BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 31.01.2017
CORAM
**THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU**

W.P.(MD)No.1118 of 2017
and
WMP(MD)Nos.937 and 938 of 2017

P.T.Rajan ... Petitioner

Vs.

1.Inspector General of Registration,
Registration Department,
Chennai-28.

2.Collector of Statmps,
Tiruchirapalli District,
Trichy.

3.The Sub-Registrar,
Manachanallur Sub-Registrar Office,
Manachanallur,
Trichy. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the $1^{st}$ respondent relating to the impugned order dated 15.04.2016 in No.57611/N3/2015 and consequential proceedings issued by the $2^{nd}$ respondent in Pa.Mu.Tha.No.722/2010 dated 20.01.2015 and quash the same.

For Petitioner : Mr.S.Vinod Sathya Lazar

For Respondent : Mr.C.Selvaraj
Spl. Govt Pleader

**ORDER**

This writ petition is filed challenging the order of the first respondent dated 15.04.2016 rejecting the appeal filed by the petitioner under Section 47A(5) of the Indian Stamp Act, on the ground that the same was filed beyond the period of limitation.

2.Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents.

3.The petitioner had presented a sale deed before the third respondent for registration and the same was registered as Document No.710 of 2010. However, an order came to be passed on 20.01.2015 by the Collector of Stamps under Section 47A of the Indian Stamp Act, calling upon the petitioner to pay deficit stamp duty of Rs.3,86,312/-. Challenging such order, the petitioner preferred an appeal under Section 47A(5) of the Indian Stamp Act, before the first respondent, however, with some delay. The petitioner also filed a petition under Section 5 of the Limitation Act, along with the appeal, seeking to condone such delay. The first respondent rejected the appeal simply by stating that the same was filed beyond the period of limitation. Hence, the present writ petition is filed challenging the order of the first respondent.

4.The learned counsel appearing for the petitioner contended that the first respondent ought to have considered the application under Section 5 of the Limitation Act and excised his power to decide such application, instead of rejecting the appeal as the time barred one. In support of his submission, the learned counsel relied on a decision of this Court reported in CDJ 2010 MHC 1233 (V.Lakshmiammal vs. The Inspector General of Registration).

5.Per contra, the learned Special Government Pleader appearing for the respondents contended that the first respondent has rightly rejected the appeal as the same was filed beyond the period of limitation.

6.It is true that the petitioner has filed the appeal before the first respondent under Section 47A(5) of the said Act with delay. However, it is not in dispute that such appeal was filed along with an application seeking for condonation of such delay. Therefore, the question that arises for consideration is as to whether the first respondent is bound to consider such application filed under Section 5 of the Limitation Act. Answer to such question is already made by this Court in the decision reported in CDJ 2010 MHC 1233 (cited supra), wherein the learned single Judge, after following the decision of the Division Bench reported in 2005(3) CTC 529, has observed at paragraph Nos.3 and 4 as follows:-

> "3.A Division Bench of this Court in M.Kaliammal vs. The Special Deputy Collector (Stamps) Salem-Namakkal-Dharmapurai and Krishnagiri at Salem and another reported in 2005(3)CTC 529 in paragraph - 4 has held as follows:-
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> "A Division Bench of this Court in the Judgement Indira Devi v. Inspector General of Registration 2005(1) CTC 733 dealing with a similar situation had held that since the provisions of the Limitation Act is not excluded in the matters relating to filing of an appeal. Section 5 of the Limitation Act gets attracted. Having

that law laid down by this Court., we perused the entire papers placed before us. Having regard to the nature of the order passed by the first respondent, which is challenged before second respondent viz., demanding difference in payment of stamp duty payable on the ground of under valuation we are of the firm opinion that ends of justice definitely requires the delay in filing the appeal, whether it is 50 days or six months, to be condoned. We find from the materials placed on records that the appellant had satisfactorily explained the delay. Consequently, the impugned order is set aside and the appeal is allowed. No costs. The second respondent is directed to take up the appeal on file and dispose it of in accordance with law. CMP No.7257 of 2005 is closed.

4.On a perusal of the entire records, it is seen that the first respondent in W.P.No.24530 of 2006 viz., the appellate authority has not taken note of the powers of Section 5 of the Limitation Act while deciding the appeal under Section 47(A)(5) of the Indian Stamp Act."

7.Considering the fact that there is no specific exclusion of the Limitation Act in the Indian Stamp Act and the Tamil Nadu Rules made thereunder and considering the fact that the said issue has already been settled by holding that the limitation Act is applicable to the proceedings before the first respondent, I am of the view that the order passed by the first respondent, impugned in this writ petition, cannot be sustained.

8.Accordingly, this writ petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the first respondent to consider the application filed by the petitioner under Section 5 of the Limitation Act and pass orders on the same on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. If the first respondent is satisfied with the reasons and chooses to allow the application filed under Section 5 of the Limitation Act, he will decide the appeal on its own merits and in accordance with law, within a period of twelve weeks thereafter. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar( )

/True copy/

Sub Assistant Registrar

To

1.Inspector General of Registration,
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Chennai-28.

2.Collector of Statmps,
Tiruchirapalli District,
Trichy.

3.The Sub-Registrar,
Manachanallur Sub-Registrar Office,
Manachanallur,
Trichy.

+1cc to Spl.Govt. Pleader, SR.No:5322

skn
AE/JM/13.02.2017/4P/5C

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