IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15..07..2021

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.13747 of 2021
and
W.M.P.No.14585 of 2021

C.Shanmugasundaram ... Petitioner

-Versus-

1.The Chief Revenue Controlling Officer
cum Inspector of General of Registration,
100, Santhome High Road,
Chennai 600 028.

2.The District Revenue Officer (Stamps),
Collectorate,
Coimbatore 641 018.

3.The Sub Registrar,
Bhavani SRO,
Erode District. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order made in Mu.Mu.No.25636/N2/2020 dated 15.10.2020 by the 1st respondent and to quash the same and for a consequential direction to the 1st respondent to decide the petitioner's appeal petition dated 28.08.2020 on merits.

For Petitioner : Mr.N.Manokaran

For Respondent(s) : Mr.K.M.D.Muhilan,
Government Advocate
for RR1 to 3

ORDER

[This matter has been heard through video conference]

This writ petition challenges the order dated 15.10.2020 passed by the 1st respondent rejecting the appeal dated 28.08.2020 filed by the petitioner as against the order of the 2nd respondent directing the petitioner to pay the deficit stamp duty of Rs.5,10,000/- on the sale deed dated 02.11.2015 registered as Doc.No.6134/2015 executed in favour of the petitioner by Tmt.Gomathi and others.

2. The case of the petitioner is that he had purchased a landed property measuring an extent of 2 acres and 10 1/2 cents situated in R.S.No.113/2, Old S.No.52/3 of Nallagoundanpalayam Village, Erode Taluk and District under a sale deed dated 02.11.20215 (registered as Doc.No.6134 of 2015) from one V.Gomathi and others. Alleging that the property was undervalued, the matter had been referred by the 3rd respondent to the Collector (Stamps) under Section 47-A(3) of The Stamp Act. The Collector (Stamps), in turn, after holding an enquiry passed an order directing the petitioner to pay the deficit stamp duty of Rs.5,10,000/- by order dated 13.02.2017. Challenging the same, the petitioner fled an appeal to the 1st respondent and the 1st respondent, by order dated 15.10.2020, rejected the same solely on the ground that appeal ought to have been filed within a period of two months from the date of order of the 2nd respondent and whereas the appeal was filed with a delay of more than 3 years and as such the appeal was barred by limitation. Hence, the present appeal.

3. The learned counsel for the petitioner submitted that after the order passed by the 2nd respondent, the petitioner fell ill and therefore, he could not prefer appeal in time and there had occurred delay. But, without considering the cause for the delay, the 1st respondent has simply rejected the appeal.

4. The learned Government Advocate appearing for the respondents on the other hand submitted that under Rule 9 of The Tamil Nadu Stamp (Prevention of Under Valuation of Instruments) Rules, 1968, an appeal should have been filed within a period of two months, but, in the instant case, the appeal was filed after three years and that too, without an application seeking to condone the delay in filing the appeal. Therefore, the 1st respondent was right in rejecting the appeal on the ground of delay.

5. The learned Government Advocate further submitted that as against the order passed by the 1st respondent, the petitioner ought to have filed an appeal under Section 47-A(10) of the Stamps Act to the High Court and he cannot exercise the writ

jurisdiction of this court.

6. Admittedly, the appeal was filed with inordinate delay. The Collector (Stamps) had passed an order on 13.02.2017 directing the petitioner to pay the deficit stamp duty. As rightly putforth by the learned Government Advocate, as per Rule 9 of The Tamil Nadu Stamp (Prevention of Under Valuation of Instruments) Rules, 1968, an appeal should have been filed within two months. However, it is the settled law that Section 5 of the Limitation Act is not excluded in matters relating to filing of appeal under Section 47-A(5) of the Stamp Act.

7. A Division Bench of this court in Indira Devi v. Inspector General of Registration, 2005 (1) CTC 733 has held as follows:-

> "5.There is no dispute that as per Rule 9 (5)(a) of the said Rules, an appeal under Section (10) of Section 47-A shall be preferred within two months from the date of final order passed under Sub-section (5) or Sub-section (6) of Section 47-A. Though the relevant rule says that an appeal has to be preferred within two months from the date of final order passed, in the absence of specific exclusion regarding application of Section 5 of the Limitation Act, the learned counsel appearing for the petitioner drawing our attention to the decision of a Division Bench of this Court (Principal Seat) dated 31.3.2004 made in C.M.A. (NPD) Nos. 896 and 897 of 2004 would submit that the appeal filed by the appellant before the first respondent is well within time. In the said decision, the Division Bench had occasion to consider the similar claim under the very same provision i.e. Rule 9 (5)(a) of the Rules referred to above. After referring to a judgment of the Supreme Court dealt with in a similar circumstance, the Division Bench has concluded thus:
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> > "We, therefore, hold that the date of the order under Section 47-A for the purpose of deciding the limitation for filing appeals should be construed to mean the date of the service of the order. Hence, the date of order under Rule 9 of the said Rules shall be construed to mean the date of service of the order for the purpose, of determining the time limit

to prefer the appeals."

8. This was followed by another Division Bench in M.Kaliammal v. The Special Deputy Collector (Stamps) Salem-Namakkal-Dharmapuri and Krishnagiri at Salem and another, [2005 (3) CTC 529].

9. It is the contention of the learned counsel for the petitioner that even though a period of limitation of two months has been prescribed under the Rule, 1968, as there is no specific exclusion of provision of Section 5 of The Limitation Act to the matters relating to filing of an appeal under Section 47-A(5) of the Stamp Act and as such Section 5 of the Limitation Act gets attracted. In those circumstances, the 1st respondent ought to have given an opportunity to the petitioner to file an appeal seeking to condone the delay in filing the appeal along with an affidavit explaining the delay. However, without considering the legal position in this regard, the 1st respondent has simply rejected the appeal by way of non speaking order.

10. On a careful perusal of the available records, it could be seen that the petitioner filed an appeal without an application seeking to condone the delay in filing the appeal. However, in the affidavit filed in support of the writ petition it has been stated by the petitioner that he was ill and bed ridden for a long time and as such he was not able to file appeal in time.

11. Considering the fact that provision of Limitation Act has not not excluded in matters relating to filing of appeal under Section 47-A(5) of The Stamp Act, this court is of the considered opinion that an application to condone the delay can very well be entertained by the appellate authority and in order to secure the ends of justice, the 1st respondent ought to have given an opportunity to the petitioner for filing an application seeking to condone the delay explaining the cause for the delay. Therefore, this court is of the view that the order impugned in the writ is liable to be set aside and the matter is required to be remitted to the 1st respondent for fresh consideration.

In the result, this writ petition is allowed in the following terms:

(i) the petitioner is directed to file an application seeking condonation of delay in filing the appeal along with an affidavit explaining the cause for the delay within a period of two weeks from the date of receipt of a copy of this order;

(ii) on filing such application, the 1st respondent is directed to consider the same on merits and in accordance with law and dispose of the same within a period of four weeks thereafter and proceed with further in accordance with law depending upon the out come of the delay condonation application; (iii) No costs. Consequently, connected WMP is closed. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

kmk

To

1.The Chief Revenue Controlling Officer cum
Inspector of General of
Registration, 100, Santhome High Road,
Chennai 600 028.

2.The District Revenue Officer (Stamps),
Collectorate, Coimbatore 641 018.

3.The Sub Registrar,
Bhavani SRO, Erode District.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.33810

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SSD(CO)
CB(18/08/2021)