

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

WRIT PETITION NO.2380 OF 2017

Tata Communications Limited & Anr. ...Petitioners
Versus
The State of Maharashtra & Ors. ...Respondents

.....

Dr. Birendra Saraf with Mr. Sairam Subramanian and Ms Shobhana Narayan i/b. M/s. Khaitan and Co. for the Petitioners.
Mrs. M.P. Thakur, AGP for the Respondent -State.

**CORAM : RANJIT MORE AND
SMT. ANUJA PRABHUDESSAI, JJ.**

DATED: 21st JUNE, 2018

P.C.:-

Rule. Rule is made returnable forthwith and by consent taken up for final hearing.

2. Heard Dr. Birendra Saraf, the learned counsel for the Petitioner and Mrs. M.P. Thakur, the learned AGP for the Respondent -State.

3. The petition is filed under Article 226 and 227 of the Constitution of India seeking direction to the Respondent No.3 -the Sub Registrar of Assurance, Haveli 10, Gr. Floor, Band Garden, Pune, to accept for registration and register the lease deed without directing any payment of fine.

4. The admitted facts, which lead to the filing of the present petition are as follows:-

The Petitioners had entered into a deed of lease dated 28th March, 2014. Said lease deed was lodged at the office of the Collector of Stamp, Pune on 28th April, 2014 for the purpose of adjudication of stamp duty. The adjudication fees of Rs.100/- were paid in the office of the Respondent No.2 on 23rd July, 2014. On 8th October, 2014 the Respondent No.2 issued a notice calling upon the Petitioner to pay stamp duty amounting to Rs.1,14,12,500/- with penalty at the rate of 2% for one month i.e. 45,64,845/-. The Petitioners vide their letter dated 30th October, 2014 contended that no penalty could have been levied without giving them any opportunity of hearing. Pursuant to the personal hearing, the Respondent No.2 issued a notice dated 31st October, 2014 calling upon the Petitioner No.1 to pay Rs.63,40,075/- being the sum payable towards stamp duty on the lease deed. On receipt of the said notice the Petitioners paid an amount of Rs.63,40,075/- in the office of the Respondent No.2, which was duly acknowledged on 21st November, 2014. The Petitioners thereafter sought for return of the original lease deed. Same was returned to the Petitioners on 23rd November, 2014. On receipt of the original lease

deed the Petitioners visited the office of the Respondent No.3 for the purpose of submitting the said lease deed for registration. The Respondent No.3 has refused to accept the lease deed for the purpose of registration on the ground that it was presented after lapse of prescribed statutory period. Aggrieved by this, the Petitioners have filed the present petition.

5. Mr. Gopinath Kolekar, the Joint District Registrar and Collector of Stamps (Class-I), Pune City has filed an affidavit on behalf of the Respondent Nos.2 and 3. It is the case of the Respondents that though the lease agreement was executed on 28th March, 2014 it was lodged in the office of the Respondent No.2 for adjudication of stamp duty on 28th April, 2014 and adjudication fees were paid only on 23rd July, 2014. The Respondents have further stated that the Petitioners were called upon to pay the stamp duty on 31st October, 2014 and that the stamp duty was paid on 11th November, 2014 and the document was certified by Respondent No.2 on 21st November, 2014. The Respondents have claimed that in terms of Sections 23 and 25 of the Indian Registration Act, 1908 the document was required to be registered within a period of 8 months from the date of execution. The Respondents have stated that since the lease deed presented for

registration beyond the prescribed period of 8 months, the same could not have been accepted.

6. Dr. Saraf, the learned counsel for the Petitioners has submitted that the period taken by the Respondent No.2-the Collector of Stamps for adjudication of the document is required to be excluded in computing the period of 8 months under Sections 23 and 25 of the Indian Registration Act, 1908. He contends that if this period is excluded, then the subject document was presented for registration within the time stipulated under Sections 23 and 25 of the Indian Registration Act, 1908. Dr. Saraf, in this regard has relied upon the decision of the Division Bench of this Court in *Nestor Builders and Developers Pvt. Ltd. and Ors. Vs. State of Maharashtra and Ors.* MANU/MH/1216/2015, the decision of the learned Single Judge in *Kirti Jagdish Mulani Vs. The State of Maharashtra through the office of the Government Pleader, High Court, Mumbai, The Collector of Stamps and The Registrar of Assurances* MANU/MH/0045/2013 and order dated 26th June, 2014 of the learned Single Judge in Writ Petition No.903 of 2014.

7. The learned AGP referring to the provision under Section

23 of the Indian Registration Act, 1908 submits that the lease deed ought to have been presented within four months from the date of execution. She submits that in terms of Section 25 of the Indian Registration Act, 1908 further delay of four months could be condoned on payment of fine. She submits that the document was submitted for adjudication of stamp duty about a month after its execution. Furthermore, the adjudication fees of Rs.100/- were paid only on 23rd July, 2014. She therefore contends that the period between 28th March, 2014 till 23rd July, 2014 cannot be condoned or excluded. She has submitted that total delay in presentation of the document exceeds 8 months and as such the same could not have been registered by taking recourse to Sections 23 and 25 of the Indian Registration Act, 1908. In support of her contention she has relied upon decision of the learned Single Judge of the Himachal Pradesh High Court in ***Mast Ram Vs. Sant Ram AIR 2010 Himachal Pradesh 18.***

8. Before considering the submissions advanced by the learned counsels for the respective parties, it would be appropriate to refer to the relevant provisions viz. Sections 23 and 25 of the Indian Registration Act, 1908:-

“23. Time for presenting documents.—Subject to the

provisions contained in sections 24, 25 and 26, 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: 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 day on which it becomes final.

24. xxx

25. Provision where delay in presentation is unavoidable.—

(1) If, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration-fee, such document shall be accepted for registration.
xxx”

9. The Division Bench of this Court after considering the scope of provisions of Sections 23 and 25 of the Indian Registration Act, 1908 in *Nestor Builders and Developers Pvt. Ltd.* (supra) held as under:-

“A cumulative reading of the aforesaid provisions and more particularly the provisions of Section 25 of the Registration Act, clearly demonstrate the intention of the legislature that if a document in a given situation cannot be presented for registration within a period of four months prescribed under Section 23 of the Registration Act then it can still be accepted for

registration beyond the prescribed period. However, this would necessarily be when the delay on the part of the party presenting the document beyond the prescribed period was bonafide and not intentional and was on account of a genuine cause beyond the control of such a party.

10. The learned Single Judge of this Court in *Kirti Jagdish Mulani* (supra) in paragraph 6 held that the period taken for adjudication cannot be held to be detriment to the Petitioner in computing period of four months. This decision is followed by another learned Single Judge of this Court in *Chhabildas Dalichand Bhayani* (supra).

11. In the instant case the document was executed on 28th March, 2014 and it was presented for adjudication of stamp on 28th April, 2014. However, the adjudication fees were paid only on 23rd July, 2014. Hence, as rightly submitted by the learned AGP, the period between 28th March, 2014 till 23rd July, 2014, which was totally attributable to the Petitioners cannot be excluded.

12. It is further to be noted that after the final adjudication and payment of amount towards stamp duty, the document was returned to the Petitioners only on 23rd November, 2014. The aforesaid period

between 23rd July, 2014 till 23rd November, 2014 taken for adjudication of stamp duty, is not attributable to the Petitioners and is therefore required to be excluded.

13. The decision of *Mast Ram (supra)* states that the delay of more than 8 months in presenting document cannot be condoned. In the present case, as stated earlier, the delay does not exceeds 8 months. The said decision is not applicable to the facts of the present case as once the period taken for adjudication is excluded, the delay in presentation of the document does not exceed eight months and hence, the case of the Petitioners would stand covered by provisions of Section 25 of the Indian Registration Act, 1908.

14. The delay in presentation was not intentional. Moreover, the Petitioners' case being covered under the provisions of Section 25 of the Indian Registration Act, 1908, the Petitioners have right to get the document registered on payment of fine, as stipulated in Section 25 of the Indian Registration Act, 1908. In that view of the matter the petition is bound to succeed.

15. Hence, the petition is allowed. Rule is made absolute in

terms of prayer clause (a). The Respondent No.3 is directed to accept the deed of lease and register the same after payment of fine as per the provisions of Section 25 of the Indian Registration Act, 1908.

16. At this stage, the learned AGP, on instructions submits that this order may be stayed. This request is opposed by Dr. Saraf. We find that the State has accepted the decision of the Division Bench in *Nestor Builders* and *Kirti Jagdish Mulani (supra)* therefore, this is not a proper stage where the request can be granted. Request is accordingly rejected.

(SMT. ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)