



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Civil Miscellaneous Appeal No.2157/2024

1. Sunil Kumar Bhakoo S/o Shri Surendra Kumar Bhakoo, R/o Bhakoo Farms, Dera Mandi Road, Village Dera, New Delhi.
2. Rumneek Bawa S/o Late Shri S.S. Bawa, R/o 37, Church Road, Basant Kunj, New Delhi.

-----Appellants/Claimants

Versus

Smt. Varisha W/o Aslam Khan D/o Shree Aamin Khan, aged about 40 years, R/o House No.59, Near Badi Masjid, Village Gardpur-Jhiwana, Tehsil Tijara, Alwar.

-----Respondent/Non Claimant



For Appellant(s) : Mr.Kamlakar Sharma, Senior Advocate assisted by Mr.Vaibhav Bhargava, Adv.
For Respondent(s) : Mr.Anurag Kalavatiya, Adv.

**HON'BLE MR. JUSTICE AVNEESH JHINGAN
HON'BLE MR. JUSTICE BHUWAN GOYAL
JUDGMENT**

08/05/2025

AVNEESH JHINGAN, J:-

1. Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short 'the 1996 Act') is filed against the order dated 26.04.2024 passed by the Commercial Court, Alwar (hereinafter 'court') accepting the objection of the respondent filed under Section 34 of the 1996 Act.
2. The appellants and respondent on 21.10.2016 entered into agreement to sell a land for consideration of Rs.65 Lakh. The part payment was made and on failure of the respondent to execute the sale deed in favour of the appellants the arbitration proceedings were initiated as provided under



Clause 7 of the agreement to sell. The proceedings culminated in award dated 03.12.2018. The claim of the appellants was allowed by awarding specific performance of the agreement to sell. The respondent was to execute sale deed of the land in question within a period of four weeks from the publication of the award and on receipt of the balance consideration. Damages of Rs.40,000/- per month with effect from 22.04.2017 till compliance of the directions were awarded. The cost was awarded in favour of the claimant.

3. The respondent filed objection under Section 34 of 1996 Act. During pendency of the objections, in view of the judgment of Seven Judges of the Supreme Court in **In Re: Interplay Between Arbitration Agreements under Arbitration, 1996 & Stamp Act, 1899** reported in **[(2024) 6 SCC 1]** the appellants filed application on 20.12.2023 for impounding the agreement to sell to adjudicate the stamp duty payable. Without deciding the application, the award was set aside vide order dated 26.04.2024. It was held that the agreement to sell was insufficiently stamped and no notice in compliance as per Section 21 of the Act was issued.

4. Learned senior counsel for the appellants contended that the application for referring the matter to the Collector (Stamps) so that the stamp duty due, if any alongwith penalty can be paid was not decided. The objections were



wrongly allowed holding that in view of limited power under Section 34 of the 1996 Act, the agreement to sell cannot be impounded. It is argued that Section 21 of the 1996 Act was duly complied.

5. Per contra, the scope of interference under Section 34 of the 1996 Act is limited and it was rightly held that the agreement to sell cannot be impounded. The contention is that only the arbitrator could have impounded the agreement to sell.

5.1 The submission is that no notice in compliance with Section 21 of 1996 Act was given for initiation of arbitration proceedings.

6. The impact of an unstamped or insufficiently stamped agreement was subject matter of the reference made to Seven Judges Bench of the Supreme Court in **Re: Interplay** (supra).

7. The Supreme Court dealt with the issue as to whether an unstamped or inadequately stamped arbitration agreement would be non-existent, unenforceable or invalid.

8. For deciding the issue an overall view of the Indian Stamps Act, 1899 (for short 'the 1899 Act') was considered.

8.1 Section 17 of the 1899 Act provides for stamp duty to be charged on the instrument as defined under the Act.

8.2 Section 33 of the 1899 Act empowers the person having authority to receive evidence either by law or consent of the



parties to impound a document which in its opinion is not stamped or sufficiently stamped. The arbitration tribunal is covered in phrase 'consent of the parties'.

8.3 The effect of Section 35 of the 1899 Act is that unless the instrument is duly stamped it shall not be admitted in evidence or be acted upon, registered or authenticated. Proviso (a) provides that the instrument shall be admissible in evidence on payment of stamp duty due and the penalty.

8.4 Under Section 43 of the 1899 Act the Collector has power to impound the instrument and in case of other authority doing so, the instrument shall be forwarded to the Collector. Thereafter it shall be decided as to whether the instrument is chargeable to duty and it has been paid. In case stamp duty due has not been paid, duty and penalty shall be levied.

8.5 As per Section 42 of the 1899 Act, on payment of stamp duty and the penalty levied, instrument shall be endorsed by the Collector of proper duty having been paid and thereafter the instrument is admissible in evidence.

8.6 It would be relevant to quote the following paras from the decision of **Re: Interplay** (supra):-

"40. Section 17 of the Stamp Act provides that all instruments chargeable with duty and executed by any person in India shall be stamped before or at the time of execution. Section 62 inter alia penalises a failure to comply with Section 17. However, despite the mandate that all



instruments chargeable with duty must be stamped, many instruments are not stamped or are insufficiently stamped. The parties executing an instrument may, contrary to the mandate of law, attempt to avoid the payment of stamp duty and may therefore refrain from stamping it.

41. Besides this situation, there are other ways in which an instrument may not be properly stamped, including the following:

41.1. The duty may have been paid under an incorrect description under Schedule I;

41.2. The duty paid may be of a sufficient amount but of improper description;

41.3. The provisions of Section 5 which govern instruments relating to several distinct matters may not have been complied with; or

41.4. The instrument may be written in contravention of Sections 13 and 14, and thereby deemed to be unstamped in terms of Section 15.

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. 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.

46. The Collector is conferred with the power to impound an instrument under Section 33. If any other person or authority impounds an instrument, it must





be forwarded to the Collector under clause (2) of Section 38. Once the Collector receives an instrument, he has the power to stamp it under Section 40, if it is not a bill of exchange, a promissory note, or an instrument that is chargeable with a duty that exceeds ten naye paise. The Collector may:

(a) Certify by endorsement that the instrument is duly stamped, if they are of such an opinion;

(b) Certify by endorsement that the instrument is not chargeable with duty, if they are of such an opinion; and

(c) Require the payment of the proper duty or the amount required to make up the proper duty, if they are of the opinion that the instrument is chargeable with duty and is not duly stamped.

The Collector may also levy a penalty, as provided by Section 40. If the instrument has been sent to the Collector under Section 38, it must be returned to the impounding officer after it is dealt with as described above.

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."

8.7 In Curative Petition the settled position of law was noted that under Section 35 of the 1899 Act, the unstamped or insufficiently stamped instrument is not admissible in evidence and that there is no provision under the 1899 Act rendering the document invalid. The decision of **Gulzari Lal Marwari Vs. Ram Gopal** reported in **[1936 SCC OnLine Cal 275]** was cited:-

"**56.** This has long been the position of law in India with respect to the Stamp Act. In *Gulzari Lal Marwari v. Ram Gopal*, one of the parties contended that the agreement was invalid because it was not properly stamped. The portion of Section 35 which bars the admissibility of unstamped instruments was the same then as it is now. The Calcutta High Court held:

"The effect of the section is to make such an unstamped document inadmissible in evidence, and unable to be acted upon by persons having authority to receive evidence or by any public officer. It does not affect the validity of the document.

There is a clear distinction to be drawn between invalidity and inadmissibility of documents. Certain statutes and sections render documents invalid if they are not stamped. No section of the Stamp Act has this effect..."



8.8 The decision of the Supreme Court in **Hindustan Steel Limited Vs. Dilip Construction Company** reported in **[(1961)1 SCC 597]** is reiterated, wherein the argument that even after payment of due stamp duty and penalty, the instrument can be admitted into evidence but is not be acted upon, was rejected. Further it was held that the 1899 Act is for securing the revenue of the State in certain classes of instrument and does not arm the party to technically defeat the case of the opponent on the ground that the instrument is not duly stamped or insufficiently stamped. The relevant paras from the decision of **Re: Interplay** (supra) are quoted :-

“**65.** The Stamp Act is a fiscal legislation which is intended to raise revenue for the Government. It is a mandatory statute. In *Hindustan Steel Ltd. v. Dilip Construction Co.* (1969) 1 SCC 597, this Court dealt with the import of Sections 35, 36 and 42 of the Stamp Act. One of the parties relied on the difference in the phraseology between Sections 35 and 36 to argue that an instrument which was insufficiently stamped or not stamped could be admitted in evidence upon the payment of duty and a penalty (if any) but that it could not be acted upon, once admitted. It was argued that Section 35 operates as a bar in two respects, namely, the admission of an instrument into evidence as well as acting upon that instrument. It was argued that Section 36, in contrast to Section 35, removed the bar in one respect alone—the admissibility of the instrument into evidence. This Court rejected this argument and held that the provisions of the Stamp Act clearly provide that an instrument could be admitted into evidence as well as acted upon once the appropriate duty has been



paid and the instrument is endorsed:
(Hindustan Steel case, para 6)

"6. ...The argument ignores the true import of Section 36. By that section an instrument once admitted in evidence shall not be called in question at any stage of the same suit or proceeding on the ground that it has not been duly stamped. Section 36 does not prohibit a challenge against an instrument that it shall not be acted upon because it is not duly stamped, but on that account there is no bar against an instrument not duly stamped being acted upon after payment of the stamp duty and penalty according to the procedure prescribed by the Act. The doubt, if any, is removed by the terms of Section 42(2) which enact, in terms unmistakable, that every instrument endorsed by the Collector under Section 42(1) shall be admissible in evidence and may be acted upon as if it has been duly stamped."

(emphasis in original)

66. In so holding, this Court made a significant observation about the purpose of the Stamp Act and the manner in which it is to be interpreted by courts:
(Hindustan Steel case, para 7)

"7. The Stamp Act is a fiscal measure enacted to secure revenue for the State on certain classes of instruments: It is not enacted to arm a litigant with a weapon of technicality to meet the case of his opponent. 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 the initial defect in the instrument. Viewed in that light the scheme is clear.

(emphasis supplied)

The Stamp Act is a legislation which is enacted in the interest of the revenue.



The statute must be interpreted with due regard to its purpose.”

8.9 It was noted that the award can be challenged on the grounds mentioned in the section 34 of 1996 Act. One of the ground available is non-existence of valid arbitration agreement and this issue cannot be decided at pre-arbitral stage i.e. at the stage of Section 8 and Section 11 of the 1996 Act.

The followings paras of **Re: Interplay** (supra) are quoted:-

137. Section 35 of the Stamp Act mandates that an unstamped instrument cannot be acted upon unless it is duly stamped. The question is whether a tribunal can effectively exercise its jurisdiction to settle the claims between the parties until stamp duty is paid on the underlying instrument. In view of the decision of this Court in *Uttarakhand Purv Sainik Kalyan Nigam*, the scope of an Arbitral Tribunal's authority is wide enough as to comprehend all preliminary issues affecting its jurisdiction, including the issue of sufficiency of stamping.

138. In case the issue of stamping is raised before an Arbitral Tribunal, Sections 33 and 35 of the Stamp Act make it evident that a person having authority by “consent of parties” to receive evidence is empowered to impound and examine an instrument. A person having authority “by consent of parties” to receive evidence includes an Arbitral Tribunal which is constituted by consent of parties.

224. The discussion in preceding segments has held that non-stamping or insufficient stamping of an instrument does not render



it invalid or non-existent. Therefore, paras 22 and 29 of *Garware Wall Ropes*, which held that an arbitration agreement contained in an unstamped or insufficiently stamped contract would be non-existent in law, does not set forth the correct position of law.

229. The discussion in preceding segments indicates that the Referral Court at Section 11 stage should not examine or impound an unstamped or insufficiently stamped instrument, but rather leave it for the determination by the Arbitral Tribunal. When a party produces an arbitration agreement or its certified copy, the Referral Court only has to examine whether an arbitration agreement exists in terms of Section 7 of the Arbitration Act. The Referral Court under Section 11 is not required to examine whether a certified copy of the agreement/instrument/contract discloses the fact of payment of stamp duty on the original. Accordingly, we hold that the holding of this Court in *SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd.*, (2011) 14 SCC 66: as reiterated in *N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd.*, (2023) 7 SCC 1, is no longer valid in law."

8.10 The Supreme Court considered that a harmonious interpretation is to be given to the provisions of the 1996 Act and the 1899 Act for efficacious and effective workability of both the Acts. It is held :-

"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."

8.11 The conclusions of the answer to the reference are as under :-

"235. The conclusions reached in this judgment are summarised below:

235.1 Agreements which are not stamped or are inadequately stamped are inadmissible in evidence under Section 35 of the Stamp Act. Such agreements are not rendered void or void ab initio or unenforceable;

235.2 Non-stamping or inadequate stamping is a curable defect;

235.3 An objection as to stamping does not fall for determination under Sections 8 or 11 of the Arbitration Act. The Court concerned must examine whether the arbitration agreement prima facie exists;

235.4 Any objections in relation to the stamping of the agreement fall within the ambit of the Arbitral Tribunal; and

235.5 The decision in N.N. Global Mercantile (P) Ltd. (2023) 7 SCC 1 and SMS Tea Estates (2011) 14 SCC 66 are overruled. Paras 22 and 29 of *Garware Wall Ropes* (2019) 9 SCC 209 are overruled to that extent."



9. The plea raised by the respondent before the arbitrator that the agreement to sell was not sufficiently stamped was rejected. It was held that the agreement to sell was not coupled with handing over of the possession and would not be hit by the provision of Section 17 of the 1899 Act. Thereafter the arbitrator proceeded to pass the award. In the objection filed under Section 34, the issue was raised that the agreement to sell was not sufficiently stamped and there was no valid agreement between the parties for settlement of dispute by arbitration.

10. During pendency of the objection the appellants filed an application for impounding of the agreement to sell so that the stamp duty due and the penalty if any can be paid. The application remained undecided but the award was set aside accepting the objection that the agreement to sell was not duly stamped. It was held that in view of limited scope under Section 34 of the 1996 Act the document cannot be impounded by the court.

11. Section 34 (1) and (2) of the 1996 Act is reproduced:-

“34. Application for setting aside arbitral award.—

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if—

(a) the party making the application (establishes on the basis of the record of the arbitral tribunal that)—



(i) a party was under some incapacity, or
(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

[Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,— (i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or (ii) it is in contravention with the fundamental policy of Indian law; or (iii) it is in conflict with the most basic notions of morality or justice.



Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]”

12. The ground for setting aside the arbitral award under sub-section (2)(a)(ii) of section 34 is that the party establishes the arbitration agreement was not valid under the law. This ground was accepted by the court and award was set aside. The Supreme Court in **Re: Interplay** (supra) held that the unstamped or inadequately stamped agreement is not invalid but is not admissible in evidence till the defect is cured.

13. The issue that needs consideration is whether the defect can be cured only at the stage of arbitral tribunal or even at the stage when for the first time the court comes to the conclusion that the agreement was not duly or sufficiently stamped.

14. The view taken by the court that the agreement cannot be impounded in objection filed under Section 34 of the 1996 Act, in the facts and circumstances of the present case shall result into an anomalous situation.

15. The arbitrator came to the conclusion that the agreement on a stamp paper of Rs.100/- was sufficiently stamped. In other words, there was no occasion for impounding the agreement at the stage of arbitral tribunal. The finding was reversed in objection under Section 34 and



the request for impounding the document so that the stamp duty due along-with penalty can be paid was rejected stating that it cannot be done in proceedings under Section 34 of the 1996 Act. The view taken by court if taken to the logical end is contrary to settled position of law and shall affect validity of document. The settled position of law is that non stamping or insufficient stamping of the agreement does not affect validity of document but bar is that it cannot be admitted in evidence till due stamp duty is paid.

16. In other words the arbitrator had rejected the objection with regard to admissibility of the agreement in evidence. In proceedings under Section 34, it was for the first time held that the agreement to sell was not duly stamped and by denying the opportunity to the appellants to cure the defect, the consequence is that the agreement to sell is not to be acted upon. Whereas the bar under Section 35 of the 1899 Act is that till duly stamped, the agreement is not admissible in evidence. The contention that even after due payment of stamp duty and penalty, the agreement need not be acted upon was rejected by the Supreme Court in the case of **Hindustan Steel Limited** (supra).

17. In present case, the appellants inspite of being ready to pay the stamp duty due alongwith penalty and thereafter the agreement becoming admissible in evidence, got no opportunity to do the needful. This is inspite of the fact that



the cause of action for curing the defect arose in Section 34 proceedings.

18. Another aspect is that a defect which is curable before the arbitrator becomes incurable at the subsequent stage even if the issue of admissibility of agreement in evidence is reversed in the proceedings against the award. The effect would be that in proceedings u/s 34 or 37 of the 1996 Act the document being unstamped or insufficiently stamped becomes a shield available to party to defend the claim on the technical ground that the agreement need not be acted upon for not being duly stamped. This situation would arise for the reason that the issue initially was decided by the arbitrator in favour of the appellants but was reversed in the subsequent proceedings.

19. Before proceeding further it would be relevant to reproduce Sections 36 and 61 of the 1899 Act:-

“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.

61. Revision of certain decisions of Courts regarding the sufficiency of stamps.—

(1) When any Court in the exercise of its civil or revenue jurisdiction of any Criminal Court in any proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (5 of 1898), makes any order admitting any instrument in evidence as duly stamped or as not requiring a stamp, or



upon payment of duty and a penalty under section 35, the Court to which appeals lie form, or references are made by, such first-mentioned Court may, of its own motion or on the application of the Collector, take such order into consideration.

(2) If such Court, after such consideration, is of opinion that such instrument should not have been admitted in evidence without the payment of duty and penalty under section 35, or without the payment of a higher duty and penalty than those paid, it may record a declaration to that effect, and determine the amount of duty with which such instrument is chargeable, and may require any person in whose possession or power such instrument then is, to produce the same, and may impound the same when produced.

(3) When any declaration has been recorded under sub-section (2), the Court recording the same shall send a copy thereof to the Collector, and, where the instrument to which it relates has been impounded or is otherwise in the possession of such Court, shall also send him such instrument.

(4) The Collector may thereupon, notwithstanding anything contained in the order admitting such instrument in evidence, or in any certificate granted under section 42, or in section 43, prosecute any person for any offence against the Stamp-law which the Collector considers him to have committed in respect of such instrument:

Provided that—

(a) no such prosecution shall be instituted where the amount (including duty and penalty) which, according to the determination of such Court, was payable in respect of the instrument under section 35, is paid to the Collector, unless he thinks that the offence was committed with an intention of evading payment of the proper duty;

(b) except for the purposes of such prosecution, no declaration made under this



section shall effect the validity of any order admitting any instrument in evidence, or of any certificate granted under section 42.”

20. As per Section 36 (*ibid*), once the agreement having been admitted in evidence it shall be not called into question at any stage in the same suit or its proceedings, on the ground of not being duly stamped except as provided under Section 61 of the Act.

21. As per Section 61 (1), once the civil or criminal court or court under revenue jurisdiction admits an instrument in evidence as duly stamped or not requiring stamp or upon payment of duty and penalty u/s 35, the appellate court or reference court may take such order into consideration on its own motion or an application by the Collector.

22. Under sub-section (2) in case the appellate court or the reference court comes to the conclusion that instrument was admitted without insufficient payment of duty as per Section 35 it shall record declaration and determine the amount payable and impound the document on production.

23. Under Section 34 of the 1996 Act the award can be set aside if the party succeeds in proving that the arbitration agreement was not valid. The restriction incorporated in Section 36 of the 1899 Act shall not be applicable to the arbitration proceedings in view of language of Section 34 of the 1996 Act. At the same time giving a harmonious



construction to the interpretation of provision of the 1899 and 1996 Act, the opportunity to cure the defect of insufficient stamp duty paid on the instrument has to be provided by the forum which for the first time form an opinion that the agreement was unstamped or insufficiently stamped.

24. At this stage, it needs to be considered that as to whether the award should be set aside under Section 34 on the ground of agreement not being stamped or insufficiently stamped and thereafter leaving the parties to invoke fresh arbitration after curing the defect or an opportunity be granted in the proceedings under Section 34 to cure the defect. The arbitration act provides for alternative disputes resolution whereby the parties agree to get the dispute decided by the neutral party with an aim for speedy and binding forum to resolve the dispute with minimum judicial intervention. This coupled with the fact that unstamped or insufficiently stamped agreement is not an invalid document and becomes admissible in evidence on curing of the defect, relegating of the parties for fresh arbitration after curing of the defect shall be against the spirit for providing alternative dispute resolution.

25. While accepting the preliminary objection the court should have proceeded to follow the procedure of impounding as prescribed under the 1899 Act and provide an opportunity to appellants to pay the stamp duty due alongwith penalty.



26. The second ground for setting aside the award i.e. non-compliance of Section 21 of the 1996 Act need not be gone into by us at this stage. Once the court came to the conclusion that agreement to sell, the basis for resorting to the arbitration was not admissible in evidence and the issue goes to the root of jurisdiction for initiating the arbitration, there was no occasion to decide the other issues.

27. The Supreme Court in the case of **Tin Plate Co. of India Ltd. Vs. State of Bihar and Ors.** reported in **[112 STC 543 (SC)]** held that while dismissing the petition relegating the petitioner to alternative remedy, the Court should not deal with the merits of the case. Relevant para is quoted :-

"It is no doubt true that when an alternative and equally efficacious remedy is open to a person, he should be required to pursue that remedy and not to invoke extraordinary jurisdiction of the High Court under Article 226 of the Constitution and where such a remedy is available, it would be a sound exercise of discretion to refuse to entertain the writ petition under Article 226 of the Constitution. In the present case, admittedly, the appellant had an alternative and equally efficacious remedy by filing an appeal before the Appellate Authority against the order of assessment and in view of such a remedy being available to the appellant, the High Court was right in dismissing the writ petition on the ground that the appellant has an alternative remedy available under the Bihar Sales Tax Act. However, we do not subscribe to the view of the High Court when it made a number of observations touching upon the merits of the case while



dismissing the writ petition on the ground of alternative remedy. If the writ petition under Article 226 is to be dismissed on the ground of alternative remedy, the High Court is not required to express any opinion on merits of the case which is to be pursued before an alternative forum. It is true that in the present case the appellant's counsel in his effort to get over the objection of existence of an alternative remedy, addressed the Court on merits of the case and thereby invited the observations on merits of the case by the High Court But in such a situation if the High Court is to dismiss the writ petition on the ground of alternative remedy, it would be a sound exercise of jurisdiction to refrain itself from expressing any opinion on the merits of the case which ultimately is to be taken up by a person before an alternative forum."

28. The court after having held that the agreement to sell is not admissible in evidence and cannot be relied upon for resolving to arbitration proceedings the arbitral tribunal became *coram non judice* and there was no occasion to decide the issue as to whether initiation of the arbitration proceeding was in compliance with the provision of the 1996 Act.

29. The impugned order is set aside. The appeal is allowed and the matter is remitted back to the court to decide the objection under Section 34 afresh after complying with the provisions of the 1899 Act.

30. It is clarified that this court has not opined upon the merits of the issue of non-compliance of Section 21 of 1996. After payment of stamp duty and penalty, if levied, the court



shall decide this issue afresh in accordance with law without being influenced by the findings recorded on this matter in the impugned order.

31. The pending misc. application stands disposed of.

(BHUWAN GOYAL),J
Himanshu Soni/36

(AVNEESH JHINGAN),J

Reportable:- Yes