IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

VAISHALI ANIL TIKAM

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WRIT PETITION No. 3098 OF 2022

Orchid Property Developers
Pvt. Ltd. and Anr. ...Petitioners
Vs.
The State of Maharashtra and Ors. ...Respondents

....

Mr. Rohaan Cama a/w. Mr. Aman Kacheria a/w. Aaditya Mapara a/w. Darshan Mehta i/b. Dhruve Liladhar & Co. for Petitioners
Mr. Abhay Patki, Additional Government Pleader for State of Maharashtra - Respondent Nos. 1 to 3

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 28th JULY, 2022.

P.C.:-

1. This Petition is filed under Article 226 of the Constitution of India, challenging the impugned orders; being order dated 25th March, 2022 passed by Respondent No.2, the Assistant District Registrar, Class-I Office, Bandra, and order dated 28th December, 2021 passed by Respondent No.3, Joint Sub-Registrar (Class-2) Andheri. By these orders, Respondent Nos. 2 and 3 declined to register the Deed of Conveyance dated 30th December, 2020 on the ground that the Deed of Conveyance was presented beyond the period of eight months, as stipulated under sections 23 and 25 of the Indian Registration Act, 1908.

2. The Petitioner No.1, had executed a Deed of Conveyance dated 30th December, 2020 and paid stamp duty of Rs.4,80,000/-. On 7th May, 2021, Petitioner No.1 submitted the Deed of Conveyance for adjudication and determination of stamp duty payable thereon. Order of adjudication was passed on 26th October, 2021, stipulating a deficit stamp duty of Rs.98,83,660/-, on which a penalty of Rs.9,88,366/- was imposed. The Petitioner No.1 paid the deficit stamp duty on 1st November, 2021. The Deed of Conveyance was duly adjudicated and received by the Petitioners on 10th November, 2021. On 28th December, 2021, the Petitioners presented the Deed of Conveyance to the Sub-Registrar for the purpose of registration.

3. By order dated 28th December, 2021, Respondent No.3, refused registration, solely on the ground that the Deed of Conveyance was presented beyond the period of eight months, as stipulated in Section 23 and 25 of the Registration Act. The Registrar observed that under Section 23 of the Registration Act, 1908, the document is required to be presented for registration within a period of four months from the date of execution and in exceptional cases, under Section 25 of the said Act, within further extended period of four months on payment of penalty under Rule 27 of

the Maharashtra Registration Rules, 1961.

4. By impugned order dated 25th March, 2022, the Assistant District Registrar (Respondent No.2), dismissed the appeal mainly on the ground that the Deed of Conveyance was presented for registration after a period of eleven months from the date of execution and the Petitioner had not offered satisfactory explanation for the delay in presenting the Deed of Conveyance for registration. The Respondent No.2 held that it would not be lawful to waive the delay in registration of deed as per the provisions of the Registration Act.

5. Shri Cama, learned counsel for the Petitioners submits that the period of six months three days, i.e. the period from the date of submission of the Deed of Conveyance to the Collector for adjudication till the date of adjudication and receipt of the conveyance by the Petitioners is required to be excluded while calculating the period of eight months as envisaged under Section 23 and 25 of the Indian Registration Act. He submits that excluding the said period, the Deed of Conveyance was presented within a period of 5 months 25 days, which is within the time prescribed under Section 25 of the Registration Act. He has relied upon the decision of this Court in ***Akshay Vitta Management and***

Investment Consultancy Pvt. Ltd. and Ors. Vs. State of Maharashtra and Ors. [Judgment dated 21st April, 2015 passed in Writ Petition No. 2762 of 2014], Chhabildas Dalichand Bhayani Vs. Sub-Registrar of Mumbai and Anr. [Judgment dated 26th June, 2014 passed in Writ Petition No. 903 of 2014], *Kirti Jagdish Mulani Vs. State of Maharashtra and Ors.* [Judgment dated 17th January, 2013 passed in Writ Petition No. 2662 of 2012], *Opal Builders Private Limited Vs. State of Maharashtra* [2015 SCC Online Bom 6029].

6. Mr. Abhay Patki , learned Additional Government Pleader for the State concedes that the time taken for the adjudication, needs to be excluded. He, however, submits that the Petitioners had presented the Deed of Conveyance to the Collector beyond the period of eight months, as stipulated under Section 25 and 23 of the Registration Act. He further submits that Section 25 of the Registration Act, authorizes the Registrar to condone the delay only when the delay is satisfactorily explained. He contends that in the instant case, the delay was not satisfactorily explained and in the absence of such explanation, the Registrar was justified in rejecting registration of the document.

7. Before adverting to the facts of the case, it would be relevant

to refer to the provisions under section 23 and 25 of the Registration Act, which read thus:

> *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 date on which the decree or order was made or, where it is appealable, within four months from the day on which it becomes final.*
>
> ***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.*
>
> *(2) Any application for such direction may be lodged with Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.*
>
> *(emphasis supplied)*

Section 23 of the Registration Act expressly provides that subject to provisions under Section 24, 25 and 26, no document other than Will shall be accepted for registration unless presented within four months from the date of execution. Section 25 gives discretion to the Registrar, to register the document on payment of fine, if the document could not be presented within the time due to unavoidable circumstances, provided the delay in presenting documents does not exceed four months. The cumulative effect of Sections 23 and 25 is that total eight months time is available for registration.

8. In the instant case, it is not in dispute that excluding the time of adjudication, the document was presented for registration within the aggregate period of eight months, as contemplated under section 25 of the Registration Act. Hence Respondent No.2 was not justified in rejecting registration on the premise that the delay in presenting the document for registration was of eleven months. The petitioners had also explained that the deed could not be presented within the time stipulated under section 23 due to unforeseen and unavoidable circumstances arisen due to outbreak of Covid-19 Pandemic. The explanation was plausible and bonafide and did not deserve outright rejection.

9. In the facts and circumstances of the case and also considering the view taken by this Court in Akshay Vitta Management and Investment Consultancy Services Pvt. Ltd. [Supra.] and other decisions referred to hereinabove, the Registrar has erred in rejecting registration. Since the document was presented beyond the period of four months, the Registrar could have at the most levied penalty as per Rule 27 of Maharashtra Registration Rules, 1961, which reads thus.

> "*27. Scale of fines under Section 25 or 34:- The scale of fines to be imposed under section 25 or 34, shall be as follows, namely :-*
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> *(1) If the delay does not exceed one month- not exceeding 2 1/2 times the proper registration fee;*
>
> *(2) if the delay exceeds one month but does not exceed two months - not exceeding five times the proper registration fee;*
>
> *(3) if the delay exceeds two months but does not exceed three months - not exceeding 7 1/2 times the proper registration fee;*
>
> *(4) if the delay exceeds three months but does not exceed four months- not exceeding ten times the proper registration fee.*
>
> *Note: This rule does not affect the Registrar's discretion to impose a smaller fine than the above maximum, under Sections 25 and 34, in suitable cases."*

10. Order dated 1st July, 2022 r/w. order dated 5th July, 2022 reveals that, this Court had directed the Petitioners to deposit the maximum amount of penalty i.e. ten times of the registration charges with the Registrar. It is stated that in compliance with the said order, the Petitioners have deposited an amount of Rs.3,00,000/-. Rule 26, contemplates that when the amount of fine imposed by the Registrar is less than to fine paid by the Applicant under Rule 25, the excess amount of fine is liable to be refunded. As per Rule 27, the petitioners are liable to pay the penalty not exceeding five times of the registration fee. Since the amount deposited by the Petitioners is more than the penalty payable under Rule 27, the Petitioners are entitled to get refund of excess amount. The same shall be refunded within a period of four weeks.

11. The Writ Petition is, accordingly allowed in terms of prayer clauses (a) and (b) with no order as to costs.

(SMT. ANUJA PRABHUDESSAI, J.)