

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2098 OF 2015

Rajesh Dulichand Borkar .. Petitioner
vs.
The District Registrar and Collector
Mumbai Suburban District .. Respondent

Mr. Ruchiv L. Tolat i/b. L. C. Tolat for Petitioner.
Mrs. Madhubala Kajale – AGP for Respondent.

CORAM : M. S. SONAK, J.
DATE: 11 JANUARY 2016

P.C. :-

1] The challenge in this petition is to the order dated 17 July 2015 made by the District Registrar and Collector, Mumbai Suburban District, upholding the order dated 13 November 2014 made by the Joint Sub Registrar – II Kurla, declining registration of consent decree dated 6 April 2010 in pursuance of consent terms dated 19 March 2010.

2] There is no dispute that the consent decree was presented for registration on 19 March 2014. The learned counsel for the petitioner has pointed out that certified copy of the consent decree was applied for on 10 October 2013 and the same was delivered on 17 October 2013. Thereafter, on 19 October 2013, the matter was referred to adjudication and the adjudication order was made on 3

December 2013. The adjudicated amount was paid on 7 January 2014 and the decree was presented for registration on 19 March 2014. The initial order refusing registration was set aside by this Court on 1 August 2014, since such order was made without afford of opportunity of hearing to the petitioner. By order dated 13 November 2014, however, the Sub Registrar once again declined registration. Appeal against the order dated 13 November 2014 was dismissed by the District Registrar on 27 July 2015. Hence, the present petition.

3] The learned counsel for the petitioner submitted that in terms of Section 17(2)(vi), registration of the consent decree was not compulsory but merely optional. Further, in terms of the proviso to Section 23, the relevant date in so far as the petitioner is concerned, is 17 October 2013, on which date, the petitioner actually received the copy of the consent decree. Thereafter, on 19 October 2013 itself, the petitioner applied for adjudication. The period spent for the purposes of adjudication, is liable to be excluded since, the petitioner was not responsible for the delay involved in adjudication. The learned counsel for the petitioner also made reference to a circular dated 22 December 2011, in the context of deeds of confirmation and submitted that there is discretion vested in the registering authorities to entertain request

for registration even beyond statutorily prescribed period. For all these reasons, he submitted that the impugned orders declining registration are *ultra vires* and are required to be set aside.

4] Mrs. Kajale, the learned AGP submitted that in terms of Section 23 of the Registration Act, 1908 no document other than a will shall be accepted for registration unless the same is presented for that purpose to the proper officer within four months from the date of its execution. The proviso, which applies to a copy of a decree, merely requires that the decree be presented within four months from the date on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final. She made reference to provisions contained in Section 25 of the Registration Act to point out that delay beyond four months cannot be condoned. She also pointed out that there is no explanation as to why application for copy of the decree was not made no sooner the consent decree was made. For all these reasons, she submitted that there is absolutely no jurisdictional error in the making of the impugned order.

5] The learned AGP also points out that the petitioner, in any case, had alternate remedy of institution of a suit in terms of Section 77 of the Registration Act, 1908, which, the petitioner has failed to avail.

6] Having heard the learned counsel for the parties and perused the record, in my judgment, there is no case made out to interfere with the impugned orders. In terms of Section 23 of the Registration Act 1908, subject to provisions contained in Sections 24, 25 and 26, no document other than a will shall be accepted for registration unless it is presented for that purpose to the proper officer within four months from the date of its execution provided that a copy of a decree or order may be presented within four months from the day on which the decree or order was made, or, where, it is appealable within four months from the date on which it becomes final.

7] Therefore, subject to the provisions contained in Sections 24, 25 and 26 the period for presentation of a document for registration, is four months from the date of its execution. In case of a decree or order however, the period is four months from the day on which the decree or order was made. In the present case, admittedly, the consent decree was made on 6 April 2010.

8] Section 25 of the Registration Act 1908 makes provision where delay in presentation is unavoidable. In the facts of the present case, it is not even the case of the petitioner that the delay involved was unavoidable. However, even if it were, the provisions

of Section 25 apply where delay in presentation does not exceed four months. Therefore, there was no case made out for exercise of powers under Section 25 of the Registration Act, 1908.

9] The circumstance that the petitioner applied for certified copy of the consent decree only on 10 October 2013 i.e. after a period of almost three years from the date when the consent decree was made is hardly relevant and on the basis of the same, the petitioner cannot insist upon registration of the consent decree. This is also not a case where the petitioner had submitted for adjudication the consent decree within a period of four months from the date on which same was made. The circular dated 22 December 2011, upon which, reliance is being placed by the learned counsel for the petitioner, also, does not apply to the case of the petitioner. This is because the petitioner had never attached any supplementary confirmation deed or declaration deed, assuming that the same can be attached to a consent decree made by the Courts. Accordingly, there is no jurisdictional error in the making of the impugned orders. This petition is therefore dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)