

An agreement with an arbitration clause, stamped elsewhere, if brought in Maharashtra, will have to be stamped again even if arbitration is the only thing to happen in Maharashtra; arbitration is a thing done or to be done under Maharashtra Stamp Act (Bombay High Court)

Update by Gunjan Soni

Published on 6 January 2020

Satyanarayana & Co. v. West Quay Multiport Private Limited

Court: Bombay High Court | **Case Number:** ARBAP No. 261 of 2018 | **Citation:** 2019 SCC OnLine Bom 4595 | **Bench:** GS Patel J | **Date:** 22 November 2019

An agreement between the petitioner and the respondent, stamped in Andhra Pradesh, had an arbitration clause. Based on this, the petitioner made an application for the appointment of an arbitrator in Maharashtra in the High Court of Bombay.

The respondent argued that the agreement should be stamped again in Maharashtra under the Maharashtra Stamp Act, 1958 (“MSA”), and, as held by the Supreme Court in *Garware Wall Ropes Limited v. Coastal Marine Constructions*, (2019) 9 SCC 209, in the absence of stamping, the court cannot act upon the arbitration agreement.

The provision of the MSA in question stipulates that an instrument executed outside but when received in Maharashtra is chargeable with duty if it relates “to any matter or thing done or to be done in Maharashtra” [Section 3 (a) (b)].

Interpreting this provision, the petitioner disputed the premise that the agreement was chargeable to stamp duty in Maharashtra at all. It argued that Section 3 (a) (b) of MSA must be restricted to mean only the contract works required to be done by the contractor and cannot include arbitration. Further, arbitration is a dispute redressal mechanism, when there arises a dispute about a thing “done or to be done.”

Rejecting the petitioner’s submissions, GS Patel J held: –

- (a) He “should have the greatest difficulty in accepting ... [the argument] ... without running seriously afoul of the Supreme Court decisions in *Garware Wall Ropes* and *SMS Tea Estates Private Limited*.¹ The petitioner’s argument involves severing the arbitration clause from the rest of the agreement,² which was simply impermissible in view of the two judgments.
- (b) If stamp duty has been paid elsewhere, of course, there will be an adjustment and credit given for the amount already paid. That will, however, not exempt the document from payment to stamp duty under the Maharashtra Stamp Act.³

¹(2011) 14 SCC 66.

²Because, the court said, accepting the petitioner’s submissions would require the court to make a finding that while the rest of the contract may be required to be stamped, arbitration agreements are themselves not assessable to stamp, therefore no stamp is payable.

³It appears that there may be a provision for adjustment in the MSA.

- (c) The other reason is purely linguistic. Without doing some very serious violence to the language, it is difficult to conclude that arbitration is not a thing done or to be done.
- (d) Finally, the petitioner's argument overlooks a cardinal principle of arbitration law. Arbitration is founded in contract, and such a contract is one and indivisible, at least to the extent of its arbitration agreement.

The court also then observed that ordinarily (following *Garware*), it would have impounded the document and send it to the Collector of Stamps for adjudication. But the petitioner undertook to submit the document, or a copy of it, for adjudication and proceed further. In view of the adjudication, the petition was kept pending.