

- The High Court referred the matter to the Registrar (Judicial) of the High Court (**Registrar**) for determination. Before the Registrar, the Respondent contended that the document in question was not a lease deed but, in fact, an agreement to lease, i.e. an agreement between the parties that a lease would be executed and registered at a later point in time. The Registrar, however, did not agree with this contention, and found that the document was indeed a lease deed, and deficit stamp duty plus penalty – aggregating to approximately INR 1 crore – was payable by the Respondent on the same. Without considering the report of the Registrar, the High Court allowed the petition of the Respondent and appointed an arbitrator to adjudicate the disputes between the parties.
- Aggrieved by this order of the High Court, the Appellant approached the Supreme Court.

ISSUES AND FINDINGS

- The Supreme Court was required to decide whether the document was sufficiently stamped or not, and, if it was found to be insufficiently stamped, what would be the effect on the arbitration agreement?
- The parties reiterated the respective arguments that they had made before the High Court. The Appellant stated that the Lease Deed 2 was insufficiently stamped, and the arbitration agreement therein could not be acted upon, while the Respondent contended that the document was not a lease deed at all, but an agreement to lease.
- For determining the nature of the document, the Supreme Court simply adverted to the report of the Registrar, which had clearly held that the document was undoubtedly a lease deed and was required to be stamped. The Supreme Court noted it was an admitted position that the requisite stamp duty and penalty for the Lease Deed 2, as determined by the Registrar, had not been paid¹, and therefore the Lease Deed 2 remained an insufficiently stamped document.
- Thereafter, in order to decide the effect on the arbitration agreement, the Supreme Court placed reliance on its landmark judgment in *SMS Tea Estates Private Limited v. Chandmari Tea Company Private Limited (SMS Tea Estates)*². In that case, it had been held that when an arbitration agreement was contained in a document which was not duly stamped as per the Stamp Act, 1899, the court could not act upon such a document nor the arbitration agreement therein.
- Noting that the provisions of the Karnataka Stamp Act, 1957 were analogous to the provisions of the Stamp Act, 1899, the Supreme Court held that, in the present case too, the arbitration agreement contained in the Lease Deed 2 could not be acted upon, and the High Court could not have appointed an arbitrator under the same. On this basis, the order of the High Court was set aside.
- Further, on the principles of equity, the apex court noted that the Respondent had sought for the disputes to be referred to arbitration only after participating in the suit proceedings before the City Civil Court at Bangalore for nearly 2 years and 3 months. If the Respondent had considered the Lease Deed 2 to be a valid document, and wanted to rely upon the same for invoking arbitration, it could have done so by filing an application under section 8 of the Arbitration Act at the earliest opportunity in the suit proceedings.

ANALYSIS

- The Supreme Court's judgment in *SMS Tea Estates* makes it abundantly clear that courts cannot act upon arbitration agreements contained in insufficiently stamped documents. In fact, while that was a case decided with reference to the Arbitration Act as it stood prior to the 2015 amendment, even post such amendment, the Supreme Court has upheld the reasoning and decision of *SMS Tea Estates* in its more recent judgment in *Garware Wall Ropes Ltd. v. Coastal Marine Constructions & Engineering Ltd.*³
- Hence, parties would always be well-advised to ensure that proper stamp duty is paid on their legal instruments, taking into account the stamp duty payable across all state jurisdictions where the document is relied upon.

¹ It was also an admitted position that the requisite stamp duty had not been paid for the Lease Deed 1

² (2011) 14 SCC 66

³ (2019) 9 SCC 209