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REGISTRATION OF AN ARBITRAL AWARD WHEN NECESSARY?



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A Concept of Registration of an Arbitral Award:

- 1 An Arbitral Award means the decision of an Arbitral Tribunal, whether in a domestic or international arbitration. Section 2 (c) of the Arbitration and Conciliation Act, 1996 (in short “**the Act**”) states that Arbitral awards include Interim Awards.
- 2 Every non-testamentary instrument is required to be registered compulsorily under provision of Section 17 (1) (b) of the Registration Act, 1908, (in short “**Registration Act**”) if, the value of the immovable property is one hundred rupees or more and if the instrument "purports or operates to create, declare, assign, limit or extinguish, whether in the present or in future, any right, title or interest, whether vested or contingent".
- 3 An Arbitral Award is a non-testamentary instrument, when it deals with and affects the right in an immovable property and as such in such situation, the Arbitral Award is to be mandatorily registered. When the Arbitral Award is not dealing with immovable property, then it is not required to be registered.
- 4 A right in immovable property means right to ownership or right to co-ownership which also include right to title. An ownership consists of a bundle of rights, various rights and interests in different persons, e.g., a mortgagor and a mortgagee, a lessor and a lessee, or a tenant for life or a successor.

B Legal Implications for non- registration of an Arbitral Award:

- 1 As per Section 23 of the Registration Act, an Award shall be registered within 4 months from the date when the Award is passed.
- 2 As per Section 28 of the Registration Act, every instrument which affects the immovable property is to be registered in the office of the sub-registrar within whose sub-district the property is situated.
- 3 Section 17 (2) (vi) of the Registration Act, excludes decrees or orders of court, but does not exclude Arbitral Awards, which purports or operates to create, declare any right, title or interest in any immovable property of the value of more than Rs 100 is compulsorily registrable. [Ramesh Kumar & Anr vs. Furu Ram & Anr, (2011) 8 SCC 613].

- 4 As such, if the Arbitral Award dealing with immovable property, if not registered, shall have legal implication under Section 49 of Registration Act.
- 5 An unregistered instrument is liable to be impounded by the Court before it is presented as evidence. After completion of process of impounding of the Award, the Award can be read in evidence.

C Registration charges under the Registration Act:

- 1 Under section 78 of the Registration Act, the State Governments are authorised to publish fees schedule payable for the registration of instruments.
- 2 The quantum of registration fees to be paid, vary from state to state, depending on the location of the immovable property. For example, the registration charge in State of Karnataka is @ 1% of the market value of the property, in Delhi @ 1% of the market value of the property plus Rs. 100 pasting charge, in State of Maharashtra @ 1% of the market value of the property or Rs. 30,000/- whichever is lesser, State of West Bengal @ 1% of the property.

D Importance of Registration of an Arbitral Award dealing with immovable property:

- 1 An Arbitral Award, if affecting immovable property, must be registered in the manner mentioned in Section 17(1) (b) of the Registration Act, 1908 otherwise it will be invalid. [M. VenkataRatnam v. M. Chelamayya, (AIR 1967 AP 257)].
- 2 Unregistered awards, which are compulsorily registrable under Section 17 (1) (b) of the Registration Act, 1908 could neither be admitted in evidence nor can decrees be passed in terms of the same. [Ratan Lal Sharma v. Purshottam Harit [(1974) 1 SCC 671 : AIR 1974 SC 1066]
- 3 The effect of non-registration of an Award came to be considered by the Supreme Court of India in the case of M Anasuya Devi v Manik Reddy, [2003 (8) SCC 565] wherein the Hon’ble Supreme Court held that:
 - a Section 34 of the Act permits an award to be set aside ‘only’ on the grounds enumerated therein and non-stamping or non-registration of an award is not one of them.
 - b Accordingly, an award cannot be set aside on the ground that it is non-stamped/improperly stamped or unregistered.

- ° However, if it is not, it may become relevant at the stage where it is sought to be executed as a decree. Hence, the Hon'ble Supreme Court deferred the issue of non-stamping or non-registration to the execution stage.
- 4 Only when the Award dealing with immovable property is registered, it becomes legal and binding.
- 5 The Award dealing with immovable property, must be registered in the office of a sub-register where the immovable property is situated.
- 6 Under Section 49 of the Registration Act, an Award dealing with immovable property, which requires compulsory registration fails to get registered, such an Award will not be admissible in Court as evidence. An unregistered Award cannot be used in legal proceedings in the Court.