

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.3803 OF 2016**

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|-----------------------------------------------|-----------------|
| Athani Sugars Ltd.                            | .. Petitioner.  |
| Vs.                                           |                 |
| Inspector General of<br>Registration & Others | .. Respondents. |

Mr. Shriniwas S. Patwardhan with Ms.Sukhman S. Rait for the  
Petitioner.  
Mr. M.M. Pabale AGP for the Respondent No.1.  
Ms. Madhavi Tavanandi for the Respondent No.4.

**CORAM : A.S. OKA & A.K. MENON, JJ.**

**DATED : 24TH APRIL, 2017**

**P.C.**

1. On last occasion, the parties were put to notice that the petition will be taken up for final disposal.

2. A lease agreement was executed by the 4th respondent - Maharashtra State Co-operative Bank Ltd. in favour of the petitioner on 26th November, 2014. A copy of the said agreement is annexed to the petition. The issue is about alleged refusal of the Registering Officer under the Registration Act, 1908 to accept the said document for registration.

3. On 26th December, 2014 the petitioner applied for adjudication of the stamp duty payable on the said agreement in accordance with Section 31 of the Maharashtra Stamp Act, 1958

(for short “the said Act”). The adjudication was made by the order dated 26th August, 2015 passed by the District Joint Registrar, Class-I cum Stamp Collector. On 28th August, 2015, as per adjudication made under Section 31 of the said Act, stamp duty was paid by the petitioner. According to the case of the petitioner, an attempt was made in the first week of September 2015 to register the documents of lease by accessing to the website of the first respondent. However, the data could not be uploaded. The case of the petitioner is that an enquiry was made with the 3rd respondent - Sub Registrar of Assurances. The petitioner was informed that the documents could not be uploaded as the statutory period of four months has expired. On 30th September, 2015, the petitioner made an application before the 3rd respondent requesting the 3rd respondent to accept the document of lease for registration and to issue a challan of the registration fee.

4. In the said application, the petitioner relied upon a decision of this Court in the case of *Nestor Builders and Developers Pvt. Ltd. vs. State of Maharashtra*<sup>1</sup>. The said decision holds that on conjoint reading of Sections 23, 23A, 25 and 26 of the said Act, if a document is not presented for registration within the prescribed period of four months, the same could still be accepted for registration beyond the period prescribed provided that the reasons for delay are bonafide. It was held that time required for

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<sup>1</sup> 2015 (6) Bom. C. R. 190

adjudicating the stamp duty will have to be excluded in calculating the period of four months. The submission of the learned counsel appearing for the petitioner, on instructions, is that till today the said application is not decided and the same is still pending.

5. We have also heard learned A.G.P appearing for the Respondent-State.

6. We have perused the document of lease. It was initially executed on a stamp paper of Rs.100/- which was issued on 24th November, 2014. The document of lease is executed on 26th November, 2014 Exhibit-B to the petition shows that on the basis of the application dated 26th December, 2014 made by the petitioner, on 26th August, 2015 the adjudication of the stamp duty payable on the instrument was made by the Joint District Registrar, Class-I cum Stamp Collector. The sum of Rs.1,23,94,700/- was adjudicated as the stamp duty payable to the Government. The petitioner is relying upon Challan MTR Form Number-6 for showing that the said amount was deposited on 28th August, 2015. Exhibit-C is a copy of Challan MTR Form Number-6. The application at Exhibit-D has been presented on 1st October, 2015 in the office of Sub Registrar of Assurances, Class-II, Shahuwadi, Malkapur, District Kolhapur. We have already made a reference to the said application.

7. The decision of the Division Bench of this Court in

*Nestor Builders and Developers* (supra) lays down that in case a document is not presented for registration within the prescribed period of four months from the date of its execution and if the delay is bonafide and not intentional, the document can be accepted for registration.

8. In the present case, exactly one month after the date of execution of the lease document, an application for adjudication was made on 26th December, 2014. The order of adjudication was issued on 26th August, 2015. Immediately on 28th August, 2015 the stamp duty as provided in the said order was paid. Therefore, for calculating the period of four months, the period between 26th December, 2014 and 28th August, 2015 will have to be excluded. On 1st October, 2015, an application (Exhibit-D) was made by the petitioner for tendering the said document for registration. If the time required for adjudication and the payment of stamp duty was excluded, surely on 1st October, 2015 the petitioner was entitled to lodge the said document for the registration.

9. Hence, we dispose of the petition by passing the following order :

- (i) If the application dated 1st October, 2015 (Exhibit-D to the petition) is already decided, a copy of the said order be provided to the petitioner within a period of two weeks from today;
- (ii) If the application is not yet decided, it will be open for the

petitioner to lodge the lease agreement dated 26th November, 2014 in the office of the Sub Registrar of Assurances, Shahuwadi, Malkapur, District Kolhapur within a period of three weeks from the date on which this judgment and order is uploaded;

(iii) If the petitioner complies with the requirement of lodging the said document for registration as aforesaid, the same shall be accepted by the Sub Registrar;

(iv) The registration of the document shall not be refused on the ground that the same has been presented after the expiry of the period of four months from the date of its execution;

(v) If the document meets all other requirements of law, the Sub-Registrar shall register the said document in accordance with law;

(vi) The Petition is disposed of in the above terms;

(vii) All contentions of the parties are kept open.

**(A.K. MENON, J.)**

**(A.S. OKA, J.)**