

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2018

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THE HONOURABLE MR. JUSTICE R.MAHADEVAN

W.P.No.13378 of 2018

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... Petitioner

Vs

The Sub Registrar,
Sub Registrar Office,
Kunnathur,
Tiruppur District.

.... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records relating to the impugned order in the nature of check slip dated 27.04.2018 issued by the respondent, quash the same and consequently, direct the respondent to register the final decree and judgment dated 06.12.2013 made in O.S.No.369 of 2013 passed by the learned Sub Judge, Tiruppur relating to the property measuring 4.76 $\frac{3}{4}$ acres in Old S.F.No.82, Koonampatti Village, Uthukuli Taluk, Tiruppur District.

For Petitioner: Mr.A. Thiagarajan

For Respondent: Mr.T.M.Pappiah,
Special Government Pleader

O R D E R

The petitioner has come up with this writ petition challenging the impugned order in the nature of check slip dated 27.04.2018 issued by the respondent and quash the same and consequently, direct the respondent to register the final decree and judgment dated 06.12.2013 made in O.S.No.369 of 2013 passed by the learned Sub Judge, Tiruppur relating to the property measuring 4.76 $\frac{3}{4}$ acres in Old S.F.No.82, Koonampatti Village, Uthukuli Taluk, Tiruppur District.

2. According to the learned counsel for the petitioner, the petitioner filed O.S.No.369 of 2013 on the file of the Sub Court, Tiruppur for partition and separate possession of the subject property. The Trial Court passed a compromise decree for

partition by judgment and decree dated 06.12.2013. According to the Judgment, the petitioner was allotted A Schedule property measuring 4.76 ¼ acres out of 6.35 acres. There was no dispute or appeal filed against the decree.

3. The learned counsel for the petitioner further submitted that the Hindustan Petroleum Corporation Ltd., approached the petitioner to take the subject property on lease. Therefore, they requested the petitioner to get the final decree registered in favour of the petitioner so as to proceed further. In view of the above, the petitioner presented the certified copy of the judgment and decree dated 06.12.2013, made in O.S.No.369 of 2013, for registration before the respondent, along with a petition to condone the delay in submission, on 17.04.2018. However, without considering the same, the respondent passed an order in the form of the check slip dated 27.04.2018. Aggrieved by the same, the petitioner has approached this Court by this writ petition.

4. The learned counsel for the petitioner has drawn the attention of this Court to the order dated 07.03.2016 made in W.P.No.8247 of 2016 which in turn places reliance on the Judgment of this Court reported in 2007 (2) TCJ 68 (Mad-DB)-A.K.Gnanasankar Vs. The Joint II Sub Registrar, Cuddalore-2, wherein this Court under similar circumstances, had directed the 2nd respondent, to give an opportunity of personal hearing to the petitioner and other parties therein and hence, the learned counsel prayed for similar orders.

5. On the other hand, Mr.T.M.Pappaih, learned Special Government Pleader appearing for the respondent submitted that in view of the factual aspect as well as the legal position, the respondent has rightly rejected the request of the petitioner on the ground that the registration of the said Judgment and Decree is barred by time and prays for dismissal of the writ petition.

6. This Court has carefully considered the rival submissions and also perused the materials on record. It is relevant to extract Section 25 of the Registration Act which reads as follows:

"25. Provision where delay in presentation is unavoidable:-

(i) 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 herein before 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."

7. The scope of Section 25 of the Registration Act came up for consideration in 2011(2) MLJ 57-Rasammal Vs. Pauline Edwin and others and it is relevant to extract paragraph No.93:

"93. In this connection, it is to be stated that Section 25 of the Registration Act provides a exception, viz., that if owing to urgent necessity or unavoidable accident, a document has not presented till after the period of four months the Registrar, in cases where the delay in presentation does not exceed four months, may direct that such document shall be accepted for registration. In a case, the document on which the Defendant claims that it has been presented for Registration beyond four months from the date of his execution, the burden, therefore, heavily lies on the defendant to establish that the requirement of law has been fulfilled, before it can be assumed by any Court that the document has been registered within the meaning of Section 25 of the Indian Registration Act. One cannot say that a presumption must be raised in favour of the defendant under Section 114 of the Indian Evidence Act, in view of the Registration Act shows that the District Registrar has the power to condone the delay in the presentation of a document for registration, for a period of four months after the lapse of the period of four months from the date of execution of the said document and he is competent and authorised to exercise his discretion in this matter by levying a appropriate fine thereto. There is nothing in the Registration Act to prevent a party from applying to the Registrar to excuse the delay, if the Registrar condones the delay, then in the words of Section 25 he may direct that such document may be accepted for registration. In short, the Registrar has given the discretion under Section 25 of the Act to decide whether there has been an urgent necessity or unavoidable delay which let to the delay in presentation of the document for registration. Certainly, it is not the domain of the Civil Court in a suit filed under Section 77 of the Act to sit an Appeal over its decision in such discretionary matter, when no such appeal is allowed by the provisions of the Act as per decision in Abdul Ghafoor v. Ganga Bux Singh (1950) 5 D.L.R. (AII) 340."

8. As per the ratio laid down in the said decision, the District Registrar has power to condone the delay of presentation of the document for registration for a period of four months from the date of execution of the said document and he is competent and authorised to exercise his discretion and

there is nothing in the Registration Act to prevent a party from applying to the Registrar to excuse the delay even after the period of four months.

9. In the light of the above facts and circumstances, this Court permits the petitioner to approach the District Registrar for condoning the delay in presenting the Judgment and Decree dated 06.12.2013 on the file of the Sub Court, Tiruppur, for condonation of delay by submitting an application within two weeks, from the date of receipt of a copy of this order. The District Registrar, Tiruppur, on receipt of the application, shall entertain the same, if the papers are otherwise in order and pass orders in accordance with law and in the light of the observations made in the above Judgment within a period of six weeks thereafter and communicate the decision taken, to the petitioner.

10. This Writ Petition is disposed of accordingly. No costs.

s/d-
Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

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To

1. The District Registrar
Tiruppur.

2. The Sub Registrar,
Sub Registrar Office,
Kunnathur,
Tiruppur District.

+1 CC to Govt. Pleader sr 70554

+1 CC to Mr.A. Thiagarajan, Advocate sr 69883(13/11/2018)

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W.P.No.13378 of 2018

KS (CO)
SP(12/11/2018)