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## **Bombay High Court rules that arbitral proceedings need not pause for stamp duty adjudication**

The Hon'ble Bombay High Court ("**Bombay HC**"), in the case of *Sachin Corporation and Anr. vs. Kusuma Bhandary Construction Private Limited and Ors.*<sup>1</sup>, clarified that an ongoing arbitration proceeding need not stall due to stamp duty objections. The Bombay HC further held that an arbitral tribunal is empowered to determine and collect deficient stamp duty and applicable penalty on an insufficiently stamped document. It can admit documents into evidence and continue with the arbitration proceeding without waiting for the stamp authorities to adjudicate the duty. The judgment, however, carved out an important exception for instruments covered by Section 32A<sup>2</sup> of the Maharashtra Stamp Act, 1958 ("**Mah Stamp Act**"). For such instruments, whose stamp duty depends on the market value of the immovable property, if the arbitral tribunal has reason to believe that the market value has not been accurately stated, it is incumbent upon the tribunal to refer such instrument to the District Collector for proper valuation and assessment of duty.

### **Brief facts**

1. Arbitration proceedings were commenced by and between Sachin Corporation and Yadushrestha T. Shetty ("**Petitioners**") and Kusuma Bhandary Construction Private Limited ("**Kusuma**").
2. In the course of the arbitration proceeding between the Petitioners and Kusuma, certain instruments were sought to be relied upon in evidence. Those instruments appeared to be insufficiently stamped as required under the Mah Stamp Act.
3. To facilitate the use of these documents in the arbitral proceedings, the Petitioners filed a petition in the Bombay HC under Section 27 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**"), which allows courts to assist in taking evidence.
4. The petition was filed against Kusuma, the Collector of Stamps (Andheri) ("**Collector**"), and the State of Maharashtra, and sought a direction to the Collector to expeditiously assess the appropriate stamp duty and any penalty on the documents. The Petitioners argued that such a direction would enable the documents to be duly stamped and introduced in evidence before the arbitral tribunal without causing undue delay in the proceedings.

<sup>1</sup> Commercial Arbitration Petition (L) No. 22660 of 2025 (decided on July 30, 2025)

<sup>2</sup> Section 32A of the Mah Stamp Act pertains to determination of the true market value of immovable property; allows referral to Collector for valuation assessment.

## Issue

Whether an arbitral tribunal must send an inadequately stamped instrument to the Collector for adjudication and await the Collector's decision or whether the arbitral tribunal can itself calculate the deficit duty and penalty payable, collect the amount, and then proceed with the arbitration?

## Analysis and findings

Whilst disposing of the Section 27 petition, the Bombay HC examined the scheme of the Mah Stamp Act in depth and made the following key findings:

1. **Arbitral tribunal's authority to impound and assess stamp duty:** An arbitral tribunal falls within the category of persons having by law or consent of parties' authority to receive evidence as per the Mah Stamp Act. Accordingly, the tribunal has a legal duty to scrutinize any instrument produced before it and determine whether it is duly stamped. If the instrument is not properly stamped (either unstamped or under-stamped), the tribunal has the power to assess the stamp duty deficiency on the instrument so that the shortfall can be remedied. Thus, an arbitral tribunal can adjudicate on the amount of stamp duty payable;
2. **Procedure for instruments not covered by Section 32A:** For instruments that do not fall under Section 32A of the Mah Stamp Act, the tribunal is empowered to calculate the deficient stamp duty amount and the statutory penalty due, collect these amounts from the responsible party, and then admit the instrument into evidence. The Bombay HC held that the arbitrator can forward the stamp duty directly after collecting it and that the arbitration need not be interrupted while this stamping process is undertaken. Once the tribunal has ensured that the proper duty and penalty are paid, the hearing can continue without waiting for any further certification from the stamp authorities;
3. **Procedure for instruments covered by Section 32A:** For instruments falling under Section 32A of the Mah Stamp Act, essentially documents whose stamp duty is assessed based on the market value of an immovable property or similar valuation, the tribunal cannot independently determine the stamp duty. The Bombay HC held that in such cases, the arbitral tribunal should follow the statutory procedure of reference to the Collector instead of attempting to assess the duty itself. Thus, the tribunal allow the concerned District Collector to evaluate the instrument's market value and stamp duty, as required by the Mah Stamp Act, before the document can be admitted in evidence. This is the sole exception to the tribunal's general ability to handle stamp duty issues on its own;
4. **Payment of stamp duty and penalty under Section 34:** The Bombay HC reiterated that no insufficiently stamped instrument may be admitted as evidence unless the stamp deficiency is cured in accordance with the Mah Stamp Act. Under Section 34 of the Mah Stamp Act, an instrument that is chargeable with stamp duty cannot be admitted in evidence by any authority (including an arbitral tribunal) unless it is duly stamped. However, Section 34 contains a proviso (Clause (a)) which allows admission of such an instrument under two circumstances: (i) the unpaid stamp duty required to make up the deficiency is paid, and (ii) a penalty is paid at the rate of 2% per month on the deficient portion of the duty from the date of the instrument's execution (subject to a statutory cap of four times the deficit). The Bombay HC held that the tribunal can facilitate the payment of the duty and penalty and then proceed to admit a copy of the document as evidence without awaiting a formal assessment by the concerned District Collector; and
5. **Effect of curing the stamp defect:** Once the deficit stamp duty and penalty have been paid and the instrument is admitted into evidence, the Mah Stamp Act provides a degree of finality to prevent further challenges on the same issue. Bombay HC stated that if an instrument has been admitted in evidence (after proper stamp duty and penalty are paid), that admission cannot be questioned later in the same proceeding on the ground that the instrument was not duly stamped. The only exception to this rule is found in Section 58 of the Mah Stamp Act which permits a higher court to review the stamp duty decision. Bombay HC clarified that for purposes of stamp duty review, the court hearing a Section 34 petition can be viewed as equivalent to the appellate court under Section 58 of the Mah Stamp Act. The Section 34 court could then require any additional duty and penalty to be paid if it finds a deficiency.

## Conclusion

The judgment provides a clear and pragmatic framework to handle stamp duty issues in arbitration without derailing the proceedings. It reaffirms that arbitral tribunals, being authorised to receive evidence, can themselves address stamp duty deficiencies on documents by impounding the documents, facilitating payment of the required duty and penalty, and then admitting the documents into evidence.

This ensures that, in most cases, an arbitration need not be put on hold awaiting the outcome of stamp duty adjudication by government authorities. Only in exceptional situations, namely, where the document in question falls under Section 32A of the Mah Stamp Act and requires a true market valuation of property, must the arbitral tribunal halt and refer the matter to the Collector for determination of stamp duty.

By drawing this distinction, Bombay HC's ruling streamlines arbitral practice. It prevents unnecessary interruptions in arbitral timelines due to stamp duty technicalities, while still preserving the role of the Collector for those instruments that statutorily demand a formal valuation. This decision thus bolsters the efficiency of arbitration proceedings and reflects a pro-arbitration approach, ensuring that procedural stamp duty requirements are met without frustrating the speedy resolution of dispute.

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