
**CASE COMMENT: INTERNET AND MOBILE ASSOCIATION OF INDIA VS.
RESERVE BANK OF INDIA**

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Tadar Achal, Law Student, Symbiosis Law School, Pune

ABSTRACT

This case law commentary analyzes a landmark overruling decision by a three-bench judge of the Supreme Court of India that addressed three important issues in the practice of arbitration. The first issue is the doctrine of separability in arbitration agreements under contracts. The second issue concerns the misconceptions surrounding fraud cases in arbitration. Lastly, the commentary examines whether writ petitions passed under the Arbitration and Conciliation Act are maintainable. The factual background of the case involves a dispute between Karnataka Power Corporation Limited and Indo Unique Company, which entered into a sub-contract with Global Mercantile for transportation purposes. Several disputes arose, leading to the invocation of bank guarantees and the rejection of the arbitration clause by Global Mercantile based on non-stamping of the agreement. The analysis explores the doctrine of separability and its application, as well as the provisions of the Maharashtra Stamp Act, 1958. The Supreme Court's decision held that non-stamping of the agreement does not invalidate the arbitration clause, emphasizing its independent nature. The court also ruled that fraud cases are arbitrable, rejecting previous outdated notions. The commentary concludes by highlighting the significance of the judgement in providing guidelines for courts and tribunals and reaffirming the importance of the doctrine of separability in protecting arbitration agreements.

Keywords: *Arbitration, Arbitration Agreement, Doctrine of Separability, Fraud Cases and Maharashtra Stamp Act.*

1. INTRODUCTION

A landmark overruling decision was passed by a three-bench judge of the Supreme Court that cleared the air on three important issues in the arbitration practice of India. Firstly, the doctrine of separability in arbitration agreements under contracts Secondly, there are misconceptions about fraud cases in arbitration. Lastly, if the writ petitions passed under the Arbitration and Conciliation Act are maintainable, this analysis would be going through the factual matrix and the concerned issues surrounding the three issues mentioned above with an analysis of the case.

2. FACTS OF THE CASE

- An open tender took place in which Karnataka Power Corporation Limited granted the work of washing coal to Indo Unique Company.
- Later, Indo uniquely provided a bank guarantee through the State Bank of India in favour of Karnataka Power Corp. Ltd. With that, a subcontract was entered between Indo Unique and Global Mercantile for transportation purposes, and according to the contents of the contract, there was a bank guarantee furnished by Global Mercantile to Indo Unique for securing stocks¹.
- In the contract, clause 9 of the transport work orders states that there should be a security deposit furnished in the form of a bank guarantee, and also clause 10, which states the arbitration clause in case any disputes arise in the future.
- Several disputes arose in which, as a result, a bank guarantee was invoked by Indo Unique as stated under clause 9 of the contract, to which Global Mercantile filed a suit showing resistance to the said party. Subsequently, the arbitration clause under Section 8 of the Arbitration Act² was invoked by Indo Unique as mentioned under Clause 10 of the agreement.

¹ Kanishk Sharma, *Internet and Mobile Association of India v. Reserve Bank of India*, 2 DE JURE NEXUS L. J. (2022)

² The Arbitration and Conciliation Act, 1996, § 8, No. 26, Acts of Parliament, 1996 (India)

- The arbitration clause was rejected by global mercantile, stating that the ‘transport work order’ in which the clause for arbitration was laid down was not duly stamped as per the provisions given under the Maharashtra Stamp Act, 1958, therefore the arbitration clause in the said agreement was invalid.

3. ISSUES

- Whether an arbitration clause in a contract be deemed as invalid due to the reasons of non-stamping of that agreement and other technical complexities?
- Whether the fraudulent bank guarantee is resolved through arbitration?

4. ANALYSIS

4.1 Doctrines of separability

The doctrine of separability states that an arbitration agreement or an arbitration clause is separate from the main contract or the contract in which the arbitration clause was laid down, and therefore, even if the main contract terminates, the arbitration clause of the agreement would survive. This principle has been laid down in the international arbitration foundations, and the main purpose behind this principle is to make sure that the arbitration clause survives even if the contract is terminated due to a breach of the contract's conditions. This doctrine can be seen in the case of *Heyman v. Darwins Ltd*³. Taking into consideration the doctrine of separability, it was held that the non-payment was a commercial part of the contract, and the same would not deem the arbitration clause or agreement void as it is independent of the contract. The independent position of an arbitration clause or an agreement from a contract can also be relied on through Section 16 of the Arbitration Act⁴ and also Article 16 of the UNCITRAL Model Law. In the case of *Gosset v. Caparelli*⁵, it was stated that the arbitration clause of the agreement has the capability to survive even if the contract is held invalid, as it is truly independent in nature.

³ *Heyman v. Darwins Ltd*, AIR 1942 AC 356.

⁴ The Arbitration and Conciliation Act, 1996, § 16, No. 26, Acts of Parliament, 1996 (India)

⁵ *Gosset v. Caparelli*, AIR 1963 (545).

4.2 The Maharashtra Stamp Act, 1958

Section 3 of the Maharashtra Stamp Act⁶ states that there is no statement about stamping of the arbitration agreement or a clause and that the stamp duty is also subject to any kind of payment; even if there was a non-payment of the stamp duty, the arbitration agreement could not be defeated because the non-payment of the stamp duty can be cured by paying the respective amount under the Maharashtra Stamp Act 1958. Therefore, in the said case, the court directed the issue of stamping of the agreement to be forwarded to the concerned official for the payment of the same by the parties by adding the fine for late payment of stamp duty with a deadline for the same.

4.3 Decision

The Supreme Court passed a judgement stating that non-stamping of the agreement does not imply invalidation of the same. An arbitration agreement is an agreement that is independent in nature and is not charged under the stamping statutes; therefore, the same arbitration agreement can be relied upon by both parties to the contract to solve the dispute. The judgement that was passed earlier in *SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd*, 2011⁷ was overruled by the Supreme Court and also disagreed with the judgement that was laid down in the case of *Garware Wall Ropes Ltd. v. Coastal Marine Constructions and Eng. Ltd*⁸ where under Section 11 of the Arbitration and Conciliation Act, the arguments were emphasized on. This case was then referred to a larger bench, where proper guidelines were provided for dealing with issues relating to non-stamping by the courts and tribunals in the future. While deciding the case, the Supreme Court has not only relied on the cases pertaining to India but also the international arbitral jurisprudence of arbitration hotspots like the US, UK, France, etc., bringing forth the UNCITRAL model law, on which arbitration and conciliation are built.

⁶ Maharashtra Stamp Act, 1958, § 3, No. 60, Acts of Maharashtra State Legislature, 1958 (India).

⁷ *SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd*, AIR (2011) 14 SCC 66.

⁸ *Garware Wall Ropes Ltd. v. Coastal Marine Constructions and Eng. Ltd*, AIR (2019) 9 SCC 209.

On the second issue, the court held that the previous decisions that were made by the court were outdated looking at contemporary issues. It held fraud as arbitrable by disregarding the old notions by looking at the huge volumes of evidence, lack of experts in the subject, and deceptive public policies.

5. CONCLUSION:-

The author would like to draw a conclusion by noting how enthusiastically the Indian arbitration community has embraced the ruling in the global mercantile case. The approach taken by the court was contemporary in nature, as, by looking at the prevailing issues in the Indian courts, this issue unnecessarily interferes with the proceedings of arbitration. Not only has it laid down guidelines for the court and tribunal's to refer to, but it has also brought to light the real significance of the doctrine of separability's role in safeguarding arbitration agreements.

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