



Arbitral award creating rights in immovable - Require registration

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Introduction: The present article and write-up is an attempt to describe one facet of the question -

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- Jurists
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A proper appreciation of this article would require at a minimum, basic understanding of

- The [Constitution Of India, 1950](#)
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In **Ratan Lal Sharma v. Purshottam Harit**, 1974 0 AIR(SC) 1066 = 1974 1 SCC 671 = 1974 3 SCR 109 = 1974 0 Supreme(SC) 8 = 1974 1 UJ 185, while deciding on matters related to Arbitration Act, 1940 : § S.13, § S.17 And Registration Act, 1908 : § S.17, it was held that -

“Award creating right in immovable property worth more than Rs 100/- - registration compulsory - held that unregistered award cannot be looked into for passing judgment in terms of award”

While it is true that an arbitral award has to be compulsorily registered, there arises a consequential issue as to whether such a defect can be curable. In **Chelamayya and Anr v. Mattapalli Venkataratnam and Anr.**, 1972 0 AIR(SC) 1121 = 1972 3 SCC 799 = 1972 0 Supreme(SC) 35 = 1972 0 UJ 579, 13 states thus -

“the award in original was not engrossed on a stamp paper. What the arbitrators had done at the time of filing the award was to file the original award along with a true copy of it engrossed on stamp paper. It is not disputed that an instrument of this kind can be admitted in evidence after proper duty and penalty is paid. The High Court has rightly pointed out that the intention of the arbitrators is engrossing a copy of award on the stamp paper and producing the same attached to the original award was merely to show that the required stamp duty and penalty had been paid. It is not disputed that the actual value of the stamp used covers more than the stamp duty and penalty required for the document and, therefore, there is no difficulty in holding that the award is admissible in evidence and cannot be rejected on the ground that the proper duty and penalty has not been paid.”

Therefore, it was held -

13. Enforcing Part Of Award - Registration Of An Award - Stamp Duty – Award Can Be Admitted In Evidence After Proper Duty And Stamp Is Paid – An Award Reference To Partition Of Immovable Properties Is Not Compulsorily

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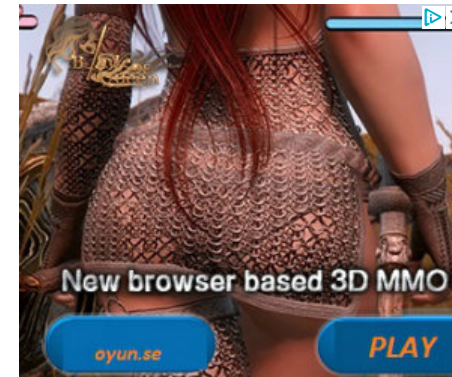
Registerable On Ground That It Embodies A Partition - Effect Of Non-Registration Of Award When Part Of It Requires Registration Which Is Severable From The Part Not Requiring Registration - Such An Award Is Admissible In Evidence - Unstamped Document - Arbitration Award – Inadmissibility In Evidence Can Be Corrected Upon Rectifying The Stamp Duty”

Moreover, in **Mohinder Kaur Kochhar v. Punjab National Bank, 1981 0 AIR(Del) 106 = 1981 19 DLT 41 = 1980 0 SUPREME(Del) 242**, the Hon'ble Court was deciding on matters related to **Cf. CONTRACT ACT: S.196, S.197 REGISTRATION ACT : S.17(1) ARBITRATION ACT : S.13, S.14, S.2(a), S.2(e), S.28, S.30 EVIDENCE ACT: S.114 PARTNERSHIP ACT : S.19(2)(a), inter alia.**

The Court in 12 observed -



“The award did not declare; as Appellant contended, any right or interest in immovable property of one hundred rupees or upwards, in terms of Section 17 (1) of the Registration Act. The word declare in Section 17 has to be read ejusdem generis with the words create, assign or limit. Now the words create, assign or limit imply a definite change of legal relation to a property and the expression declare therefore must also import a similar meaning. The distinction as such between a mere recital of a fact and something which in itself creates title in the property must be borne in mind. In the present case, no rights in the immovable property are being declared by the award. The reference to equitable



mortgage was only a recital of fact. Award did not declare or create a mortgage of any immovable property. This plea, therefore, fails”

The Hon'ble Court held - “Award of Arbitration did not declare or create a mortgage of any immovable property and therefore does not require registration.”

Now, as to the procedure for registration, in **Yanala Malleshwari and Ors. v. Ananthula Sayamma and Ors., 2006 6 ALT 523 = 2007 0 AIR(AP) 57 = 2007 1 CivCC 527 = 2007 5 RCR(Civ) 609 = 2006 0 Supreme(AP) 1228**, it was held -

“This Court has referred to relevant provisions of the Registration Act, which would reveal that under specific conditions only the registering officer can reject registration and if a document registered earlier is invalid, the registering officer can even re-register the document at the instance of the person who is entitled to execute and register the document. Further, as rightly pointed out by the learned counsel for the respondents, the registering officer can refuse registration only on grounds contemplated under law. When the legislature or subordinate legislature contemplates the circumstances and situations under which the registering officer can refuse registration, the Court cannot enlarge the scope by supplying casus omissus.”

STAMP PAPER - WHOSE NAME, IN

In **Municipal Corporation Of Greater Bombay V. Girjashankar R. Singh, 1996 2 Arb. LR 553 = 1996 0 SUPREME (Mah) 125**, it was held -

8. Merely because the said award has been made on the sheet of paper with impressed stamp of Rs. 100/- issued in the name of the firm of the respondent, a party to the reference, the said award is made neither in contravention of the said **Section § 34 (of The Registration Act, 1908)** as amended nor inadmissible in evidence nor invalid nor bad in law.

xxx

In the instant case, this having been done, there is no infirmity in the procedure followed by the arbitrator in making the said award. In any event, this cannot be a ground for setting aside the said award under the provisions of **Section § 30** of the Act (The Arbitration Act, 1996).”

Conclusion

Thus, one may content that Arbitral Award Creating Rights In Immovable – Require Registration.

SUGGESTED READINGS:

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