IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3798 OF 2021

Hunaid Fakhruddin Khorakiwala ...Petitioner
vs.
The Joint Sub-Registrar of Assurances and Another ...Respondents

Mr. Karl Tamboly a/w. Ms. Taruna Nagpal i/b. DSK Legal, for the Petitioner.
Smt. M.S. Bane, AGP for the Respondent-State.

CORAM : N. J. JAMADAR, J.

DATE : AUGUST 31, 2021

ORDER

1. Rule. Rule made returnable forthwith and, with the consent of the counsels for the parties, heard finally.

2. This petition calls in question the legality and correctness of an order dated 27th January, 2021 passed by the Joint Sub-Registrar, Mumbai City No.3 whereby the Registrar declined to register the consent decree passed by the Court of Small Causes at Bombay in RAE & R Suit No. 432/699 of 2011 dated 10th September, 2018, on the ground that it was tendered for registration beyond the period stipulated by section 25 and 34 of the Registration Act, 1908.

3. The petition arises in the backdrop of the following facts:

a] The petitioner is the successor in interest of the tenant of the demised premises i.e. Flat No. 2, First Floor, Alashin Mansion, C.S.No.10/385, Colaba Division, Mumbai 400005. Suit was instituted in respect of demised premises, being RAE & R Suit No. 432/699 of 2011. Eventually, the parties to the said suit arrived at an amicable settlement of all the disputes. Pursuant to the settlement, a decree came to be passed by the Court of Small Causes in accordance with the consent terms on 10th September, 2018.

b] After obtaining certified copy of the consent decree, the petitioner applied to the Collector of Stamps, Mumbai for adjudication of stamp duty. Being aggrieved by an order dated 2nd August, 2019 passed by the Collector, re-adjudicating the market value of the demised premises at Rs. 7,44,76,000/- and determining the stamp duty thereon at Rs. 37,23,800/- along with penalty of Rs. 2,23,430/-, the petitioner preferred appeal being appeal case No. 205 of 2019 before the Chief Controlling Revenue Authority, Maharashtra, Pune. By an order dated 16th December, 2020 the appellate authority allowed the appeal by setting aside the order dated 2nd August, 2019 passed by the Collector of Stamps, Mumbai and adjudicated the stamp duty and penalty at Rs. 2,39,928/-. After receipt of the copy of the said order, the petitioner paid the stamp duty on 28th December, 2020 and thereafter tendered the consent decree for registration on 27th January, 2021.

c] By the impugned order the Registrar refused to register the consent decree opining that since the certified copy appears to have been issued on 5th October, 2018 it was incumbent upon the petitioner to present the documents for registration within four months from the execution of the said instrument under section 25 of the Registration Act and, in any event, within a further period of four months under section 34 of the Registration Act. Being aggrieved, the petitioner has invoked the writ jurisdiction of this Court.

4. Heard Mr. Karl Tamboly, learned counsel for the petitioner and Smt. M.S. Bane, learned AGP for the State.

5. Mr. Tamboly would urge that the Registrar completely misdirected himself in declining to register the consent decree. In the process the Registrar lost sight of the fact that unless the stamp duty was adjudicated and paid on the consent decree, the petitioner could not have tendered it for registration. The time consumed by the petitioner in getting the stamp duty adjudicated especially when the appellate authority passed the order in appeal No. 205 of 2019

on 16th December, 2020, ought not to have been construed against the petitioner.

6. Reliance was sought to be placed on a judgment of this Court in the case of **STT Global Data Centres India Pvt. Ltd. And Anr. vs. The Joint Sub Registrar of Assurance at Mumbai dated 31st July, 2020 (Coram: A.K. Menon, J.) in LD-VC-AS-SJ-WP-75-2020** wherein following earlier judgment in the case of **Kirti Jagdish Mulani vs. State of Maharashtra**[1] it was held that time taken for adjudication of the stamp duty payable on the documents is liable to be excluded and the period of four months will have be computed after allowing for such exclusion. Paragraph 4 of the said order reads as under:

> *4. As far as amended lease deed is concerned the document was certified on 2 nd January, 2020. Stamp duty payable thereon was also paid and meanwhile it appears that the document lay lodged upon the same being impounded. Vide the impugned orders the request for registration has been rejected only on the ground that it had not been presented within the time specified in section 23. This Court has inter alia in Kirti Jagdish Mulani v/s State of Maharashtra (2013) 2 Mah LJ 765 taken a view that when an instrument it required to be*

1 (2013) 2 Mah.L.J. 765

lodged for registration, time taken for adjudication of stamp duty payable on the document is liable to be excluded and that the period of four months will have to be taken after such exclusion. This case is no different. In that view of the matter petition can be disposed at this stage.

7. In the case of **Kirti Mulani** (supra) a learned single Judge of this Court had held that the period taken for adjudication of stamp duty cannot be held to the detriment of the petitioner, in computing the period of four months stipulated under Registration Act, 1908. Paragraph 9 of the said judgment reads as under:

9 Having heard the learned counsel for the parties. In my view, there is merit in the submission of the learned Senior Counsel for the Petitioner that the period taken for adjudication cannot be held to the detriment of the Petitioner, in computing the period of four months' which is stipulated in the said provision. Since in the instant case, the time for filing the Appeal came to over on 20.10.2011 and since no Appeal was filed, the decree can be said to have become final on the said day, it necessarily will have to follow that the document which was lodged on 27.12.2011 was within time. The period of seven months that has been taken by the Authority to

> *adjudicate the stamp duty and the penalty payable obviously cannot be taken into consideration whilst computing the period of said four months as also the period which has been spent whilst prosecuting the above petition.*

8. In view of the aforesaid legal position, the Registrar was in error in declining to register the consent decree on the ground that it was tendered for registration beyond the period of eight months. The period spent by the petitioner for getting the stamp duty on the consent decree adjudicated was required to be excluded. In the absence of adjudication and payment of stamp duty, it is trite, the instrument could not have been registered, even if tendered by the petitioner. Thus, the impugned order deserves to be quashed and set aside. Hence, the following order.

ORDER

i) The impugned order dated 27th January, 2021 passed by the Joint Sub-Registrar, Mumbai City No.3 stands quashed and set aside.

ii) The respondent No. 1 is directed to accept the application of the petitioner for registration of the consent decree dated 10th September, 2018 and register the same in accordance with the governing provisions.

iii) Rule made absolute in the aforesaid terms.

(N. J. JAMADAR, J.)