

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.10.2016

CORAM

THE HON'BLE MR.JUSTICE M.S.RAMESH

W.P.No.2824 of 2013

and M.P.Nos.1 & 2 Of 2013

P.A.Duraisamy

... Petitioner

Vs

1.The Registrar, Registration Department,
Coimbatore.

2.The Sub-Registrar,
Periyanaickenpalayam,
Coimbatore.

.. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus calling for the records relating to 2nd respondent's order dated 30.10.2012 in Na.ka.No.543 of 2012 and quash the same and direct the respondents to Register the Judgment and Decree dated 28.08.2009 passed by this Court in S.A.No.2210 of 2004.

For Petitioner : Mr.P.Ravi Shankar Rao for
Mr.L.Mouli

For Respondents : Mr.K.Balamurugan
Govt. Advocate

O R D E R

This writ petition has been filed seeking issuance of a writ of Certiorarified Mandamus calling for the records relating to 2nd respondent's order dated 30.10.2012 in Na.ka.No.543 of 2012 and quash the same and direct the respondents to Register the Judgment and Decree dated 28.08.2009 passed by this Court in S.A.No.2210 of 2004.

2. On 28.08.2009, the compromise decree and judgment was passed by this Court in S.A.No.2210 of 2004. When the petitioner had submitted a certified copy of decree dated 28.08.2009 before the second respondent for registration on 29.10.2012, it was refused on the ground that it was belated representation.

3. The learned counsel appearing for the petitioner would submit that in similar circumstances, this Court had passed an order holding that the cases in this nature are not barred by period of limitation as prescribed under Section 23 of the Registration Act.

4. Mr.K.Balamurugan, learned Government Advocate appearing for the respondents would submit that under Section 23 of the Registration Act, time permissible for presenting the document for registration is a period of four months from the date of execution and with regard to decree it is four months from the date on which, the copy of the decree was made.

5. The learned Government Advocate would submit that the appeal, which is the subject matter of the decree, was compromised by the petitioner and a compromise decree dated 28.08.2009 was passed. As per the Section 23 of the Registration Act, the time for filing the appeal will be exonerated and in the instant case since it is a compromise decree, the question of time for filing the appeal does not arise and the time starts to run from the date when the copy is made available. The learned Government Advocate further submits that as per Section 23 of the Registration Act, the compromise decree ought to have been presented for registration within 4 months and the fine in accordance with rule 34 of the Registration Rules is paid. As such the period of extension to condone the delay is only upto a further 4 months which will run from 02.06.2012 and expires on 02.10.2012. Even the first respondent, i.e. The District Registrar does not have powers to condone the delay beyond 8 months from the date when the copy is made. As stated above, even assuming that the copy of the order was made available only on 02.02.2012, the document had been presented for registration as admitted by the petitioner only on 29.10.2012 which is beyond the 8 months period and this respondent does not have any power to receive the document which is presented for registration beyond the statutory period under the said Act and hence this respondent was right in refusing to register the said decree for registration.

6. This Court, by an order dated 31.03.2015 passed in W.P.No.9352 of 2015 has held that the limitation prescribed under Section 23 of the Registration Act, will not be applicable to a decree, since it is a permanent record of court and for the purpose of registration, no limitation can be prescribed. The relevant portions of the Judgment in paragraph Nos.8 to 10, which are extracted hereunder :

" 8. It is note worthy to point out that in the case of A.K.Ganesan reported in 2007 (2) TCJ

Page 68 (Madras), wherein this Court has held that Limitation prescribed for presenting documents does not apply to decree, as decree is a permanent record of Court and to register the case, no limitation can be prescribed.

9. Be that as it may, in the instant case, the following facts would be relevant to consider as to whether the check-slip issued by the 2nd respondent was valid.

10. The Sub Court passed a decree on 28.03.2014 and the petitioner filed copy application on 10.04.2014 and the same was delivered to the petitioner on 04.06.2014. Immediately, within six days, the petitioner approached the Registrar to register the decree and also made request by registered post and the said representation dated 11.06.2014 was received by the 2nd respondent on 13.06.2014. Therefore, the said date should be taken to be the date of first presentation of the decree for Registration, though the representation was made by registered post. The learned counsel for the petitioner submitted that the necessity to send the representation by registered post arose, since the 2nd respondent did not entertain the document when he approached the 2nd respondent in-person. After the representation was received by the 2nd respondent, the 2nd respondent did not pass any orders either accepting the stand taken by the petitioner or rejecting the same. Therefore, the petitioner filed a Writ Petition before this Court in W.P.No.34989 of 2014 on 07.12.2014 and the said writ petition was disposed of on 28.01.2015, after which the check-slip dated 26.02.2015 has been issued. Therefore, for all purposes limitation has to be computed from 11.06.2014, when the petitioner approached the respondent for registering the civil court's decree. Therefore, the petitioner's case is not barred by the period of limitation prescribed under Section 23 of the Act."

The above proposition is squarely applicable to the facts of the present case. It would be useful to add to the above proposition that the limitation prescribed under Section 23 of the Limitation Act is not mandatory in nature but only directory.

7. In view of the proposition held in the above said case, the impugned order dated 30.10.2012 passed by the respondent, is hereby set aside and accordingly quashed. The writ petition is allowed with a direction to the second respondent to register the Judgment and Decree dated 28.08.2009 passed by this Court in S.A.No.2210 of 2004 and the said exercise shall be completed with a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

kkd

To

- 1.The Registrar, Registration Department,
Coimbatore.
- 2.The Sub-Registrar,
Periyanaickenpalayam,
Coimbatore.

+lcc to Mr.L.Mouli, Advocate Sr.61314
+lcc to the Government Pleader Sr.61729

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