

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE**

WRIT PETITION NO.2100 OF 2015

FedEx Express Transportation and
Supply Chain Services (India) Private Limited ... Petitioner
Versus
The Assistant Sub-Registrar And Others ... Respondents

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Mr. Mayur Khandeparkar a/w Mr. S.B. Rao and Ms. Anisha Nair i/b INDIA
Law for the Petitioner.

Mr. H.S. Venegaonkar, Addl. Government Pleader for Respondent Nos. 1
and 2.

Mr. A.R. Gole with Ms. Jyotsna Pandhi for Respondent No.3.

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CORAM : S.C.GUPTE, J.

DATE : 12 JULY 2016.

P.C. :

. The Writ Petition, filed under Article 226 of the Constitution of India, seeks to challenge orders passed by the Assistant Sub-Registrar, Mumbai Suburban District, on 27 August 2014 and the District Registrar Cum Collector on 30 March 2015 on appeal, refusing to register the Petitioner's documents. The subject documents are merger documents concerning a composite scheme of amalgamation between the Petitioner (as the transferee-company) and two other transferor-companies sanctioned by this Court.

2 By an order dated 5 July 2013, this Court sanctioned a scheme of amalgamation between the two transferor companies and the Petitioner

herein. Under the order of sanction, the Petitioner was to lodge a copy of the order as well as the scheme duly authenticated by the Company Registrar with the Superintendent of Stamps for the purpose of adjudication of stamp duty payable thereon, within 60 days from the date of the order. A certified copy of the order was made available to the Petitioner on 24 July 2013. Within 60 days, i.e. 2 September 2013, the Petitioner lodged a copy of the sanction order alongwith the scheme with the Superintendent of Stamps for adjudication and proper stamping of the documents. By his order of adjudication dated 7 June 2014, the Superintendent of Stamps adjudicated the stamp duty payable on the scheme of amalgamation. Soon after the adjudication, the Petitioner paid the requisite stamp duty of Rs.19,19,55,300/-, and after completion of all requisite formalities made a representation to the Assistant Sub-Registrar, Mumbai Suburban District for concluding the registration of the amalgamation scheme. By his order dated 27 August 2014, the Assistant Sub-Registrar, Mumbai Suburban District refused to register the amalgamation scheme on account of delay of more than 8 months in filing the same with the Registrar. The delay was purely on account of time taken for adjudication of stamp duty by the Superintendent of Stamps. The Petitioner, in the premises, challenged the order of the Assistant Sub-Registrar, Mumbai Suburban District, in appeal under Section 72 of the Registration Act, 1908 before the District Registrar-cum-Collector, Mumbai Suburban District, Bandra. The Appellate Authority by its order dated 13 November 2014 refused to entertain the appeal. The order of the Assistant Sub-Registrar, Mumbai Suburban District refusing to register the scheme of amalgamation and the order of the Appellate Authority refusing to entertain the appeal, are challenged in the present Petition.

3 The sole controversy in the present Petition concerns the delay in presentation of the scheme for registration. Section 23 of the Registration Act, 1908 provides for presentation of a document for registration within four months from the date of its execution. Section 23 provides that no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution. The provision of Section 23 is, however, subject to Sections 24, 25 and 26 of the Registration Act, 1908. Section 25 provides for acceptance of the document for registration by the Registrar by condoning the delay if, owing to urgent necessity or unavoidable accident, the document could not be presented for registration till after the expiration of the time prescribed in that behalf. Our Court, in a number of cases, had occasion to construe these provisions in the context of delay in presentation occasioned due to want of adjudication within the prescribed presentation period. There are as many as five such decisions of our Court. (See the cases of **Chhabildas Dalichand Bhayani Vs. The Sub-Registrar of Mumbai**¹, **Opal Builders Private Limited Vs. The State of Maharashtra**², **Nestor Builders & Developers Pvt Ltd Vs. State of Maharashtra**³, **Tardeo Properties Private Limited Vs. State of Maharashtra**⁴ and **Accord Nidhi Developers Vs. The State of Maharashtra**⁵.) These decisions lay down, firstly, that the period taken for adjudication cannot be held against the applicant whilst computing the stipulated period of four months. The judgments, secondly, lay down that a cumulative reading of the various provisions, including particularly

1 W.P. No.903/14 dated 17 April 2014.

2 W.P. No.6604/14 with W.P. No.6607/14 dated 9 July 2015

3 W.P. No.1480/13 dated 24 June 2015.

4 W.P. No.2501/15 dated 28 September 2015.

5 W.P. No.389/16 dated 18 February 2016.

Section 25 of the Registration Act, clearly demonstrates the intention of the legislature that if a document, in a given situation, cannot be presented for registration within the period of four months prescribed under Section 23, it can still be accepted for registration beyond the prescribed period, provided the delay on the part of the party presenting the document was bonafide and not intentional and was on account of a genuine cause beyond the control of such party.

4 In the premises, it is quite apparent that the delay in the present case, which was merely on account of time taken by the Stamp Authorities for adjudication of stamp duty payable on the documents, ought to have been condoned by the Respondents, and the documents ought to have been accepted for registration.

5 In his reply to the Petition, the Joint District Registrar, Mumbai Suburban District, Bandra has taken a position that where the Registrar refuses to order any document to be registered either under Section 72 or Section 76 of the Registration Act, 1908, the aggrieved person can only avail of the remedy of filing of a suit under Section 77. It is submitted that such suit has to be filed within a period of 30 days from making of the order of refusal. It is submitted that since the Petitioner in the present case did not avail of this legal remedy, the writ petition is not maintainable. It is clear from the various orders of this Court, which are referred to above, that the matter of admitting a document for registration despite delay occasioned by want of adjudication within the prescribed period, did not admit of any doubt. Non-acceptance of a document for registration in a case like this, despite a clear mandate of this Court, is clearly a matter

without jurisdiction and amounts to a failure to perform a statutory duty. In a matter such as this, if the aggrieved party does not avail of the statutory remedy of a suit but approaches the Writ Court for expeditious and effective relief, the approach cannot be faulted on the ground of availability of the statutory remedy. Besides, the refusal to register a document can be on several grounds, including a ground that the property to which the document relates is not situate within the registering authority's jurisdiction or that the execution itself is denied. Particularly, in a case where the execution is denied and contested questions of fact and law arise in that behalf, the appropriate remedy may be the remedy of a suit under Section 77 of the Registration Act, 1908. A case where the registration is refused simply on the ground of non-production of the document within the statutory period of four months, particularly in the face of binding legal authority requiring the Registrar to accept documents for registration beyond the statutory period of four months, is properly a subject matter of a writ to be issued by this Court. One would have in fact expected the Registrar to at least accept this position when a petition is filed and submit to the orders of the Court rather than contest the petition on the ground of existence of an alternative remedy under Section 77 of the Registration Act.

6 In the premises, **Rule** is made absolute and the impugned orders of Assistant Sub-Registrar, Mumbai Suburban District, and the District Registrar Cum Collector dated 27 August 2014 and dated 30 March 2015, respectively, are quashed and set aside and the Respondents are directed to register the merger documents submitted by the Petitioner.

7 The Inspector General of Registration and Controller of Stamps, State of Maharashtra, is directed to take note of this order, and particularly the observations concerning the defence of alternative remedy under Section 77 of the Registration Act, 1908 and instruct all the registering authorities under him accordingly.

(S.C.GUPTE, J.)