100. While there is no iota of doubt that this is a binding position of law, it must be understood within the confines of the question it answered.

101. Significantly, this decision pertains to the stage of Section 8 and 11 of the Arbitration Act and relates to stamp duty payable on the underlying document containing the arbitration clause. Accordingly, the reading of the provisions of the Stamp Act adopted in this decision is restricted to the Section 8 and 11 stages. The decision does not contemplate the procedure to be followed by a Court for enforcement of an arbitral award and is silent on Section 36 of the Arbitration Act.

102. Therefore, the aforesaid position of law is restricted to a specific stage in arbitration proceedings to maintain sanctity of the arbitral process as envisaged by the Arbitration Act. Nowhere does the aforesaid decision call for such an interpretation of the Stamp Act at the stage of enforcement of the award as a decree of the Court.

103. In fact, save for Sections 8 and 11 of the Arbitration Act, the decision delineates the following framework of the Stamp Act:

> *"44. In terms of Section 35, an instrument which is not duly stamped is inadmissible in evidence for any purpose and it shall not be acted upon, registered, or authenticated. [Subject to the proviso to Section 35.] Clause (a) of the proviso to Section 35 stipulates that the bar contained*

in the provision is removed upon the payment of duty and the penalty (if any). The party or parties may pay the duty chargeable to the person who has the authority to receive evidence by law or by consent of parties. ***Section 35 is significant because it gives teeth to the Stamp Act by ensuring that stamp duty is paid before rights and obligations arising from an agreement are enforced****.*

***

47. In terms of Section 42 of the Stamp Act, ***an instrument is admissible in evidence once the payment of duty and a penalty (if any) is complete****. It stipulates that either the person admitting the instrument in evidence or the Collector, as the case may be, shall certify by endorsement that the proper duty has been paid.*

48. ***The procedure contemplated by the Stamp Act facilitates the collection of revenue. It permits instruments to be impounded*** *not only by persons in charge of a public office or those who are empowered by law to receive evidence but also by any person who is empowered to receive evidence by consent of parties. The statute then sets out the procedure to be followed upon impounding a document.* ***This procedure ensures that stamp duty is paid****.* ***After the payment of the appropriate amount under the appropriate description in Schedule I and the penalty (if any), the Stamp Act provides for the certification of such payment by an endorsement by the appropriate authority. Once an instrument has been endorsed, it may be admitted into evidence, registered, acted upon or authenticated as if it had been duly stamped****."*

(emphasis supplied)

104. Although the Bench did not lay down any law with respect to enforcement of an arbitral award, it did delineate the scheme of the Act. It recognised that an insufficiently stamped instrument is inadmissible as evidence and cannot be acted upon by virtue of Section 35, and this bar can only be removed upon the payment of duty and penalty (if any) in light of the said provision. The Court recognised that Section 35 *"gave teeth"* to the Stamp Act by *"ensuring that stamp duty is paid before rights and obligations arising from an agreement are enforced".*

105. The Court further observed that an instrument becomes admissible only after payment of the deficit duty and penalty, if applicable, in view of Section 42. It was further elaborated that the procedure of impounding ensures that stamp duty is paid, which is nothing but collection of revenue for the State.

106. The Court further held that the object of the Stamp Act is indeed preserved, in the following words:

> *"205. **The interpretation accorded to the Stamp Act by this Court in the present judgment does not allow the law to be flouted**. The Arbitral Tribunal continues to be bound by the provisions of the Stamp Act, including those relating to its impounding and admissibility. The interpretation of the law in this judgment ensures that the provisions of the Arbitration Act are given effect to while not detracting from the purpose of the Stamp Act.*
>
> *206. **The interests of the Revenue are not jeopardised in any manner because the duty chargeable must be paid before the agreement in question is rendered admissible and the lis between the parties adjudicated.** The question is at which stage the agreement would be impounded and not whether it would be impounded at all. The Courts are not abdicating their duty but are instead giving effect to:*
>
> *206.1. The principle of minimal judicial intervention in Section 5 of the Arbitration Act;*
> *206.2. The prima facie standard applicable to Sections 8 and 11 of the Arbitration Act; and*
> *206.3. The purpose of the Stamp Act which is to protect the interests of the Revenue and not arm litigants with a weapon of technicality by which they delay the adjudication of the lis."*
>
> ***(emphasis supplied)***

107. Thus, even the Bench of seven Judges of the Supreme Court held that the purpose behind the Stamp Act shall be preserved while striking a balance with the objectives behind the Arbitration Act. It is clearly held

that the Court is not doing away with the procedure envisaged under the Stamp Act but only delineating the stage at which it may be invoked.

108. The aforesaid observation is crucial to the present discourse, inasmuch as it draws a bridge between payment of sufficient stamp duty on an instrument and its enforceability. It therefore recognises payment of stamp duty as a pre-requisite to enforcement of an arbitral award.

The Stamp Act

109. Having delineated the backdrop of necessity of stamp duty at different stages of arbitral proceedings in light of various precedents, I deem it fit at this juncture to advert to the Stamp Act itself. For this purpose, it is apposite to reproduce relevant provisions of the Act hereinbelow:

> *"**2. Definitions.**—In this Act, unless there is something repugnant in the subject or context,—*
>
> ***
>
> *(6) **Chargeable**.—"chargeable" means, as applied to an instrument executed or first executed after the commencement of this Act, chargeable under this Act, and, as applied to any other instrument, chargeable under the law in force in India when such instrument was executed or, where several persons executed the instrument at different times, first executed;*
>
> *******
>
> *(11) **Duly stamped**. —"duly stamped", as applied to an instrument, means that the instrument bears an adhesive or impressed stamp of not less than the proper amount and that such stamp has been affixed or used in accordance with the law for the time being in force in India*
>
> *(12) **Executed and execution**. —"executed" and "execution" used with reference to instruments, mean "signed" and "signature" and includes*

attribution of electronic record within the meaning of section 11 of the Information Technology Act, 2000 (21 of 2000);

***

(14) ***"instrument"*** *includes—*
(a) every document, by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded;
(b) a document, electronic or otherwise, created for a transaction in a stock exchange or depository by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded; and
(c) any other document mentioned in Schedule I, but does not include such instruments as may be specified by the Government, by notification in the Official Gazette."

110. It is evident from the above that an arbitral award is an "instrument" for the purposes of the Act. Such an instrument becomes chargeable when it is "executed", which means nothing but "signed" by the party(s) to such instrument.

111. Pertinently, these are the definition clauses. The charging provision under the Act is Section 3, which, when read with Schedule IA[50], stipulates rates of stamp duty. The same is reproduced thus:

"3. Instruments chargeable with duty.*—Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefore respectively, that is to say—*

(a) every instrument mentioned in that Schedule which, not having been previously executed by any person, is executed in India on or after the first day of July, 1899;

(b) every bill of exchange payable otherwise than on demand or promissory note drawn or made out of India on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in India; and

[50] Schedule IA of the Indian Stamp (Delhi Amendment) Act, 2010

(c) every instrument (other than a bill of exchange, or promissory note) mentioned in that Schedule, which, not having been previously executed by any person, is executed out of India on or after that day, relates to any property situate, or to any matter or thing done or to be done, in India and is received in India:

Provided that no duty shall be chargeable in respect of—
(1) any instrument executed by, or on behalf of, or in favour of, the Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument;

(2) any instrument for the sale, transfer or other disposition, either absolutely or byway of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered under the Merchant Shipping Act 1894, Act No. 57 & 58 Vict. c. 60 or under Act XIX of 1838 Act No. or the Indian Registration of Ships Act, 1841, (CX of 1841) as amended by subsequent Acts."

Description of Instrument	*Proper Stamp-duty*
*12. **AWARD**, that is to say, any decision in writing by an arbitrator or umpire, not being an award directing a partition on a reference made otherwise than by an order of the Court in the course of a suit-*	
(a) where the amount or value of the property to which the award relates as set forth in such award, does not exceed Rs. 1,000;	*The same duty as a Bond (No.15) for such amount.*
(b) if it exceeds Rs. 1,000/- but does not exceed Rs. 5,000, and for every additional Rs. 1,000 or part thereof in excess of Rs. 5,000.	*One rupee for every one thousand rupees or part thereof of the value of the property to which the award relates.*

***15. BOND** as defined by section 2(5), not being a Debenture (No. 27), and not being otherwise provided for by this Act, or by the Court-fees Act, 1870-* *See ADMINISTRATION BOND (No.2), BOTTOMRY BOND (No. 16), CUSTOMS BOND (No. 26), INDEMNITY BOND (No. 34), RESPONDENTIA BOND (No. 56), SECURITY BOND (No. 57).* *Exemption* *Bond when executed by any person for the purpose of guaranteeing that the local income derived from the private subscription to a charitable dispensary or hospital or to any other object of public utility, shall not be less than a specified sum per mensem.*	*2% and 0.5% on bond issued by the local authority.*

112. Therefore, it is evident from a conjoint reading of definition of "chargeable" under Section 2(6), Section 3, along with Articles 12 and 15 to Schedule IA, that affixing signature on an instrument is the chargeable event, at which point, the rate as stipulated under Schedule IA must be paid on such instrument. Thus, there is no explicit and exclusive link between enforcement of an instrument (arbitral award in this case) and the payment of stamp duty on such instrument. In other words, <u>the Stamp Act does not envisage enforcement of an instrument as the trigger event for payment of stamp duty</u>.

113. On the other hand, Sections 17 and 18 envisage payment of stamp duty as follows:

*"**17. Instruments executed in India.**—All instruments chargeable with duty and executed by any person in India shall be stamped before or at the time of execution."*

"18. Instruments other than bills and notes executed out of India.—
(1) Every instrument chargeable with duty executed only out of India, and not being a bill of exchange or promissory note, may be stamped within three months after it has been first received in India.
(2) Where any such instrument cannot, with reference to the description of stamp prescribed therefore, be duly stamped by a private person, it may be taken within the said period of three months to the Collector, who shall stamp the same, in such manner as the State Government may by rule prescribe, with a stamp of such value as the person so taking such instrument may require and pay for."

***"62. Penalty for executing, etc., instrument not duly stamped.** —(1) Any person—*
(a) drawing, making, issuing, endorsing or transferring, or signing otherwise than as a witness, or presenting for acceptance or payment, or accepting, paying or receiving payment of, or in any manner negotiating, any bill of exchange payable otherwise than on demand or promissory note without the same being duly stamped; or
(b) executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped; or
(c) voting or attempting to vote under any proxy not duly stamped, shall for every such offence be punishable with fine which may extend to five hundred rupees:

Provided that, when any penalty has been paid in respect of any instrument under section 35, section 40 or section 61, the amount of such penalty shall be allowed in reduction of the fine, (if any) subsequently imposed under this section in respect of the same instrument upon the person who paid such penalty.

(2) If a share-warrant is issued without being duly stamped, the company issuing the same, and also every person who, at the time when it is issued, is the managing director or secretary or other principal officer of the company, shall be punishable with fine which may extend to five hundred rupees."

114. Therefore, the aforesaid provisions are to be read keeping in mind that stamp duty must ideally be paid before or at the time of execution, i.e.,

signing of the instrument. Section 17 clarifies that for all instruments executed in India (i.e., a domestic arbitral award for this discourse), such duty must be paid before or at the time of execution i.e., before or at the time of affixing signatures to such instrument. Whereas, Section 62 imposes penalty for non-compliance of Section 17.

115. Section 18 further mandates that instruments executed outside of India shall be duly stamped within three months of receiving it in India. To reiterate, for the purposes of this Act, execution means "signature".

116. To digress a little, Sections 13 to 15 of the Act are also noteworthy. These provisions are reproduced hereinbelow:

> ***"13. Instruments stamped with impressed stamps how to be written.***—*Every instrument written upon paper stamped with an impressed stamp shall be written in such manner that the stamp may appear on the face of the instrument and cannot be used for or applied to any other instrument.*
>
> ***14. Only one instrument to be on same stamp.***—*No second instrument chargeable with duty shall be written upon a piece of stamped paper upon which an instrument chargeable with duty has already been written:*
> *Provided that nothing in this section shall prevent any endorsement which is duly stamped or is not chargeable with duty being made upon any instrument for the purpose of transferring any right created or evidenced thereby, or of acknowledging the receipt of any money or goods the payment or delivery of which is secured thereby.*
>
> ***15. Instrument written contrary to section 13 or 14 deemed unstamped.***—*Every instrument written in contravention of section 13 or section 14 shall be deemed to be unstamped."*

117. Section 13 envisages instruments to be prepared on stamp paper. Section 14 provides that two instruments cannot be prepared on the same stamp paper. Further, Section 15 stipulates that if an instrument is prepared in contravention of these two provisions, such an instrument would be deemed as unstamped.

118. Proceeding further, Section 31 empowers the Collector to adjudicate upon the proper stamp duty payable. A party may also approach the Collector for his opinion regarding the duty, if any, to be paid on an instrument, even if such instrument has not been previously executed or stamped. Notably, there is no stipulation of a time-period under Section 31 for adjudication by the Collector. It also does not stipulate any period of time or stage of proceedings at which parties may approach the Collector. Upon such adjudication, as per Section 32, the Collector may certify by way of endorsement that such instrument is duly stamped, or that the instrument is not chargeable. However, proviso (a) to Section 32(3) categorically restricts the Collector from making such an endorsement if an instrument executed in India is brought after the expiry of one month from the date of its execution/signature. Therefore, it provides somewhat of a relaxation to the requirement as stipulated under Section 17. I deem it apposite to reproduce Sections 31 and 32 hereinbelow:

> ***"31. Adjudication as to proper stamp.*** *—(1) When any instrument, whether executed or not and whether previously stamped or not, is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount (not exceeding five rupees and not less than fifty naye paise) as the Collector may in each case direct, the*

Collector shall determine the duty (if any) with which, in his judgment, the instrument is chargeable.

(2) For this purpose the Collector may require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein, and may refuse to proceed upon any such application until such abstract and evidence have been furnished accordingly:

Provided that—
(a) no evidence furnished in pursuance of this section shall be used against any person in any civil proceeding, except in an inquiry as to the duty with which the instrument to which it relates is chargeable; and

(b) every person by whom any such evidence is furnished, shall, on payment of the full duty with which the instrument to which it relates, is chargeable, be relieved from any penalty which he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid."

"32. Certificate by Collector. *— (1) When an instrument brought to the Collector under section 31 is, in his opinion, one of a description chargeable with duty, and*

(a) the Collector determines that it is already fully stamped, or

(b) the duty determined by the Collector under section 31, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid, the Collector shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid.

(2) When such instrument is, in his opinion, not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable.

(3) Any instrument upon which an endorsement has been made under this section, shall be deemed to be duly stamped or not chargeable with duty, as the case may be; and, if chargeable with duty, shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped:

<u>Provided that nothing in this section shall authorize the Collector to endorse—</u>

<u>(a) any instrument executed or first executed in India and brought to him after the expiration of one month from the date of its execution or first execution, as the case may be;</u>

(b) any instrument executed or first executed out of India and brought to him after the expiration of three months after it has been first received in India; or

(c) any instrument chargeable with a duty not exceeding ten naye paise, or any bill of exchange or promissory note, when brought to him, after the drawing or execution thereof, on paper not duly stamped."

<u>(emphasis supplied)</u>

119. Therefore, at the cost of repetition, the plain words of the Stamp Act provide that stamp duty must be paid on or before execution of an instrument as per Section 17. Section 31, in a way, provides for deferred payment of such stamp duty, and Section 32 lays down a caveat that it can be deferred only up to one month from execution of an instrument.

120. Moving further, Chapter IV of the Stamp Act deals with instruments not duly stamped.

121. Section 33 entails that (i) every person having authority to receive evidence by law or by consent of parties, (ii) every person in charge of a public office, (iii) but not a police officer, before whom an instrument chargeable with duty is produced, is under a statutory obligation to impound such instrument if it appears to be not duly stamped. Section 33 is reproduced hereinbelow:

> ***"33. Examination and impounding of instruments.—(****1) Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.*
>
> *(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in 1[India] when such instrument was executed or first executed:*
>
> *Provided that—*
> *(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (V of 1898);*
> *(b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.*
> *(3) For the purposes of this section, in cases of doubt, —*
> *(a) the State Government may determine what offices shall be deemed to be public offices; and*
> *(b) the State Government may determine who shall be deemed to be persons in charge of public offices."*

122. It is evident from a plain reading that this provision imposes a duty on the authorities stipulated therein to impound a chargeable but insufficiently stamped award. The mandatory nature of this duty is evident from the word "shall", from the bar provided under Section 35 and from the stipulation of penalty under Section 62 for non-stamping.

123. Section 35 creates a clear bar against admitting an inadequately stamped instrument into evidence or acting upon it for any purpose, subject to the validation mechanisms and penalties prescribed thereunder:

*"**35. Instruments not duly stamped inadmissible in evidence, etc.**—No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:*

Provided that—
(a) any such instrument shall be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of any instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

(b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;

(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;

(d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure 1898 (V of 1898);

(e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government, or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act."

124. This provision, in the words of the Supreme Court in ***In Re: Interplay (supra)***, "gives teeth" to the Stamp Act and ensures that rights and liabilities are enforced only after payment of adequate stamp duty and penalty, if any.

125. Section 35 prohibits a Court from admitting in evidence, registration or authentication of such instruments or acting upon such instrument.

126. In my considered view, "acted upon" has a wide import which includes enforcement of an instrument. Therefore, in the present case, it would include within its ambit the enforcement of an arbitral award under Section 36 of the Arbitration Act.

127. While Section 35 imposes a bar on this Court from acting upon an insufficiently stamped instrument, it also reminds us that stamp duty is a curable defect. In this regard, proviso (a) mandates that insufficiently stamped instruments can be admitted as evidence or acted upon only after deposit of the deficient duty along with penalty.

128. It is also pertinent to note that Section 35 earlier read as *"not being an instrument chargeable with a duty not exceeding ten naye paise only, or a bill of exchange or promissory note, shall, <u>subject to all just exceptions</u>"*. However, evidently, it now employs the word "shall". Therefore, the shift from permitting just exceptions to solely using the word "shall" indicates that only upon the payment of deficient duty along with stamp, can the instrument be acted upon. Notably, this provision does not provide room for only the payment of deficient duty without penalty to render an instrument admissible as evidence or to act upon it for enforcement.

129. Therefore, Section 35 does two things: (i) it restricts this Court from acting upon an insufficiently stamped instrument and, (ii) permits this Court to act upon such instrument after payment of deficit along with penalty[51].

130. Thereafter, Section 36 of the Stamp Act grants protection to certain instruments in the following manner:

> *"**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."*

131. Section 37 provides that in cases where an instrument bears sufficient stamp duty but of improper description, State Governments are empowered to make rules to certify such instruments to be duly stamped, as follows:

> *"**37. Admission of improperly stamped instruments.** — The State Government may make rules providing that, where an instrument bears a stamp of sufficient amount but of improper description, it may, on payment of the duty with which the same is chargeable, be certified to be duly stamped, and any instrument so certified shall then be deemed to have been duly stamped as from the date of its execution."*

132. Section 38 further delineates the procedure for handling an impounded instrument, as follows:

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[51] *Ram Rattan v. Bajrang Lal*, **(1978) 3 SCC 236;** *Avinash Kumar Chauhan v. Vijay Krishna Mishra*, **(2009) 2 SCC 532 (para 25);** *Sanjeeva Reddi* v. *Johanputra Reddi*, **AIR 1972 AP 373 (para 9);** *T. Bhaskar Rao v. T. Gabriel,* **AIR 1981 AP 175 (para 5)**

"38. Instruments impounded, how dealt with.—

(1) When the person impounding an instrument under section 33 has by law or consent of parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by section 35 or of duty as provided by section 37, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.

(2) In every other case, the person so impounding an instrument shall send it in original to the Collector."

133. Thus, where an instrument is admitted in evidence upon payment of penalty as per Section 35 (or payment of duty as per Section 37), (i) an authenticated copy along with (ii) the collected amount and a (iii) certificate in writing stipulating the amount of duty and penalty, must be forwarded to the concerned Collector. In all other cases, i.e., if the instrument is not admitted as evidence upon payment of duty and penalty, the impounding authority "shall" forward the original instrument to the Collector. The use of "shall" reiterates the mandatory nature of the provision.

134. Section 38(1) clarifies that a Court is empowered to admit the instrument upon payment of stamp duty and penalty. If the Court adopts this procedure, it need only forward an authenticated copy to the Collector with the amount so collected.

135. Notably, Section 39 grants discretion to the Collector to refund the amount of penalty paid under Section 38(1).

136. Therefore, as noted in the preceding paragraphs, after an insufficiently stamped instrument is impounded under Section 33, it is either admitted in evidence by payment of deficit duty and penalty (if any) by the authority under Section 33 or the original instrument is forwarded to the Collector in terms of Section 38(1) and 38(2) respectively.

137. Upon receipt of such instrument, the Collector acts in accordance with Section 40, which stipulates the Collector's power to stamp impounded instruments as follows:

> ***"40. Collectors power to stamp instruments impounded.***—*(1) When the Collector impounds any instrument under section 33, or receives any instrument sent to him under section 38, sub-section (2), not being an instrument chargeable with a duty not exceeding ten naye paise only or a bill of exchange or promissory note, he shall adopt the following procedure:—*
>
> *(a) if he is of opinion that such instrument is duly stamped, or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be;*
>
> *(b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees; or, if he thinks fit, an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees:*
>
> *Provided that, when such instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.*
>
> *(2) Every certificate under clause (a) of sub-section (1) shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.*

(3) Where an instrument has been sent to the Collector under section 38, sub-section (2), the Collector shall, when he has dealt with it as provided by this section, return it to the impounding officer."

138. Section 40 therefore provides that if the Collector is satisfied that the impounded instrument is duly stamped (or not chargeable), he may endorse it. However, if the Collector is of the opinion that an instrument chargeable with duty is not duly stamped, he "shall require" payment of proper duty "together with" the statutory penalty. After compliance of the aforesaid, the Collector is bound to return such instrument to the impounding authority.

139. Therefore, in Section 40(1)(b), it is evident from the use of the words "together with" that there is no discretion to the waive the penalty component. However, discretion is granted with respect to the quantum of penalty levied, as it apparent from the words "if he thinks fit".

140. Accordingly, it emerges from a reading of Sections 33, 35, 38 and 40 that the question of payment of penalty will arise in cases wherein a chargeable yet insufficiently stamped arbitral award is brought before any of the competent authorities stipulated under Section 33. It is only upon the payment of adequate duty along with penalty can such an award be acted upon by an enforcing Court. The deficit duty and penalty may be deposited before the impounding authority under Section 38(1) (calculated as per Section 35) or the Collector under Section 40.

141. The aforesaid stipulation of payment of penalty is relaxed by Sections 39 and 41, which makes for an interesting read.

142. Section 39 empowers the Collector to exercise discretion for the refund of the penalty paid under Section 38(1), i.e., before the impounding authority, as is evident from the use of the phrase "if he thinks fit". This discretion may be exercised to waive "any portion of the penalty". Section 39 reads as thus:

> *"**39. Collector's power to refund penalty paid under section 38, sub-section (1).** — (1) When a copy of an instrument is sent to the Collector under section 38, sub-section (1), he may, if he thinks fit, refund any portion of the penalty in excess of five rupees which has been paid in respect of such instrument.*
>
> *(2) When such instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector may refund the whole penalty so paid."*

143. Further, the Collector under Section 41 need not direct deposit of penalty if a party approaches him within one year from the execution of the instrument offering to pay the deficit duty and if the Collector is satisfied that grounds of either mistake, accident or urgent necessity are made out for not depositing the requisite stamp duty in accordance with the Act. Section 41 is hereinbelow:

> ***"41. Instruments unduly stamped by accident.**— If any instrument chargeable with duty and not duly stamped, not being an instrument chargeable with a duty not exceeding ten naye paise only or a bill of exchange or promissory note, is produced by any person of his own motion before the Collector within one year from the date of its execution or first execution, and such person brings to the notice of the Collector the fact that such instrument is not duly stamped and offers to*

pay to the Collector the amount of the proper duty, or the amount required to make up the same, and the Collector is satisfied that the omission to duly stamp such instrument has been occasioned by accident, mistake or urgent necessity, he may, instead of proceeding under sections 33 and 40, receive such amount and proceed as next herein-after prescribed."

144. Once the requisite stamp duty and penalty, if any, have been duly paid (whether under Section 35, Section 40, or Section 41), the Collector or the authority under Section 33 admitting this instrument in evidence, shall endorse the instrument under Section 42. In doing so, the concerned authority is to certify that the proper duty and penalty have been levied. It is only upon such endorsement that the instrument regains statutory admissibility and can be acted upon in enforcement proceedings. Section 42 is as follows:

> ***"42. Endorsement of instruments on which duty has been paid under section 35, 40 or 41.***—*(1) When the duty and penalty (if any), leviable in respect of any instrument have been paid under section 35, section 40 or section 41, the person admitting such instrument in evidence or the Collector, as the case may be, shall certify by endorsement thereon that the proper duty or, as the case may be, the proper duty and penalty (stating the amount of each) have been levied in respect thereof, and the name and residence of the person paying them.*
>
> *(2) Every instrument so endorsed shall thereupon be admissible in evidence, and may be registered and acted upon and authenticated as if it had been duly stamped, and shall be delivered on his application in this behalf to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct:*
>
> *Provided that—*
>
> *(a) no instrument which has been admitted in evidence upon payment of duty and a penalty under section 35, shall be so delivered before the expiration of one month from the date of such impounding, or if the*

Collector has certified that its further detention is necessary and has not cancelled such certificate;

(b) nothing in this section shall affect the Code of Civil Procedure (XIV of 1882), section 144, clause 3."

145. Therefore, in addition to Sections 35 and 38, even Section 42 envisages the payment of deficit duty along with penalty. It does not provide an option to not pay penalty by using terms like "or" and other such disjunctive conjunctions. The only discretion in this regard is granted to the Collector by virtue of Sections 39 and 41 as stated in the preceding paragraphs.

146. In my considered view, the use of expression "if any" in conjunction with "penalty" does not render the penalty merely optional. This expression must be understood in the context of other provisions of the Act such as Section 37, 39 and 41 and not read in isolation. These provisions empower the State Government and the Collector respectively to do away with penalty. Therefore, this expression merely accommodates exemptions and does not, in any manner whatsoever, confer discretion upon this Court to waive penalty.

Overview of the Act

147. It emerges from the scheme of the Act that Section 17 requires an instrument to be stamped before or at the time of execution/signed and relaxation of one month from the execution of the instrument is granted by proviso (a) to Section 32(3), after which the Collector becomes *functus*

officio and cannot endorse any instrument executed in India, i.e., a domestic arbitral award in the present case.

148. Notably, Section 31 does not provide any time limit for adjudication by the Collector or any such period within which parties should approach the Collector. Hence, if parties approach the Collector within a month, the Collector may endorse the instrument upon payment of requisite duty without the payment of any penalty. However, if they approach after a month, the Collector cannot directly endorse such instrument due to the bar imposed by Section 32, and would have to impound the instrument under Section 33 and thereafter, proceed under Section 40 and 42 of the Act. Alternatively, any other competent authority before which such instrument is produced, shall impound and either proceed under Section 35(1) or Section 38(2).

149. Undoubtedly, instruments not duly stamped are inadmissible as evidence under Section 35 and the Court is prevented from acting upon the same. Further, if such an instrument falls before an authority as stipulated under Section 33, such authority is duty-bound to impound the instrument. Thereafter, the procedures under Section 35, 38 and 40 of the Act are triggered.

150. Proviso (a) to Section 35 permits an insufficiently stamped instrument to be admitted in evidence only after the deposit of deficient duty along with penalty. The provision employs the term "duty, together with a penalty". Therefore, there is no room under this proviso to discard

the penalty component. The use of "if any" with respect to penalty is only to provide room for discretion granted to the Collector. The Court is not accorded with such discretion.

151. Thereafter, Section 38 permits the concerned authority besides the Collector to either (i) receive deficient duty and penalty under Section 35 or only duty under Section 37 (specific cases) and forward an authenticated copy of the instrument to the Collector along with the collected amount and requisite details or (ii) in other cases, send the impounded original instrument to the Collector.

152. Once the Collector receives such insufficiently stamped instrument impounded under Section 38(2) or impounds himself under Section 33, he "shall" require payment of the deficit along with penalty, as under Section 40(1)(b). Therefore, there is no room under this provision as well to do away with the penalty component altogether; discretion lies with respect to the quantum of penalty.

153. Subsequently, the instruments so impounded under Sections 35, 40 or 41, may be endorsed by the Collector (or the authority admitting such instrument in evidence) only after the duty and if applicable, penalty is paid as per Section 42.

154. Notably, the Collector may, under Section 41, do away with penalty and require payment of the deficit duty if the conditions stipulated under this Section are satisfied.

155. Consequently, from a bare and conjoint reading of Sections 17, 32, 33, 35, 40, and 42, no occasion arises for a Decree Holder to unilaterally pay the stamp duty or the deficit duty at a belated stage, i.e., any time after one month from execution of the instrument (arbitral award herein), without the penalty component (if applicable) being paid either to the impounding authority under Section 33 or the Collector. Thus, an insufficiently stamped award ought to be impounded by an authority under Section 33 or Decree Holder may approach the concerned Collector, who shall then proceed to endorse the award as per Section 42 after the pre-requisites under the Act are satisfied. No discretion is granted to this Court by the statute to waive penalty; such discretion has been vested with the Collector.

The Act as Interpreted by the Supreme Court

156. Having delineated the scheme of the Act, I shall now refer to certain decisions of the Supreme Court that may further act as a guiding compass in order to ascertain how should the Stamp Act be understood.

157. The Supreme Court in ***Ram Rattan v. Bajrang Lal***[52] reiterated that if competent authority comes across insufficiently stamped instrument, the same shall be impounded and that such instrument cannot be admitted as evidence until duty and penalty is paid. The relevant excerpt is below:

[52] **(1978) 3 SCC 236 : 1978 SCC OnLine SC 157**

"7. Mr Desai then contended that where an instrument not duly stamped or insufficiently stamped is tendered in evidence, the Court has to impound it as obligated by Section 33 and then proceed as required by Section 35 viz. to recover the deficit stamp duty along with penalty. Undoubtedly, if a person having by law authority to receive evidence and the civil Court is one such person before whom any instrument chargeable with duty is produced and it is found that such instrument is not duly stamped, the same has to be impounded. The duty and penalty has to be recovered according to law. Section 35, however, prohibits its admission in evidence till such duty and penalty is paid. The plaintiff has neither paid the duty nor penalty till today. Therefore, stricto sensu *the instrument is not admissible in evidence. Mr Desai, however, wanted us to refer the instrument to the authority competent to adjudicate the requisite stamp duty payable on the instrument and then recover the duty and penalty which the party who tendered the instrument in evidence is in any event bound to pay and, therefore, on this account it was said that the document should not be excluded from evidence. The duty and the penalty has to be paid when the document is tendered in evidence and an objection is raised. The difficulty in this case arises from the fact that the learned trial Judge declined to decide the objection on merits and then sought refuge under Section 36. The plaintiff was, therefore, unable to pay the deficit duty and penalty which when paid subject to all just exceptions, the document has to be admitted in evidence. In this background while holding that the document Ext. I would be inadmissible in evidence as it is not duly stamped, we would not decline to take it into consideration because the trial Court is bound to impound the document and deal with it according to law."*

158. In ***Shanti Devi L. Singh v. Tax Recovery Officer***[53], the Supreme Court held the following:

"11. There are two provisions in the Stamp Act which provide for the adjudication of stamp duty. Under Section 31, it is open to the executants of any document, at any stage but within the time limit set out in Section 32, to produce a document before the Collector of Stamps and require him to adjudicate on the question whether the document should bear any stamp duty. The Collector thereupon may adjudicate the stamp duty himself or refer the matter to the Chief Controlling Revenue Authority of the State. In turn, it is open to the Chief Controlling Revenue Authority to refer the matter to the High Court for

[53] **(1990) 3 SCC 605 : 1990 SCC (Tax) 356 : (1990) 183 ITR 481 : 1990 SCC OnLine SC 219**

an authoritative decision (Sections 32 and 56). This procedure could have been followed by the petitioners if they wished to seek an answer to the question whether the certificate of sale is liable to stamp duty but they have not done it and the time limit under Section 32 has run out. The other provision that may become applicable is Section 33. Under this section, if any document (and this includes a certificate of sale) is presented to the Registrar for registration and the Registrar is of opinion that it is a document which should bear stamp duty but that it has not been stamped, it is his duty to impound the document and send it on to the Collector of Stamps for necessary adjudication (Section 38). This contingency has also not happened. The third contingency, also provided for in Section 33 is when a party wishes to rely upon the certificate of sale as a piece of evidence before a Court or an authority entitled to take evidence. Such Court or authority will also have to impound the document and shall not admit the same in evidence unless the stamp duty chargeable and the stipulated penalty are paid. This situation has not arisen so far but may arise at some time in future. It is unnecessary to anticipate the same and decide the issue. We shall therefore leave the issue of stamp duty to be adjudicated upon in the normal course, as and when found necessary, and express no views thereon at this stage."

159. The Court highlighted the two ways for adjudication of stamp duty under the Act, i.e., Section 31 and 33. The former applies if parties themselves approach the Collector within the time period stipulated under Section 32. If this time period expires, the recourse is Section 33, whereby the instrument shall first be impounded, thereafter the duty and penalty be paid to make good the instrument, and only then will the Collector endorse such instrument. Upon such endorsement, the instrument becomes eligible to be admitted in evidence or otherwise acted upon.

160. More recently, the Supreme Court in ***Vijay v. UOI & Ors.***[54], reiterated the underlying scheme of Section 35 as follows:

[54] **2023 INSC 1030**

"27. The object of the Stamp Act is to collect proper stamp duty on an instrument or conveyance on which such stamp duty is payable. Section 35 is a provision to cater for the instruments not being properly stamped and, as such, not being admissible in evidence. A document not duly stamped cannot be admitted for any purposes. To impose the bar of admissibility provided under this section, the following twin conditions are required to be fulfilled:

(i) Instrument must be chargeable with duty;
(ii) It is not duly stamped.

28. If the documents sought to be admitted are not chargeable with duty, Section 35 has no application…"

161. In ***Bidyut Sarkar & Anr. v. Kanchilal Pal (Dead) through LRs & Anr.***[55], the Supreme Court recapitulated the scheme of the Act:

"21. According to the language of the section 35 of the Stamp Act, instruments not duly stamped would be inadmissible in evidence, and ***any instrument chargeable with duty would be admissible in evidence only and only if such instrument is duly stamped****. The proviso gives illustration as to how the instrument would become admissible upon payment of duty with which it was chargeable or* ***in case of instruments insufficiently stamped, the payment is made to make up such duty along with penalty*** *mentioned therein. It also refers to exceptions where a document could be admissible in evidence under a given situation. As elaborated in clauses (b), (c), (d) and (e) of the proviso, the instrument in question i.e. agreement to sell dated 23.03.1999 does not fall under any exception.*

22. Section 36 of the Stamp Act provides for admissibility of an instrument not being questioned if the same had been admitted in evidence on the ground that it is not duly stamped except as provided under section 61 of the Stamp Act...

23. Section 40 of the Stamp Act gives power to the Collector to stamp such instruments which have been impounded. The Collector will determine the proper duty payable on such instrument along with penalty as provided in clause (b) of section 41 (sic).

[55] **2024 INSC 704**

24. Section 42 of the Stamp Act provides that when duty and penalty, if any, leviable in respect of any instrument has been paid under sections 35, 40 or 41 upon endorsement by the Collector that such duty has been paid, instrument shall thereupon be admissible in evidence."

(emphasis supplied)

162. Thereafter, in ***Aman Bhatia v. State (GNCT of Delhi)***[56], the Apex Court held that:

*"32. **Section 35** is of particular significance to the issue before this Court as it **renders instruments which are not duly stamped inadmissible in evidence for any purpose and imposes a prohibition on such instruments from being acted upon, registered, or authenticated.** However**, the bar is removed on payment of duty and the penalty**. The **Collector, again, by powers vested in him under Section 40 is authorised to levy penalty.** Section 42 reinforces that the purpose of stamping is in payment of duty, **as once the payment of duty and a penalty is complete, the instrument is admissible.***

*33. **The common thread running across the above-mentioned provisions is that the Government desires that the holder of the instrument pays appropriate stamp duty**. To fulfil this objective, the Government ensures there is sufficient availability of stamps through licensed stamp vendors. It is for this reason the Government remunerates a stamp vendor as he is facilitating the accessibility of stamps on behalf of the Government, and thus the role being performed by licensed stamp vendor is nothing short of a highly important public duty, essential for ensuring the efficient collection of revenue on behalf of the State."*

(emphasis supplied)

163. The aforesaid excerpt succinctly reiterates the foregoing discussion that the Stamp Act ensures collection of revenue. At the cost of repetition, Section 35 bars a Court from admitting in evidence or otherwise acting upon an insufficiently stamped instrument. This bar is lifted upon payment

[56] **2025 INSC 618**

of duty and penalty (if applicable), thereby reaffirming the curable nature of stamping an instrument.

164. With respect to the aspect of penalty, the Supreme Court gave detailed guidelines in ***H.C. Dhanda Trust v. State of M.P.***[57]. The relevant portion is hereinbelow:

> *"15. Section 40 of the Stamp Act, 1899 provides for Collector's power to stamp instruments impounded. Section 40(1) which is relevant for the present case is as follows:*
>
> > *"**40. Collector's power to stamp instruments impounded**.— (1) When the Collector impounds any instrument under Section 33, or receives any instrument sent to him under Section 38, sub-section (2), not being an instrument chargeable with a duty not exceeding ten naye paise only or a bill of exchange or promissory note, he shall adopt the following procedure—*
> >
> > *(a) if he is of opinion that such instrument is duly stamped, or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be;*
> > *(b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees; or, if he thinks fit, an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees:*
> >
> > *Provided that, when such instrument has been impounded only because it has been written in contravention of Section 13 or Section 14, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section."*
>
> *16. According to Section 40(1)(b) if the Collector is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees; or, if he thinks fit,*

[57] **(2020) 9 SCC 510 : 2020 SCC OnLine SC 753**

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an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof. The statutory scheme of Section 40(1)(b) as noticed above indicates that when the Collector is satisfied that instrument is not duly stamped, he shall require the payment of proper duty together with a penalty of five rupees. The relevant part of Section 40(1)(b) which falls for consideration in these appeals is:

> *"or, if he thinks fit, an amount not exceeding ten times the amount of the proper duty or deficient portion thereof."*
>
> *(emphasis supplied)*

17. The amount of penalty thus can be an amount not exceeding ten times. The expression "an amount not exceeding ten times" is preceded by expression "if he thinks fit". The statutory scheme, thus, vests the discretion to the Collector to impose the penalty amount not exceeding ten times. Whenever statute transfers discretion to an authority the discretion is to be exercised in furtherance of objects of the enactment. The discretion is to be exercised not on whims or fancies rather the discretion is to be exercised on rational basis in a fair manner. The amount of penalty not exceeding ten times is not an amount to be imposed as a matter of force. Neither imposition of penalty of ten times under Section 40(1)(b) is automatic nor can be mechanically imposed. The concept of imposition of penalty of ten times of a sum equal to ten times of the proper duty or deficiency thereof has occurred in other provisions of the Act as well.

18. We may refer to Section 35(a) in this context which is as follows:

> *"**35. Instruments not duly stamped inadmissible in evidence, etc**.—No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:*
> *Provided that—*
> *(a) any such instrument shall be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of any instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;"*

19. It is relevant to notice that Section 35 contemplates that when ten times the amount of the proper duty of or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion is required to be deposited. Under Section 39 the Collector is empowered to refund penalty. As noticed above under Section 35(a) there is no option except to pay sum equal to ten times of such duty or deficient portion but Section 39 empowers the Collector to refund any portion of the penalty in excess of five rupees which is expressed in the following words:

> *"if he thinks fit refund any portion of the penalty in excess of five rupees which has been paid in respect of such instrument."*

20. The legislative intent which is clear from reading of Sections 33, 35, 38 and 39 indicates that with respect to the instrument not duly stamped, ten times penalty is not always retained and power can be exercised under Section 39 to reduce penalty in regard to that there is a statutory discretion in the Collector to refund penalty.

21. Section 39(1)(b) of the Stamp Act, 1899 came for consideration before this Court in Gangappa v. Fakkirappa [Gangappa v. Fakkirappa, (2019) 3 SCC 788 : (2019) 2 SCC (Civ) 415] (of which one of us Ashok Bhushan, J. was a member). This Court noticed the legislative scheme and held that the legislature has never contemplated that in all cases penalty to the extent of ten times should be ultimately realised. In para 16 the following has been laid down by this Court: (SCC p. 794)

> *"16. The Deputy Commissioner under Section 38 is empowered to refund any portion of the penalty in excess of five rupees which has been paid in respect of such instrument. Section 38 sub-section (1) again uses the expression "if he thinks fit". Thus, in cases where penalty of 10 times has been imposed, the Deputy Commissioner has discretion to direct the refund of the penalty in facts of a particular case. The power to refund the penalty under Section 38 clearly indicates that the legislature has never contemplated that in all cases penalty to the extent of 10 times should be ultimately realised. Although the procedural part which provides for impounding and realisation of duty and penalty does not give any discretion under Section 33 for imposing any lesser penalty than 10 times, however, when provision of Section 38 is read, the discretion given to the Deputy Commissioner to refund the penalty is akin to exercise of the jurisdiction under Section 39 where while*

determining the penalty he can impose the penalty lesser than 10 times."

(emphasis in original)

The expression "if he thinks fit" also occurs in Section 40(1) clause (b). The same legislative scheme as occurring in Section 39 is also discernible in Section 40(1)(b), there is no legislative intendment that in all cases penalty to the extent of ten times the amount of proper stamp duty or deficient portion should be realised. The discretion given to the Collector by use of the expression "if he thinks fit" gives ample latitude to the Collector to apply his mind on the relevant factors to determine the extent of penalty to be imposed for a case where instrument is not duly stamped. Unavoidable circumstances including the conduct of the party, his intent are the relevant factors to come to a decision.

22. The purpose of penalty generally is a deterrence and not retribution. When a discretion is given to a public authority, such public authority should exercise such discretion reasonably and not in oppressive manner. The responsibility to exercise the discretion in reasonable manner lies more in cases where discretion vested by the statute is unfettered. Imposition of the extreme penalty i.e. ten times of the duty or deficient portion thereof cannot be based on the mere factum of evasion of duty. The reason such as fraud or deceit in order to deprive the Revenue or undue enrichment are relevant factors to arrive at a decision as to what should be the extent of penalty under Section 40(1)(b).

23. We may refer to the judgment of this Court in Peteti Subba Rao v. Anumala S. Narendra [Peteti Subba Rao v. Anumala S. Narendra, (2002) 10 SCC 427] . This Court had occasion to consider in the above case provisions of Section 40 of the Stamp Act, 1899. Referring to Section 40 this Court made the following observation in para 6: (SCC p. 429)

"6. ... The Collector has the power to require the person concerned to pay the proper duty together with a penalty amount which the Collector has to fix in consideration of all aspects involved. The restriction imposed on the Collector in imposing the penalty amount is that under no circumstances the penalty amount shall go beyond ten times the duty or the deficient portion thereof. That is the farthest limit which meant only in very extreme situations the penalty need be imposed up to that limit. It is unnecessary for us to say that the Collector is not required by law to impose the maximum rate of penalty

> *as a matter of course whenever an impounded document is sent to him. He has to take into account various aspects including the financial position of the person concerned."*

24. This Court in the above case categorically held that it is only in the very extreme situation that penalty needs to be imposed to the extent of ten times.

25. The Collector by imposing ten times penalty in his order has given the reason for imposition as "the party has not mentioned the actual nature of the document with the intention to escape the duty". When the Collector found intention to escape the duty, it was the case of imposition of penalty but whether the reason given by the Collector is sufficient for imposition of extreme penalty of ten times is the question which needs to be further considered. The High Court while considering the question of imposition of penalty of ten times has also given almost same reason in the following words: (H.C. Dhanda Trust case [H.C. Dhanda Trust v. State of M.P., 2017 SCC OnLine MP 1755 : (2018) 1 MP LJ 318] , SCC OnLine MP paras 31-32)

> *"31. … But in the present case the complete title has been transferred by Trust to Jogesh Dhanda and Ishan Dhanda in the name of deed of assent. Therefore, there was intention to evade the heavy stamp duty on such transaction. Therefore, the Collector of Stamps has rightly imposed 10 times penalty which is maximum under the Act.*
> *32. In view of the above, I do not find any merit in this writ petition. The same is hereby dismissed."*

26. No other reasons have been given either by the Collector or by the High Court justifying the imposition of maximum penalty of ten times. It is not the case of the Collector that the conduct of the appellant was dishonest or contumacious. The High Court in its judgment [H.C. Dhanda Trust v. State of M.P., 2017 SCC OnLine MP 1755 : (2018) 1 MP LJ 318] has noticed that although the resolution was passed on 6-4-2005 to execute the deed of transfer by trustees in favour of Jogesh Dhanda and Ishan Dhanda, but later on they deliberately executed the deed in the name of deed of assent on a stamp paper of Rs 200. For the reason given by the Collector as well as by the High Court that there was intention to evade the stamp duty in describing the document as deed of assent the imposition of the penalty was called for but in the facts and circumstances and the reasons which have been given by the Collector of Stamps as noticed above we are satisfied that this was not a case of imposition of extreme penalty of ten times of deficiency of stamp duty. Taking into consideration all facts and circumstances of the

> *case, we are of view that ends of justice will be served in reducing the penalty imposed to the extent of the half i.e. five times of deficiency in the stamp duty."*

165. Therefore, the Court in ***H.C. Dhanda Trust (supra)*** emphasised that the purpose of imposing penalty is deterrence and is not a matter of ordinary course.

166. It emerges from the aforesaid decision that the Court placed reliance on Section 40 of the Act to hold that Section 40(1)(b) allows the Collector to require payment of duty and penalty. The penalty shall be of five rupees or if deemed fit, any amount not exceeding ten times the amount of property duty or the deficit amount. It was reasoned that this provision grants discretion to the Collector to impose any penalty from the minimum of five rupees to the maximum of up to ten times the proper or deficit stamp duty. In this light, it was emphasised that such statutory discretion is to be exercised in accordance with the object of the statute, in a rational and fair manner, and the Collector shall not act on whims.

167. The key element herein was that imposition of ten times penalty under Section 40(1)(b) was not automatic. This is evident from the words employed under Section 35 proviso (a), which stipulates penalty *"of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum* ***equal to*** *ten times such duty or portion".* Thus, this is starkly distinct from Section 40(1)(b).

168. The aforesaid observation also buttresses my view that the impounding authority or the Courts do not have any discretion in the levy of penalty, as is evident from the comparison between Section 35 and 40.

169. The Court considered the relaxation granted under Section 39 to waive penalty and held that the penalty need not always be ten times. Discretion must be exercised reasonably and not in an oppressive manner.

170. The statutory import, therefore, is that in order to impose maximum penalty, mere intent to evade stamp duty will not suffice. Instead, there must exist an element of fraud or deceit to unjustly enrich from public exchequer and such other extreme cases.

171. Therefore, in view of the foregoing legal position as drawn from binding precedents and the statute itself, it is safe to say that while stamp duty is a curable defect, the cure must necessarily be in accordance with the Stamp Act, which mandates payment of the deficient duty and penalty as stipulated.

Interplay between the Stamp Act and the Arbitration Act

172. The interaction between these two Acts has resulted in certain legal and pragmatic issues in enforcement proceedings for both Decree Holders and Judgment Debtors alike.

173. The dichotomy is that, on one hand, inadequate stamping is not a ground to set aside an award under Section 34 of the Arbitration Act as held in ***M. Anasuya Devi (supra)***; apparently, the Arbitration Act also does not stipulate deposit of stamp duty on the award or mandate the Tribunal to ensure the same. However, on the other hand, it is trite that an instrument must be duly stamped for its enforcement. Therefore, obstacle arises at the stage of Section 36 i.e., enforcement of the award, which can only be invoked after the statutory three-month period from passing of the award has expired.

174. The issue gains further prominence since the Stamp Act does not expressly provide room for such three-month window and instead stipulates a maximum of one month for stamping the award from its execution/signing. The Act also prevents a competent authority from acting upon an insufficiently stamped arbitral award, which undoubtedly includes enforcement of such award. The Act lifts this bar only upon deposit of adequate stamp duty along with penalty, if applicable.

175. This is an apparent disconnect between the two statutory regimes that ought to be brought to a coitus.

<u>Obligation Imposed under Section 33 of the Stamp Act</u>

176. This Court is mindful that while "shall", in the ordinary sense, implies a mandatory nature, however, other factors may make it derogable

and render it directory. These factors may be, *inter alia,* the legislative intent, the context of the whole Act, statutory purpose[58]. However, *prima facie* "shall" indicates mandatory nature.

177. If there is a statutory mandate to perform a duty in a certain manner or within a specific time period, the prescription may be mandatory unless shown otherwise[59]. Further, if a statue lays down consequences for failure to comply with a requirement, it must be strictly followed[60] and is ordinarily construed to not be directory.

178. The Supreme Court in ***State of A.P. v. P. Laxmi Devi*** [61], held that "shall" under Sector 33 of the Stamp Act is mandatory and leaves no room for discretion in the following words:

> *"16. A perusal of the said provision shows that when a document is produced (or comes in the performance of his functions) before a person who is authorised to receive evidence and a person who is in charge of a public office (except a police officer) before whom any instrument chargeable with duty is produced or comes in the performance of his functions, it is the duty of such person before whom the said instrument is produced to impound the document if it is not duly stamped. The use of the word shall in Section 33(1) shows that there is no discretion in the authority mentioned in Section 33(1) to impound a document or not to do so. In our opinion, the word shall in Section 33(1) does not mean may but means shall. In other words, it is mandatory to impound a document produced before him or which comes before him in the performance of his functions. Hence the view taken by the High Court*

[58] *Raza Buland Sugar Co. Ltd.* v. *Municipal Board, Rampur*, 1964 SCC OnLine SC 119; Collector of Monghyr v. Keshav Prasad Goenka, 1962 SCC OnLine SC 93; Hiralal Agarwal v. Rampadarath Singh, 1968 SCC OnLine SC 264; Sainik Motors v. State of Rajasthan, 1961 SCC OnLine SC 15; *Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV)*, (2025) 4 SCC 641 : (2025) 2 SCC (Civ) 1 : 2024 SCC OnLine SC 3219

[59] Karnal Improvement Trust v. Parkash Wanti, (1995) 5 SCC 159

[60] State of Jharkhand v. Ambay Cements, (2005) 1 SCC 368

[61] **(2008) 4 SCC 720**

that the document can be returned if the party does not want to get it stamped is not correct."

179. The aforesaid view has echoed in various other decisions[62] of the Supreme Court as well.

180. In ***Seetharama Shetty (supra)***, the Supreme Court held that Chapter IV of the Karnataka Stamp Act, 1957 (analogous to the Stamp Act in the present case) is both "mandatory and regulatory". It was held that Section 33 mandates every competent authority to impound an insufficiently stamped instrument when such instrument is produced. The Court highlighted the objective of the Act in the following words:

> *"17. The object of the Act is not to exclude evidence or to enable parties to avoid obligations on technical grounds. Rather, the object is to obtain revenue even from such instruments which are at the first instance unstamped or insufficiently stamped. The said objective has the twin elements of recovering the due stamp duty and penalty, and also the public policy of binding parties to the agreed obligations…"*

181. A Division Bench of the Karnataka High Court in ***Sandra Lesley Anna Bartels v. P. Gunavathy***[63], though in context of the Karnataka Stamp Act of 1957[64], aptly articulated as follows:

> *"12. Court cannot say that it would impound the document only when the document is tendered in evidence for marking. **There may be instances where duty and penalty payable may be very high and the party may not choose to rely upon such insufficiently stamped document in order to avoid stamp duty and penalty. In such circumstances, it would result in loss of revenue to the exchequer**. The*

[62] Ram Rattan v. Bajrang Lal, (1978) 3 SCC 236; Avinash Kumar Chauhan v. Vijay Krishna Mishra, (2009) 2 SCC 532; Tirupati Developers v. State of Uttarakhand, (2013) 9 SCC 332
[63] 2012 SCC OnLine Kar 8770
[64] Section 33(1) of the Karnataka Stamp Act 1957 is *pari materia* to the Indian Stamp Act, 1899

power of impounding a document is to collect stamp duty and penalty whenever there is an escape of duty. Therefore, when it is brought to the notice of the Court that a document is insufficiently stamped, the Court exercising its power under Section 33 of the Act ***has to pass an order at the first instance for impounding the document****. Though there is a discretion vested in the Court to exercise powers under Sections 33 and 34 of the Act, no Court can hold that it would wait till the document is tendered in evidence. In such circumstances, there may be chances of loss of revenue to the exchequer."*

(emphasis supplied)

182. A Division Bench of this Court in ***Dalip Singh Sachar, Col. (Retd.) v. Prabodh Chander Puri, Major General (Retd.)***[65] , held as follows:

"10. Faced with this situation, the learned Counsel for the appellant in this appeal made the following two submissions:

(A) For a decree to be passed on the basis of admissions, admissions have to be clear, unambiguous and unqualified and for this purpose, entire written statement is to be read and not the isolated portions. He referred to the following judgments in support of his submission:

(i) Balraj Taneja v. Sunil Madan, AIR 1999 C 3381.

(ii) Manisha Commercial Ltd. v. N.R. Dongre, AIR 2000 Del 176 : (2000) 52 DRJ 578.

(iii) Parivar Seva Sansthan v. Dr.(Mrs.) Veena Kalra, AIR 2000 Del 349 : (2000) 54 DRJ 914 (DB).

(iv) Madhav Leasing Finance (P) Ltd. v. Erose Educational Infotech Pvt. Ltd., 1997 V AD (Delhi) 627.

There is no doubt about the principles of law contained in the aforesaid judgments. However, in the present case, we find that Ext. P1 is clear and unqualified acknowledgment and acceptance of the liability. Not only it confirms that the respondent had given the loan in question, it also gives the particulars of the demand drafts vide which the loan was given. It also states the purpose for which the money was utilised. It also mentions that the appellant was pledging the shares of the company for repayment of the loan. It even mentions the interest which this loan was to carry [See Balraj Taneja v. Sunil Madan, AIR 1999 SC 3381]. The object of Order XII Rule 6 CPC is to enable the parties to obtain speedy judgments and, therefore, Courts are not to unduly narrow down the

[65] **2007 SCC OnLine Del 728**

scope and meaning of this Rule. In Shikharchand v. Mst. Bari Bai, AIR 1974 MP 75, the Court held that a judgment under Order XII Rule 6 CPC can be based on a statement made by the parties de hors the pleadings and such admissions could be either expressed or constructive. This Court in K.N. Construction v. JVG Finance Ltd., (2004) 111 DLT 437 : (2004) 74 DRJ 483, concurred with the aforesaid view. We may also, quote for our benefit, the following observations of a Division Bench of this Court in Delhi Jal Board v. Surendra P. Malik, 2003 III AD (Delhi) 419 : (2003) 68 DRJ 284 (DB):

> *"9. The test, therefore, is (i) whether admission of fact arise in the suit (ii) whether such admissions are plain, unambiguous and unequivocal (iii) whether the defence set up is such that it requires evidence for determination of the issues and (iv) whether objections raised against rendering the judgment are such which go to the root of the matter or whether these are inconsequential making it impossible for the party to succeed even if entertained. It is immaterial at what stage the judgment is sought or whether admissions of fact are found expressly in the pleadings or not because such admissions could be gathered even constructively for the purpose of rendering a speedy judgment."*

The present case fulfills the aforesaid test.

(B) Ext. P1 could not have even been considered, as it is an unstamped document, though it required stamp of rupee one and, therefore, is inadmissible under Section 35 of the Stamp Act. He submitted that the document is termed as 'acknowledgment' and is required to be stamped as per Article 1 of Schedule 1 to the Stamp Act. The submission of the learned Counsel was that Section 35 lays down that an unstamped document cannot be looked into as evidence and passing judgment on the basis of such a document was totally untenable. He referred to the judgment in the case of Smt Gita Devi Shah v. Smt Chandra Moni Karnani, AIR 1993 Cal 280 wherein it was held that even if the objection of stamp duty was not taken by a party, the Court was under obligation to look into this question as it was an independent obligation of the Court to look into admissibility of the evidence.

We have the following two answers to this contention of the learned Counsel for the appellant:

(i) ***even if the document is unstamped, Court can impugn the document and get the same adjudicated in so far as the payment of stamp duty is concerned. The penalty up to 10 times of the stamp duty payable can be levied. Since the document requires, admittedly, stamp duty of one rupee, the respondent will have to pay stamp worth***

ten rupees even if maximum penalty is imposed. On payment of this duty the document can be read into evidence.

The High Court of Himachal Pradesh in Narender Kumar v. Hans Raj, AIR 1986 HP 75 has explained the legal position in the following words:

"7. The approach of the learned Sub-Judge in the matter in my view was wholly erroneous and has resulted in his failure to exercise his lawful jurisdiction. So as to call for interference by this Court It is an admitted position that the document sought to be produced by the petitioners before the trial Court was an unstamped one. ***In a situation of this type when a document chargeable with duty is found unstamped or insufficiently stamped and is produced before a Court, the Court is under a legal obligation in terms of Section 33 of the Indian Stamp Act to impound such a document In other words, the Court is duty bound to take such document into legal custody. After the document is so impounded there are two courses open to the Court. The first course is to admit the document into evidence of course subject to all just exceptions, upon payment of the duty chargeable thereon and the penalty as provided under Section 35 of the Indian Stamp Act if so tendered by the party producing the document. After the stamp duty and the panelty are so paid, the Court is required to send to the Collector an authenticated copy of the document together with a certificate in writing stating the amount of duty and penalty levied in respect thereof and also to send such amount to the Collector as provided by Sub-section (1) of Section 36 of the Stamp Act. The second course is when the party producing the document fails to pay the duty and penalty as provided under Section 35 of the Stamp Act, the Court must send the original document to the Collector who shall then take necessary steps for realising the stamp duty and the penalty. There is no third course open to the Court like keeping the unstamped document on the record without first realising the stamp duty and the penalty.***

8. Again if we look to the provisions of Section 35 of the Indian Stamp Act, it is obvious that the bar against admittance in evidence of an unstamped or insufficiently stamped instrument of the nature like the one under consideration as placed by ***Section 35 of the Stamp Act is not an absolute bar and the same would stand removed as soon as the duty chargeable on the instrument or the deficiency in such duty along with the prescribed penalty are paid****. The party producing an unstamped or insufficiently stamped instrument of this nature has, therefore, the right to claim that the instrument be admitted in evidence on payment of the deficient stamp duty and the penalty which right as earlier stated is, of course, subject to all just exceptions."*

This view found support in the judgment of the Supreme Court in Peteti Subba Rao v. Anumala S. Narendra, (2002) 10 SCC 427. ***We, therefore, take this document, namely, Ext. P1 into legal custody and direct the respondent to pay the requisite stamp duty along with penalty, which would be Rs 10.*** *Since the learned Counsel the respondent, during the course of arguments, had stated that such duty would be paid, we admit the document into evidence, which otherwise stands proved as it is an admitted document and can proceed with the case on the basis of this document.* ***We, however, make it clear that after the stamp duty and the penalty are paid, the Registry shall send to the Collector, an authenticated copy of the document together with a certificate in writing stating that the amount of duty and penalty levied has been paid.*** *The embargo, as sought to be created by the appellant in admitting this document into evidence, thus vanishes and with that goes the basis of submission of the learned Counsel for the appellant.*

(ii) The learned Counsel for the respondent had submitted that apart from Ext. P1, the pleadings, namely, the plaint and the written statement would clearly bear out that there was hardly any dispute raised by the appellant in so far as liability to make the payment is concerned."

(emphasis supplied)

183. Therefore what is apparent from the aforesaid decisions, the scheme of the Act and Section 33 itself is that it does in fact, impose an imperative duty upon a Court to safeguard the public exchequer. This Court in ***Mohini Electricals (supra)*** and ***Jitender Mohan Malik (supra)*** also adopted the aforesaid reading of Section 33 of the Stamp Act. The Supreme Court in ***In Re: Interplay (supra)*** also underscored this intent.

184. In my considered view, Section 33 is in no words ambiguous. Inasmuch as it uses the word "shall", Section 33 does not provide for any other alternatives or grants any degree of discretion. The only caveat is that a competent authority must come across such instrument during the course of its duties. I also arrive at this view bearing in the mind the statutory

purpose behind this legislation, i.e., to secure revenue for the State and safeguarding the public exchequer. Therefore, treating this duty as merely directory would essentially permit parties to circumvent the mandate of paying stamp duty and thereby defeating the purpose behind a fiscal statute.

<u>Dichotomy in Timelines</u>

185. The two statutes appear to be temporally inconsistent.

186. On the face of it, the Stamp Act demands compliance within a month from affixing signatures on an arbitral award (without attracting penalty), but the Arbitration Act and judicial precedents somewhat relax this mandate at the Section 34 stage, which thereafter becomes relevant at the Section 36 stage, i.e., after the lapse of at least three months (additional thirty days with sufficient cause) from the execution of the award.

187. However upon a closer look, one may see that there is no dichotomy at all. The statutes operate independently of each other. This is evident from a conjoint reading of Sections 2(6), 2(12), 3, 17 and 32. I shall reproduce them again hereinbelow for ease of reference:

> *"(6) **"Chargeable".** — "chargeable" means, as applied to an instrument executed or first executed after the commencement of this Act, chargeable under this Act, and, as applied to any other instrument, chargeable under the law in force in India when such instrument was executed or, where several persons executed the instrument at different times, first executed;"*

*"(12) "**Executed" and "execution".** — "executed" and "execution" used with reference to instruments, mean "signed" and "signature":"*

*"3. **Instruments chargeable with duty.** —Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefore respectively, that is to say—*
(a) every instrument mentioned in that Schedule which, not having been previously executed by any person, is executed in India on or after the first day of July, 1899;
(b) every bill of exchange payable otherwise than on demand or promissory note drawn or made out of India on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in India; and
(c) every instrument (other than a bill of exchange, or promissory note) mentioned in that Schedule, which, not having been previously executed by any person, is executed out of India on or after that day, relates to any property situate, or to any matter or thing done or to be done, in India and is received in India:
Provided that no duty shall be chargeable in respect of—
(1) any instrument executed by, or on behalf of, or in favour of, the Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument;
(2) any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered under the Merchant Shipping Act 1894, Act No. 57 & 58 Vict. c. 60 or under Act XIX of 1838 Act No. or the Indian Registration of Ships Act, 1841, (CX of 1841) as amended by subsequent Acts."

***"17. Instruments executed in India.** — All instruments chargeable with duty and executed by any person in India shall be stamped before or at the time of execution."*

***"32. Certificate by Collector. —** (1) When an instrument brought to the Collector under section 31 is, in his opinion, one of a description chargeable with duty, and*

(a) the Collector determines that it is already fully stamped, or
(b) the duty determined by the Collector under section 31, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid, the Collector shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid.

(2) When such instrument is, in his opinion, not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable.

(3) Any instrument upon which an endorsement has been made under this section, shall be deemed to be duly stamped or not chargeable with duty, as the case may be; and, if chargeable with duty, shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped:

Provided that nothing in this section shall authorize the Collector to endorse—

(a) any instrument executed or first executed in India and brought to him after the expiration of one month from the date of its execution or first execution, as the case may be;
(b) any instrument executed or first executed out of India and brought to him after the expiration of three months after it has been first received in India; or
(c) any instrument chargeable with a duty not exceeding ten naye paise, or any bill of exchange or promissory note, when brought to him, after the drawing or execution thereof, on paper not duly stamped."

188. Thus, it is evident from the above that the Stamp Act, in no words, envisages enforcement of an instrument as the chargeable event. It operates independent of the Arbitration Act.

189. Under the Stamp Act, the chargeable event is the execution/signing of an instrument/arbitral award. Thus, the stamp duty is to be paid either (i) before the execution or signing of the award or (ii) at the time of execution or signing of the award or (iii) within one month from execution or signing of the award.

190. Having said that, I now turn to the Arbitration Act and its import, whereunder Section 36 imposes a bar on enforcement of an arbitral award until the expiry of three months and an additional thirty days in some cases.

191. In addition to this embargo under Section 36(1), ***M. Anasuya Devi (supra)*** also holds that the objection of inadequate stamping is premature for the purposes of Section 34.

192. This has unfortunately caused Decree Holders to wait till the enforcement stage to pay stamp duty, which may come after disposal of Section 34 petitions or appeals under Section 37 or SLPs filed before the Supreme Court. At which point, the time period under the Stamp Act expires and such decree holders are required to make good the deficit amount along with penalty.

193. To achieve this, this Court has observed that Decree Holders are paying e-stamp for the deficit amount and filing proof thereof.

194. However, in the opinion of this Court, this unilateral mechanism is not permissible by the statute as it overlooks the procedure provided by the Act including and not restricted to Sections 32(3) and 33. These provisions respectively prevent a Collector from endorsing an instrument after one month from its execution and mandate a competent authority before whom such insufficiently stamped instrument is brought, to impound the same.

195. As discussed in the foregoing discussions, the penalty component cannot be waived by this Court and only the Collector, in specific situations, can do away with payment of penalty. Therefore, it is not

apposite for decree holders to unilaterally pay deficit amount without penalty.

196. Even ***M. Anasuya Devi (supra)*** does not grant any exemption from the payment of stamp duty. The requirement of payment of adequate stamp duty does not depend on when an instrument is sought to be enforced. Therefore, the time period under Section 36 of the Arbitration Act does not "cure" the stamping defect.

197. ***M. Anasuya Devi (supra)*** only holds that insufficient stamp duty is not one of the grounds stipulated under Section 34 for setting aside an arbitral award, therefore, an objection to that effect does not hold water for Section 34 purposes and nothing more.

198. A harmonious view would be, in fact, to permit willing Decree Holders to deposit the deficit amount and proceed with enforcement. However, there is no provision in the Act to allow parties to unilaterally make good the deficit stamp duty after expiry of the one month from execution. However, this Court is of the view that especially keeping in mind the intent behind the Arbitration Act, the pendency of Section 34 objection petition or an appeal under Section 37 or an SLP, is a cogent ground for the Collector to waive and/or impose minimal penalty in accordance with the Stamp Act.

199. This Court is also mindful that it is not exercising writ jurisdiction and is only acting within the garb of proceedings under Section 36 of the

Arbitration Act and therefore must act within confines of the statute, which in no ambiguous words provides that an arbitral award must be stamped within one month of its execution and if failed to do so, it must be impounded and thereafter be dealt with under Section 35 or 38. Only thereafter such award shall be endorsed under Section 42.

Impounding

200. In view of the preceding discussion, this Court is clear in its mind that Section 33 imposes an unconditional duty on the authorities stipulated therein to impound insufficiently stamped instruments brought before them in the course of their duties.

201. Further, it is also well settled that only the original instrument shall be impounded since a photocopy is not an "instrument" for the purposes of Section 2(14) of the Stamp Act[66].

202. This position has been well settled in ***Hari Om Aggarwal v. Prakash***[67] by the Supreme Court. The relevant portion is reproduced thus:

> *"7. Section 33 gives power to the authority to check whether the instrument has been duly stamped and in case it is not duly stamped, to take steps to impound the same by proper stamp duty on the said document. This power can be exercised in regard to an "instrument". Section 2(14) of the Act defines "instrument" as:*

[66] State of Bihar v. Karamchand Thapar and Bros. Ltd., **AIR 1962 SC 110**

[67] **(2007) 8 SCC 514**

"2. (14) Instrument.—'Instrument' includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded;"

8. The instrument as per definition under Section 2(14) has a reference to the original instrument. In State of Bihar v. Karam Chand Thapar & Bros. Ltd. [AIR 1962 SC 110] this Court in para 6 of the judgment held as under: (AIR p. 113)

"6. It is next contended that as the copy of the award in Court was unstamped, no decree could have been passed thereon. The facts are that the arbitrator sent to each of the parties a copy of the award signed by him and a third copy also signed by him was sent to the Court. The copy of the award which was sent to the Government would appear to have been insufficiently stamped. If that had been produced in Court, it could have been validated on payment of the deficiency and penalty under Section 35 of the Indian Stamp Act, 1899. But the Government has failed to produce the same. The copy of the award which was sent to the respondents is said to have been seized by the police along with other papers and is not now available. When the third copy was received in Court, the respondents paid the requisite stamp duty under Section 35 of the Stamp Act and had it validated. Now the contention of the appellant is that the instrument actually before the Court is, what it purports to be, 'a certified copy', and that under Section 35 of the Stamp Act there can be validation only of the original, when it is unstamped or insufficiently stamped, that the document in Court which is a copy cannot be validated and 'acted upon' and that in consequence no decree could be passed thereon. ***The law is no doubt well settled that the copy of an instrument cannot be validated.*** *That was held in Rajah of Bobbili v. Inuganti China Sitarasami Garu [(1898-99) 26 IA 262] where it was observed:*

'The provisions of this section ***(Section 35) which allow a document to be admitted in evidence on payment of penalty, have no application when the original document, which was unstamped or was insufficiently stamped, has not been produced; and, accordingly, secondary evidence of its contents cannot be given.*** *To hold otherwise would be to add to the Act a provision which it does not contain. Payment of penalty will not render secondary evidence admissible, for under the stamp law penalty is leviable only on an unstamped or*

insufficiently stamped document actually produced in Court and that law does not provide for the levy of any penalty on lost documents.' "

9. This Court had an occasion again to consider the scope and ambit of Sections 33(1), 35 and 36 of the Act and Section 63 of the Evidence Act in Jupudi Kesava Rao v. Pulavarthi Venkata Subbarao [(1971) 1 SCC 545 : AIR 1971 SC 1070] and held that: (SCC pp. 550-51, paras 13-14)

"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 35 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 2(14) as 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."*

10. It is clear from the decisions of this Court and a plain reading of Sections 33, 35 and 2(14) of the Act that an instrument which is not duly stamped can be impounded and when the required fee and penalty has been paid for such instrument it can be taken in evidence under Section 35 of the Stamp Act. ***Sections 33 or 35 are not concerned with any copy of the instrument and party can only be allowed to rely on the document which is an instrument within the meaning of Section 2(14). There is no scope for the inclusion of the copy of the document for the purposes of the Stamp Act****. Law is now no doubt well settled that copy of the instrument cannot be validated by impounding and this cannot be admitted as secondary evidence under the Stamp Act, 1899."*

(emphasis supplied)

203. Therefore, there is no quarrel with the proposition that only an original instrument may be impounded under the Stamp Act.

204. However, Mr. Jayant Mehta placed reliance on ***Ashok Kamal Capital Builders (supra)*** to submit that the Court does not have authority to direct production of an original award if a copy is filed. The aforesaid decision places reliance on ***District Registrar and Collector, Hyderabad & Anr. v. Canara Bank & Ors.***[68], to arrive at the said conclusion. It was reasoned that no power vests with the authorities in NCT of Delhi to compel production of an original instrument for the purposes of impounding the same.

[68] (2005) 1 SCC 496

205. Accordingly, difficulty arises in view of the ratio laid down by the Supreme Court in ***Canara Bank (supra)***, which provides that a Court cannot compel production of the original in the exercise of its powers under Section 33 of the Stamp Act.

206. This Court in ***Kotak Mahindra Bank Ltd. v. Yogesh Baweja & Anr.***[69] placed reliance on ***Canara Bank (supra)*** and held as follows:

> *"9. Section 33 of the Stamp Act, 1899 which relates to impounding of the documents is applicable only when the original document is actually and voluntarily brought before the Court of law. Further contrary to forcing any party to produce the original document it is only when the document chargeable is produced or comes in the performance of the working that the same can be ordered to be impounded.*
>
> *10. The Court is bound with the domain of the procedure envisaged in the Civil Procedure Code, 1908. The Court is authorized to receive evidence and can for this purpose issue summons for attendance and adducing evidence under different provisions of Civil Procedure Code. Order 16 Rule 10 of the Code of Civil Procedure, 1908 is designed to protect the interest of a party against a "Non Cooperative" witness for which purpose it confers power upon a Court to ensure the attendance and "Co-operation" of the witness.*
>
> *11. Section 33 of the Stamp Act, 1899 is applicable when the original document is actually and voluntarily brought before the Court. The words "is produced or comes in the performance of his function" used in Section 33 of the Stamp Act, 1899 mean the production of the instrument voluntarily by the party relying on it. It is for the party alone to produce the document and the Court cannot force the production of the same.*
>
> *12. The Supreme Court in its judgment passed in District Registrar Vs. Canara Bank, AIR 2005 SC 186 held that Section 31 of the Stamp Act, 1899 involves an element of voluntariness in the persons seeking adjudication to apply before the collector and under that provision the*

[69] CM(M) 168/2011 and 16 connected matters, decided on 22.07.2013; 2013 SCC OnLine Del 2738

collector cannot compel its production. Section 33 of the Stamp Act, 1899 confers power of impounding a document deficiently stamped if the document is produced or comes before the authority in performance of its functions.

13. Thus, it is clear from the law settled on this aspect that the levy of stamp duty upon voluntary production of the instrument is an essential characteristic of the Stamp Duty Act. If the authorities are allowed to issue direction for the production of the original documents not produced then it would lead to invasion of the house of the person in whose possession the document lies. Further non-payment of the stamp duty is not a criminal offence and as such the party in those possession the document lies cannot be compelled to produce the same or to forcefully pay the penalty."

207. This poses certain difficulties in effectuating the mandate of the Stamp Act.

208. A question now arises as to how shall a Court proceed in cases where only true copies of an instrument are placed before it and it is blatantly evident from the same that adequate duty has not been paid?

209. It is to be borne in mind is that substantial amount of the precedents proscribing calling for the original instrument for impounding were either not rendered in context of arbitration and particularly enforcement of an arbitral award and the ones so rendered, were in context of the earlier Arbitration Act of 1940, whereby the original award was required to be filed in Court to make it a decree. This is starkly different from the present Arbitration Act, which provides that an arbitral award shall automatically be enforced like a decree of the Court without any application being preferred.

210. With respect to the present Arbitration Act, the Supreme Court in ***Widescreen Holdings Pvt. Ltd. & Anr. v. Religare FInvest Ltd. & Anr.***[70], held as follows:

> *"Considering the fact that even the loan agreement which contains the arbitration clause which was sought to be impounded is not produced before any Tribunal and/or Court and till then, there is no question of impounding any document, the High Court is justified in passing the impugned order.*
>
> *Shri Kaul, learned Senior Advocate has submitted that the original applicant(s) is not placing on record the original loan agreement containing the arbitration clause. If the original claimant who has initiated the arbitration proceedings relying upon the arbitration clause contained in the loan agreement is not producing the same, it is ultimately for the learned Arbitrator to pass an appropriate order and to take into consideration such a conduct. So far as the impounding of the document is concerned unless and until the same is produced on record before any Court/Tribunal, there is no question of any impounding the same, as observed hereinabove.*
>
> *The Arbitrator may take call on the impounding of document provided it is produced by the original claimant."*

211. Therefore, it is reiterated by the aforesaid decision that only the original instrument can be impounded. There lies no dispute with this proposition.

212. Further, what is clear from the above excerpt is that the Apex Court envisages to preserve the element of voluntariness while producing an instrument under Section 33. However, the Court does empower the Tribunal to "pass appropriate order" if the original is not produced and take note of such conduct.

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[70] Special Leave to Appeal (C) Nos. 6826-6829/2022, as decided on 22.04.2022

213. Significantly, since the Arbitration Act does not mandate filing of the original award with the accompanying Section 36 petition, no occasion would arise for this Court to examine the adequacy of stamp duty and impound the same, even if found insufficient.

214. This position of law, in my considered view, leads to an absurdity and renders the Stamp Act otiose by preventing an otherwise competent authority from discharging its statutory duty under Section 33 of the Stamp Act.

215. If allowed to thrive, such construction would lead to situations of brazen evasion from paying stamp duty on arbitral awards sought to be enforced, since a decree holder would advertently or inadvertently file a copy of the inadequately stamped award. An enforcing Court, in the absence of an original award, would be unable to impound the same, but at the same time, it would also be prevented from acting upon such award in view of the bar under Section 35 of the Act. Such an impasse, according to this Court, cannot be what the statutes envisage.

216. For the sake of legal coherence and public interest, I deem it fit to further highlight this prevailing anomaly.

217. The Stamp Act pertains to public exchequer and ensures collection of revenue of the State. The Arbitration Act protects party autonomy and provides speedy dispute resolution.

218. Keeping the aforesaid in mind, while there is no cavil with the position that only the original award can be impounded, the preposition that a Court cannot direct furnishing the original award under Section 33 leads to inconsistencies in law and gives rise to practical issues.

219. A Court is bound to impound an instrument which is insufficiently stamped under Section 33. The Court is also barred from acting upon such instrument in any manner until the duty is made good as per Section 35, which can only happen after impounding of such instrument if one month period has expired. Further, only the original instrument can be impounded, however, the original cannot be called for by the Court for this purpose and it has to await voluntary production.

220. In the face of such unavoidable contradiction, Joseph Heller's Catch-22 comes to mind.

221. The aforesaid problem renders the Stamp Act nugatory and permits evasion of the statutory obligation to pay stamp duty.

222. In the practical sense, this position allows a decree holder to file for enforcement of an arbitral award under Section 36 of the Arbitration Act, which can be done without filing the original arbitral award. Now, even if it is apparent from the record that the said award lacks stamp duty, the Court would be unable to call for the original to impound the same. This not only disregards the Court's statutory duty under Section 33 of the

Stamp Act but also permits a decree holder to take away from the public exchequer while compelling the Court to be a mere bystander.

223. Since the Supreme Court has held that stamp duty is a defect which may be cured at any stage, the Decree Holder would be permitted to unjustly reap the benefits of the award without paying adequate stamp duty. However, at the same time, the statute itself imposes a bar on this Court preventing it from proceeding further and acting upon such award. According to this Court, such diametrically opposite positions cannot stand simultaneously.

224. Therefore, in my view, an interpretation which renders the Court powerless and reduces it to a mere observer whilst parties are permitted to evade the responsibility under a fiscal statute, cannot be adopted.

225. Accordingly, in the opinion of this Court, judgments are not to be read like Euclid's theorem and surrounding facts and circumstances must be taken into account.

226. ***Canara Bank (supra)*** was not rendered in the context of enforcement proceedings. Instead, it was rendered in the context of right to privacy and penal consequences of criminal nature. The Court struck down Section 73 introduced *vide* the Andhra Pradesh State Amendment Act of 1986. This provision empowered the Collector or any one authorised by him to enter any premises, inspect any public office and officer having in his custody books, records etc. and permitted him to make

copies of the same, seize and impound if required. By placing reliance on ***Maneka Gandhi v. UOI***[71]**,** and ***Air India v. Nergesh Meerza***[72], it was opined that if a statute grants a power without laying down guiding principles or fetters to the same, such power is liable to be struck down.

227. It is pertinent to note that Section 33 of the Stamp Act is not a power but a duty of the authority concerned (a Court of law herein).

228. Therefore, an invasive provision (Section 73 of A.P. Act) cannot be considered to be on the same footing as Section 33 of the Stamp Act which only imposes a statutory public duty upon the competent authority to impound insufficiently stamped instruments that it comes across in the course of its duties.

229. In ***Tata Teleservices Limited v. State of Uttar Pradesh***[73], it was held as follows:

> *"14. Decided cases have interpreted the words "produced or come in the performance of his functions" as having been voluntarily produced vide Ujjal Singh v. A.Y. Khan, AIR 1936 Lahore 95, In re Narayandas Nathuram Marwadi, AIR 1943 Nagpur 97, Uttam Chand v. Perman Nand, AIR 1942 Lahore 265, Raja Mohd. v. Deputy Commissioner, 1956 ALJ 220 : (AIR 1956 All 453) (FB), Government of U.P. v. Mohd. Amir, AIR 1961 SC 787, R.A. Remington v. Deputy Commissioner, 1966 ALJ 514, Varghese v. State of Kerala, AIR 1989 Kerala 248, Som Dutt Buildersv. State of U.P., AIR 2005 All. 234 : (2005 All LJ 2346) and District Registrar v. Canara Bank, (2005) 1 SCC 496 : (AIR 2005 SC 186).* ***In Lala Uttam Chand v. Perman Nand it was held that no Court has a right to compel a party to produce a document against his wishes. If a party does not produce a material document the party will***

[71] **(1978) 1 SCC 248**
[72] **(1981) 4 SCC 335**
[73] **2008 SCC OnLine All 897**

suffer its consequences. The word 'produced' in Section 33 of the Indian Stamp Act was defined to mean production in the ordinary course of law and not under compulsion. *In Re, Narayandas Nathuram AIR 1943 Nagpur 97 Vivian Bose, J. held that the word 'produced' has a technical meaning and means either produced in response to summons or produced voluntarily for some judicial purpose such for instance as evidence and not to documents which fall accidentally or incidentally into a Judge's hands. The learned Judge has given the example of a document submitted mistakenly under the impression that it is another document. In such a case there is no intention to produce the document. The same view was taken by the Full Bench of this Court in Raja Mohammad v. Deputy Commissioner, Sitapur, 1956 ALJ 220 : (AIR 1956 All 453). That was a case in which an instrument was produced before the Collector for his opinion about the stamp duty required to be paid thereon. It was held that after determining the duty payable the Collector became functus officio and he could not impound the instrument if the duty determined was not paid.* ***It was held that the words "is produced or comes in the performance of his functions" used in Section 33 of the Act mean the production of the instrument concerned in evidence or for the purposes of placing reliance upon it by one party or the other.*** *The decision of this Court in Raja Mohammad's case was* ***affirmed in appeal by the Apex Court*** *in Government of U.P. v. Raja Mohammad Amir Ahmad Khan, AIR 1961 SC 787. In District Registrar and Collector v. Canara Bank (supra) the provisions of Sections 31, 33 and 36 were again considered and it was held in the context of Section 33 that to attract the provision the document must have been voluntarily produced or come before the authority or person in charge in performance of its functions. It is to be noted that there is no provision in the Stamp Act requiring a person to get the stamp duty assessed such as by filing a return.* ***Even the production of the instrument for the purposes of Registration is voluntary.*** *When however the instrument is produced for registration the adequacy of stamp duty can be examined under Section 47-A. From the scheme of the provisions of the Stamp Act and the cases above referred to it appears that duty can be charged only upon a voluntary production of the original instrument. But what does a voluntary production mean. It would appear from the cases aforesaid that if a document is summoned in evidence and produced by a party called upon to produce it would be a 'production' within the meaning of Section 33 and the document can be impounded vide. In Re Narayandas Nathuram (supra). In such a situation it cannot be said that the production was not voluntary.* ***But if a party refuses to produce it despite the summons it may suffer the consequences of withholding evidence in the cake, but it cannot be compelled to produce it for the purposes of the Stamp Act****. But it appears from the cited cases that it* *was in the context of proceedings to recover the duty that it was observed that the proceedings could be initiated only on a voluntary production of the instrument."*

(emphasis supplied)

230. It is evident from the preceding paragraphs that an element of voluntariness is required under Section 33.

231. For the purposes of the present discourse, I shall refer to the words of Section 33(1) in black and white, they are as follows:

*"**33. Examination and impounding of instruments.** — (1) Every person having by law or consent of parties authority to receive evidence, and every person in charge of a pubic office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, **is produced or comes in the performance of his functions**, **shall**, if it appears to him that such instrument is not duly stamped, impound the same."*

(emphasis supplied)

232. With respect to the competent authorities under this provision, I shall refer to a Court of law for ease of reference.

233. Accordingly, the first condition to be met is that an instrument chargeable with duty is either (i) produced before a Court or (ii) the Court encounters such instrument in performance of its normal duties. The second condition being, this instrument should not be duly stamped in the opinion of the Court.

234. An arbitral award is to be enforced like a decree of the Court in accordance with CPC. Such award is undoubtedly an "instrument" which

a Court comes across in the performance of its duties in Section 36 enforcement proceedings, thereby maintaining the voluntariness as envisaged by Section 33 and the Supreme Court. This Court is conscious of the judicial confines and accordingly does not deem it apposite to compel Decree Holders to furnish the original instrument. However, in the same breath, this Court is also conscious of the bar imposed on it by virtue of Section 35. Accordingly, it would be the prerogative of the Decree Holders to furnish the same in order to cure the defect for the purposes of enforcement.

235. To place a technical embargo on an otherwise reasonable and fettered duty imposed on a Court will defeat the purpose of the Stamp Act.

236. According to this Court, enforcement proceedings stand on a different footing and an enforcing Court is granted certain powers by the CPC by virtue of Section 51 and Order XII. The only caveat is that an enforcing Court cannot go behind the decree. In my view, calling for the original award does not amount to going beyond the decree especially if it is blatant from the record that such award is inadequately or not stamped at all.

237. Section 51 grants powers to a Court for enforcement, as follows:

> *"**51. Powers of Court to enforce execution.**—Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree—*
>
> *(a) by delivery of any property specifically decreed;*

(b) by attachment and sale or by the sale without attachment of any property;

(c) by arrest and detention in prison for such period not exceeding the period specified in section 58, where arrest and detention is permissible under that section;

(d) by appointing a receiver; or

(e) in such other manner as the nature of the relief granted may require:

Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied—

(a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree,—
(i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or
(ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or
(b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or
(c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.

Explanation. —In the calculation of the means of the judgment-debtor for the purposes of clause (b), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree."

(emphasis supplied)

238. Therefore, an executing Court has wide mandate of powers especially in light of the residuary clause under Section 51(e). It is trite that such powers must be exercised in a fettered manner.

239. It is also pertinent to note that this Court issued Practice Direction No. 26/Rules/DHC dated 30.08.2010, whereby it was directed that once notice is issued in a petition filed under Section 34 of the Arbitration Act, the Registry of this Court will issue a letter to the concerned Arbitrator to transfer the arbitral record including the award. This is as follows:

"HIGH COURT OF DELHI, NEW DELHI

No. 26/Rules/DHC *Dated: 30/08/10*

PRACTICE DIRECTION

Hon'ble the Chief Justice has been pleased to issue the following practice direction:-

> *As soon as notice is issued in the petitions filed under Section 34 of the Arbitration & Conciliation Act, 1996, the Registry shall send a letter of request to the Arbitrator to transmit the record of arbitral proceedings as well as award to this Court after the conclusion of arbitration.*

This Practice Direction will come into force immediately."

240. Another Practice Direction No. 33/Rules/DHC dated 08.04.2015 was issued stating that the original signed award would be received by this Court, digitally scanned and signed. The original award and the order sheets would be retained, in the following words:

"HIGH COURT OF DELHI AT NEW DELHI

No. 33/Rules/DHC *Dated: 08.04.2015*

PRACTICE DIRECTIONS

Hon'ble the Chief Justice, on the recommendations of Hon'ble the Judge-In-Charge (Original Side) has been pleased to issue *following practice directions for information and compliance by all concerned :-*

1. *After receiving the original signed Award, the proceedings and the arbitral record from the learned Arbitrator / Arbitral Tribunal, it will be scanned by the Registry and the scanned copies will be digitally signed by the Deputy Registrar/ Assistant Registrar (Original), Delhi High Court.*

2. *The original signed Award and the proceedings i.e., order sheets will be retained. The remaining record will be returned after two months of its receipt during which period each party will be free to point out discrepancies/shortcomings, if any, in the scanning/digitization of the records to the Court. The Registry will in that event, rectify the shortcomings pointed out and the remaining record shall thereafter be returned to the learned Arbitrator/Arbitral Tribunal.*

These Practice Directions shall come into force immediately."

241. Therefore, it is not alien for this Court to receive the original award sought to be enforced. Even the parties concerned are empowered to move an application to requisition the original record.

242. In 2015, e-filing was made mandatory for this Court in arbitration matters on the original side. Accordingly, now requisition request is made to transmit the digitized arbitral record including the original award.

243. In view of the foregoing, since this Court requisitions the arbitral record which includes the original award as well, it need not specifically direct parties to furnish the original for the purpose of impounding the same. In this manner, the Court is in adherence of the binding precedent, whilst also not defeating the purpose of the fiscal statute.

Penalty

244. This Court is mindful that there exist practical exigencies where an otherwise *bona fide* decree holder, may not have paid requisite stamp duty due to pending Section 34 petition, a Section 37 appeal or an SLP thereafter, and has only approached an enforcing Court after these judicial avenues have been exhausted.

245. From the lens of justice, while there is exist genuine reasons for such failure to deposit requisite duty by a Decree Holder, who is otherwise willing to make such deposit at the outset of enforcement proceedings, this Court cannot come to his rescue even if it believes that sufficient reasons exist to waive such penalty as the said power is invariably vested with the Collector.

246. I arrive at the aforesaid position due to lack of any statutory discretion granted to the Court with respect to penalty. This is evident from the careful words of Sections 35 and 40, as follows:

> *"**35. Instruments not duly stamped inadmissible in evidence, etc. —** No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped :*
>
> *Provided that—*
> *(a) any such instrument shall be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of any instrument insufficiently stamped, **of the amount required to make up such duty, together with a penalty of five rupees,** or, when ten times the amount of*

the proper duty or deficient portion thereof exceeds five rupees, ***of a sum equal to ten times such duty or portion****;*

(b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it…"

(emphasis supplied)

247. Proviso (a) to Section 35 allows an authority under Section 33 to require payment of deficit duty and penalty. When ten times the deficiency does not exceed Rs.5/-, the penalty is Rs.5/- but if ten times the adequate amount or deficient amount exceeds Rs.5/- then the penalty is ten times the deficiency.

248. Section 40 on the other hand pertains to the Collector's power to require payment of deficit duty and penalty, as follows:

*"**40. Collectors power to stamp instruments impounded.** — (1) When the Collector impounds any instrument under section 33, or receives any instrument sent to him under section 38, sub-section (2), not being an instrument chargeable with a duty not exceeding ten naye paise only or a bill of exchange or promissory note, he shall adopt the following procedure: —*

(a) if he is of opinion that such instrument is duly stampeded or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be;

(b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped, ***he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees; or, if he thinks fit, an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees****:*

Provided that, when such instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

(2) Every certificate under clause (a) of sub-section (1) shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.

(3) Where an instrument has been sent to the Collector under section 38, sub section (2), the Collector shall, when he has dealt with it as provided by this section, return it to the impounding officer."

(emphasis supplied)

249. Section 40(1)(b) is distinct from proviso (a) to Section 35 in two ways: (i) it uses the words "if he thinks fit", which is an explicit provision of discretion and (ii) penalty "not exceeding ten times", indicates that any amount up to ten times the deficit can be levied as penalty. This is not present in Section 35, which says, "a sum equal to". Meaning thereby, this Court must levy penalty of Rs.5/- or ten times the deficit portion or duty.

250. Accordingly, this Court does not have the discretion to waive penalty or reduce it thereof.

251. Additionally, the power to leavy penalty by the Collector is not unfettered and the Supreme Court has laid down guiding principles for the same in ***H.C. Dhanda Trust (supra)***, whereby it cautioned that maximum penalty must only be imposed in extreme cases where an element of fraud or deceit exists. This position was reiterated in ***Peteti Subba Rao v.***

Anumala S. Narendra[74], whereby it was held that maximum penalty cannot be imposed mechanically, and other factors must be considered including the financial position of the concerned person.

252. The Supreme Court in ***Seetharama Shetty (supra)*** also duly acknowledged the distinction in the level of discretion accorded to the Court and the Deputy Commissioner (Collector in the present case), as follows:

> *"14.1. Gangappa's case (supra), analysed a situation on an insufficiently stamped document produced before a Court, and compared Sections 34 and 39 of the Act and held that the discretion conferred by the provision is different by the text and the context of these provisions. This Court upheld the ratio laid in Digambar Warty (supra) and held that even though no discretion was provided to the Court to impose a reduced penalty, Section 38 of the Act empowered the Deputy Collector to refund the duty so collected. In paragraph 18 of the Judgment, it is recorded that:*
>
>> *"18. The above view of the Karnataka High Court that there is no discretion vested with the authority impounding the document in the matter of collecting duty under Section 33, is correct. The word used in the said proviso is "shall". Sections 33 and 34 clearly indicate that penalty imposed has to be 10 times. The Division Bench of the Karnataka High Court in Digambar Warty [Digambar Warty v. Bangalore Urban District, 2012 SCC OnLine Kar 8776 : ILR 2013 Kar 2099] has rightly interpreted the provisions of Sections 33 and 34 of the Act. We, thus, are of the view that the High Court in the impugned judgment [Fakkirappa v. Gangappa, 2014 SCC OnLine Kar 12775] did not commit any error in relying on the judgment of the Division Bench in Digambar Warty [Digambar Warty v. Bangalore Urban District, 2012 SCC OnLine Kar 8776 : ILR 2013 Kar 2099]. We thus have to uphold the above view expressed in the impugned judgment [Fakkirappa v. Gangappa, 2014 SCC OnLine Kar 12775].*

[74] **(2002) 10 SCC 427**

However, as a one-time measure, this Court allowed closing the matter by confirming the payment of deficit duty with the double penalty as imposed by the trial Court. The precedent interpreted the discretionary limits under Section 34 of the Act.

14.2. *In United Precision Engineers Private Limited (supra), the question arose as to the extent of power exercised by Deputy Commissioner under Section 37(2) of the Act. The Court observed that the phrase "in every other case" contained in Section 37(2) of the Act will have to be understood to include not only an instrument which is merely impounded and referred but also an instrument impounded, relating to which duty and penalty determined but not paid by the party. The Court observed that as per the combined reading of the sections, if the impounding authority determined the penalty under Section 37(1) of the Act, and thereafter, sends the document to Deputy Commissioner under Section 37(2) of the Act, then the Deputy Commissioner will have the power to reduce the penalty under Section 38 of the Act. The ratio deals with the interplay between Sections 37 and 38 of the Act."*

253. Therefore, to reiterate, with respect to the authorities (besides the Collector) under Section 33, particularly an enforcing Court under Section 36 of the Arbitration Act, for instruments that are chargeable but insufficiently stamped and have been therefore impounded under Section 33, payment of penalty is not an option but a mandate, as is evident from a conjoint reading of Sections 35, 38 and 40. Where the Act does provide relaxation is under Sections 37, 39 and 41, which is either the prerogative of the State Government or the Collector.

<u>Time is of Essence</u>

254. This Court is mindful that enforcement proceedings are time-sensitive and that requiring a Decree Holder to approach the Collector for payment of adequate stamp duty and penalty, if any, is essentially adding

another adjudicatory process, which may cause delay in enforcement of the arbitral award. However, it must also be borne in mind that Section 33 requires this Court to impound an insufficiently stamped award and Section 35 prohibits this Court from acting upon such award. Therefore, balance must be struck between practical consequences and statutory prohibitions.

255. To do away with another adjudication altogether, the Court may proceed under Section 35 read with Section 38(1) and act upon the instrument upon payment of deficit duty and penalty. In this case, only an authenticated copy of the instrument and the collected amount shall be forwarded to the Collector. Only if a Decree Holder refuses to pay under Section 35, should the Court impound the instrument and send it to the Collector. This procedure, in my opinion, would achieve the desired result and also not prolong the process.

256. The aforesaid was adopted in ***Peteti Subba Rao (supra)***, wherein it was held that if a party is unwilling or unable to pay the deficit duty as per Section 35, then the instrument may be impounded under Sectio 38(2). This would allow enforcement to proceed without adjudication before the Collector. However, even this route under the Act envisages payment of penalty.

257. The Supreme Court in ***Chilakuri Gangulappa v. Revenue Divisional Officer***[75], also adopted the aforesaid approach in the following manner:

> *"12. It is clear from the first sub-section extracted above that* ***the Court has the power to admit the document in evidence if the party producing the same would pay the stamp duty together with a penalty amounting to ten times the deficiency of the stamp duty****. When the Court chooses to admit the document on compliance with such* ***condition the Court need forward only a copy of the document to the Collector, together with the amount collected*** *from the party for taking adjudicatory steps.* ***But if the party refuses to pay the amount aforesaid the Court has no other option except to impound the document and forward the same to the Collector.*** *On receipt of the document through either of the said avenues the Collector has to adjudicate on the question of the deficiency of the stamp duty. If the Collector is of the opinion that such instrument is chargeable with duty and is not duly stamped "he shall require the payment of the proper duty or the amount required to make up the same together with a penalty of an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof"."*
>
> ***(emphasis supplied)***

258. Another solution, in my mind, would be to expedite the adjudication before the Collector.

259. In this regard, Rule 16 of Chapter I of the Delhi High Court (Original Side) Rules, 2018 provide that:

> *"16. Inherent power of the Court not affected. — Nothing in these Rules shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of Court."*

[75] **(2001) 4 SCC 197**

260. In light of the aforesaid, it would be apposite to issue time-bound directions to the concerned Collector of Stamps/SDM.

261. This approach was also adopted by a co-ordinate Bench of this Court in ***Uno Minda Ltd. (supra)***, whereby it was duly recognised that an instrument executed in India must be stamped within one month from its execution. Thereupon, directions were issued to ensure timely adjudication by the Collector, in the following words:

> *"11. In view thereof, since the activities of individuals and companies would be depended upon various documents, instruments of transfer, etc., and the first step would be to seek adjudication of the stamp duty under Section 31 of the Indian Stamps Act, 1899, a time limit would be required to be followed by the Collector of Stamps for the said adjudication.*
>
> *12. Under these circumstances, it is opined that reasonable time ought to be fixed in order to enable the parties to have some certainty as to the stamp duty payable. Accordingly, it is directed that the Collector of Stamps shall usually adjudicate the stamp duty payable and communicate the same to parties within 30 days. However, if the same involves any complexity/extraordinary circumstances, the adjudication of stamp duty can be extended for a maximum period of three months from the date of application.*
>
> *13. The present order shall be communicated to the Chief Secretary, GNCTD for ensuring compliance. In addition, the Chief Secretary, GNCTD shall also consider adding a specific entry in the Delhi Act, 2011 in respect of adjudication of stamp duty with a reasonable time limit being fixed so that the same can be followed by the Collector of Stamps. Till the addition of the said entry in the Delhi Act, 2011, the aforementioned timeline shall operate."*

262. Therefore, it may be fruitful to request the Collector of Stamps/SDM concerned to expedite the adjudication in light of the pending enforcement proceedings.

263. At this juncture, I deem it relevant to advert to the remaining unanswered contentions.

264. Mr. Vikas Mehta, the learned Counsel for the Decree Holder submitted that requisite stamp duty was deposited when award was sought to be enforced and hence, no question for impounding arises, which would otherwise also delay the enforcement and allow the Judgment Debtor to escape.

265. In light of the foregoing observations, Section 33 is a mandatory duty of this Court and is triggered the moment it comes across an insufficiently stamped instrument in the course of its functions. Further, there is no provision in the Act which provides that endorsement of an award after more than a month from its execution can be done by a Decree Holder unilaterally. However, this Court is mindful of the practical repercussions, therefore, it deems it fit to not dispose of the enforcement petition, and direct the concerned Collector to act in accordance with the statute within a time-bound manner.

266. The reliance placed on ***Punita Bhardwaj (supra)*** is of no avail since (i) unlike in the present case[76], adequate stamp duty was paid before the enforcement petition was filed and (ii) the question of law as to how an

[76] Instant petition filed on 13.07.2026 and stamp duty was deposited on 03.08.2026

instrument is to be treated if duty is deposited after one month from execution of the award was not considered.

267. Further, ***Sharma Fabricators and Erectors Pvt. Ltd. (supra)*** actually goes against the case of the Decree Holder inasmuch as it duly recognises that, *"An instrument that requires to be stamped does not cease to be an instrument if not stamped and at best, the legal consequence of insufficient stamping or not stamping is that the instrument is liable to be impounded"*. It was also held that an award would become enforceable as a decree the moment it is signed and pronounced, therefore, the effect and operation of the award does not depend on the date of payment of stamp duty. This Court has no quarrel with the aforesaid position, however, the same does not help the case of the Decree Holder as it merely reiterates that the effect of an award is from the date it is signed and pronounced.

268. With respect to the contention that the timelines under both statutes ought not to be conflated, I am of the view that ***M. Anasuya Devi (supra)*** does not envisage that stamp duty is not to be paid on arbitral awards. It only provides that an objection on such grounds can be deferred to a later stage, i.e., the enforcement stage under Section 36. It holds that inadequacy of stamp duty is not a ground to set aside an award under Section 34 proceedings in view of the specific grounds mentioned in Section 34 and nothing more.

269. To reiterate, both statutes are independent of each other. While adequacy of stamp duty is relevant for the enforcement stage under Section

36 of the Arbitration Act, the Stamp Act makes execution/signing of the award as the chargeable event. The Arbitration Act is a special law and it is trite that special provisions prevail over general ones. However, even this does not come to the rescue of the Decree Holder since Section 36 of the Arbitration Act only stipulates that an award becomes enforceable after three months from the date of the award; this provision, in no terms, provides that since the award is enforceable after three months, stamp duty is also to be paid after three months. The Stamp Act continues to govern the procedure for deposit of stamp duty, which unequivocally provides that stamping is connected to execution/signing of the award and not the enforceability of such award.

270. There is no quarrel with the proposition laid down in ***Vodafone Idea Telecom Infrastructure Ltd. (supra)*** that maximum penalty need not be imposed. However, such discretion is granted to the Collector under Section 40 and not an authority (other than the Collector) under Section 33 of the Stamp Act. There is also no quarrel with the finding in ***M/s Tarini Prasad Mohanty (supra)*** that non-stamping does not render an award as unenforceable, it only prohibits its admissibility, and is therefore, a curable defect.

271. Mr. Jayant Mehta placed reliance on ***Krishnavathi Sharma (supra)*** to contend that non-payment of stamp duty is curable defect. This decision categorically holds that an insufficiently stamped instrument is inadmissible and if produced before a competent authority, has to be mandatorily impounded under Section 33. This decision pertains to the

Karnataka Stamp Act, 1957, whereby procedure adopted is analogous to that of the Stamp Act applicable herein. In paragraph nos. 15 to 18, it is held that there is no discretion with respect to the quantum of penalty when the instrument is to be admitted by the Court without forwarding it to the District Commissioner (Collector herein), only upon payment of deficit amount along with the "penalty at ten times", a copy of such instrument would be forwarded to the concerned authority. However, if the instrument is itself forwarded to the concerned authority (Collector herein), such authority is granted the discretion to impose penalty in excess of five rupees but not exceeding ten times the deficit duty.

<u>Conclusion: The Position That Emerges</u>

272. I deem it fit to summarize the findings arrived at in the preceding discussion as follows:

(i) The Arbitration Act and the Stamp Act operate independently of each other and this Court must read them harmoniously as far as possible.

(ii) Enforcement of an arbitral award is not the chargeable event envisaged by the Stamp Act. Instead, execution/signing of an award is when stamp duty is attracted.

(iii) ***M. Anasuya Devi (supra)*** does not grant any exemption from the payment of stamp duty, only defers such an objection at the

Section 34 stage since non-payment of stamp duty is not a ground to set aside an arbitral award.

(iv) The three-month (and an additional thirty days) window under Section 36 of the Arbitration Act does not grant exemption from the requirement of stamp duty.

(v) Section 17 of the Stamp Act envisages that a domestic arbitral award must be stamped before or at the time of its execution.

(vi) Proviso (a) to Section 32(3) unequivocally prohibits the Collector from endorsing a domestic arbitral award after lapse of one month from its execution.

(vii) The competent authorities under Section 33 are duty-bound to impound insufficiently stamped arbitral awards produced before it or which come in performance of its functions.

(viii) Section 35 bars the competent authority from admitting an award, which is chargeable but not adequately stamp, in evidence or even otherwise acting upon it unless deficit duty and penalty (if applicable) have been paid. There is no discretion in the quantum of penalty under proviso (a) herein.

(ix) Section 38(1) empowers the impounding authority under Section 33 to admit such an award in evidence upon payment of deficit duty and penalty as stipulated under Section 35. In this case, (i) an authenticated copy, (ii) a written certificate stating the amount of duty and penalty imposed along with (iii) the amount collected must be forwarded to the Collector. In all other cases, Section 38(2) requires such authority to forward the original award to the concerned Collector.

(x) The statute does not empower this Court to waive the penalty component.

(xi) Section 40 empowers the Collector to require payment of adequate duty or the deficit amount along with penalty. A penalty of five rupees or if deemed fit, an amount not exceeding ten times the adequate duty or the deficit portion may be levied. The Collector is granted discretion with respect to the quantum of penalty.

(xii) Upon payment of duty and penalty (if applicable), the competent authority or Collector is empowered to endorse such an award. It is upon such endorsement that an award may be acted upon for its enforcement.

(xiii) There is no provision in the Stamp Act which permits Decree Holders to deposit adequate stamp duty on an arbitral award after lapse of one month from its execution unilaterally and without payment of penalty (if applicable).

(xiv) An insufficiently stamped arbitral award sought to be enforced is to be impounded under Section 33 and dealt with either under Section 35 or 38(2).

(xv) *Bona fide* pendency of Section 34 objection petition or appeal under Section 37 or an SLP would be cogent grounds for the concerned Collector to waive or impose minimal penalty.

Way Forward – An Act of the Court Should Prejudice No One

273. In the foregoing view of the matter, it is explicitly clear that provisions of the Stamp Act cannot be circumvented for the purposes of Section 36 of the Arbitration Act, i.e., for the enforcement of an arbitral award as a decree of the Court.

274. The preceding discussion establishes the legal contours regarding stamp duty on arbitral awards and the stage at which insufficient stamping becomes relevant. However, practical difficulties remain. The lack of requirement to ascertain sufficient stamp duty at the stage of Section 34 of the Arbitration Act as held in ***M. Anasuya Devi (supra)*** more often than not results in inadequately stamped awards in enforcement proceedings.

275. Another important aspect for the purposes of enforcement of an arbitral award is the requirement of registration under Section 17 of the Registration Act, 1908.

276. Where an arbitral award being a non-testamentary instrument falls under the ambit of Section 17 of the Registration Act, 1908, it mandatorily requires registration. In the absence of registration, Section 49 of the

Registration Act bars such an award from affecting any immoveable property comprised therein or being received as evidence of any transaction affecting such property.

277. Against this backdrop and to give operational effect to the statutory framework of the Stamp Act, this Court issued Practice Directions *vide* Notification No. 01/Original/DHC/2026 dated 13.07.2026, directing that every enforcement petition under Section 36 of the Arbitration Act must mandatorily contain an express declaration by the Decree Holder/Petitioner regarding the sufficiency of stamp duty paid on the award. These Directions are as follows:

"HIGH COURT OF DELHI: NEW DELHI
PRACTICE DIRECTIONS
No. 01/Original/DHC/2026 Dated:13.07.2026

Hon'ble the Chief Justice has been pleased to direct that in every execution petition under Section 36 of the Arbitration & Conciliation Act, 1996, the Petitioner/Decree Holder shall make a declaration in bold capital letters on the top of the index that he has paid the stamp duty on the award.

As regards, pending execution petition under Section 36 of the Arbitration & Conciliation Act, 1996, the Petitioner/Decree Holder shall pay the stamp duty on the award (where not paid) within a period of four weeks from the date of issue of this practice direction.

By Order
Sd/-
(H.K. ARORA)
Registrar (Original, IPD & JJC)"

278. It is evident from the aforesaid that by the way of these practice directions, this Court had granted a final indulgence of four weeks to

Decree Holders to deposit adequate stamp duty on the arbitral awards sought to be enforced. This Court finds that these practices directions have not been followed in their true letter and spirit. It is observed that the declaration regarding stamp duty is only in present in fresh execution petitions and not "*every* execution petition under Section 36" as envisaged by these directions.

279. Accordingly, to enforce strict statutory compliance under the Indian Stamp Act, 1899, the Registration Act, 1908, and the procedural mandates of this Court, the following directions are issued for all petitions filed under Section 36 of the Arbitration Act:

(i) Declaration: All execution petitions under Section 36 shall bear a declaration on the first page of the e-file on the top regarding stamp duty. This declaration shall the following:

(1) Date of Award

(2) Date of Payment of Stamp Duty

(3) Awarded Amount

(4) Quantum of Stamp Duty to be paid on such Award as per the applicable rates.

(ii) Registry Scrutiny Mandate: In addition to the declaration required from the Decree Holder at the top of the index, verified proof of payment of sufficient stamp duty and registration (where applicable) must be annexed to the petition. The Registry is strictly directed not to list any enforcement petition that lacks such proof.

(iii) Office Noting Requirement: The Registry shall explicitly record an Office Note detailing whether adequate stamp duty has been paid (specifically quantifying the amount paid versus chargeable) or if it remains unpaid.

(iv) Pending Filings (On or before 13.08.2026[77]): All petitions filed on or before 13.08.2026 where the arbitral award is inadequately stamped are liable to be impounded under Section 33 of the Stamp Act. These petitions shall be directly listed before the Joint Registrar, who shall either proceed under Section 35 or Section 38(2) depending upon the facts and circumstances of each case. These petitions shall be listed before the Court only upon due satisfaction in accordance with the Act.

(v) Future Filings (After 13.08.2026): For petitions filed after 13.08.2026 accompanied by an arbitral award that is inadequately stamped, the Registry shall return the petition under objections and the award shall be impounded forthwith. For this purpose, such petitions shall be listed before the Joint Registrar. The Joint Registrar is at liberty to proceed either under Section 35 or Section 38(2) depending upon the facts and circumstances of each case. These petitions shall be listed before the Court upon satisfaction of stamp duty.

[77] When Practice Directions issued *vide* Notification No. 01/Original/DHC/2026 dated 13.07.2026 ceased to operate

(vi) To balance out the objective behind the Arbitration Act and the bar under Section 35 of the Stamp Act, these petitions shall not be disposed of for want of stamp duty and interim orders (if any) shall continue till the defect is cured by Decree Holders.

(vii) Existing Pending Petitions: Parties in pending enforcement petitions lacking adequate stamp duty, if deemed fit, are also permitted to withdraw the petition with liberty to seek restoration as and when the situation arises and after due satisfaction of the stamp duty.

(viii) Encumbered / Stayed Proceedings: In cases where a stay on the operation of the award is subsisting in connected proceedings under Section 34 or Section 37 of the Arbitration Act, or where a moratorium under the Insolvency and Bankruptcy Code of 2016 is imposed or liquidation proceedings are ongoing, parties are granted liberty to withdraw the enforcement petition, with liberty to re-file or seek restoration as and when the statutory or judicial impediment ceases to operate.

(ix) Power to Call Original Award: In cases where the arbitral award is not requisitioned, the Registrar General / Joint Registrar of this Court may call for the original arbitral award. If not furnished voluntarily, the Court may not impose any penalty. However, the bar under Section 35 of the Stamp Act will continue to operate.

(x) Registration Act of 1908: Where applicable, if an award is liable to be registered by virtue of Section 17 of the Registration Act of 1908, and is not so registered, the Decree Holders are directed to ensure necessary compliance in view of Section 49 of the Registration Act.

The Sequitur

280. In light of the foregoing discussion and the duty cast upon this Court under Section 33 of the Act, the arbitral award dated 26.03.2019, along with order dated 07.05.2019 under Section 33 of the Arbitration Act is liable to be impounded.

281. To cure the defect of stamp duty, the Decree Holder is to furnish the original award before Joint Registrar.

282. List before Joint Registrar on 08.09.2026 for the needful in accordance with the Act.

283. Keeping in view the objective of expeditious and speedy disposal as envisaged by the Arbitration Act, the concerned Collector of Stamps/SDM is requested to expedite the process as far as possible, preferably within a period of six weeks from the date when the arbitral award is sent to the Collector concerned.

284. List this matter before this Court after requisite stamp duty and penalty (if applicable) is deposited as per the Act.

285. Needless to state that the aforesaid directions do not apply to foreign arbitration awards[78].

286. Let a copy of this Judgment be forwarded by the worthy Registrar General of this Court for information and compliance to:

1. The Principal District & Sessions Judges of all District Courts for proper circulation amongst all Commercial Courts Judges.

2. The Principal Secretary (Law, Justice & LA), GNCTD.

3. The Divisional Commissioner, Office of the Collector of Stamps (Headquarters) for proper circulation amongst all Deputy Commissioners of each Revenue District and all concerned Officers under the Deputy Commissioner.

4. The Director, Delhi Judicial Academy.

OM PRAKASH SHUKLA, J.

SEPTEMBER 01, 2026/*gunn*

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[78] *Shriram EPC Ltd. v. Rioglass Solar Sa,* **(2018) 18 SCC 313**