IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

WP.NO.9650 OF 2022
AND
WMP.NO.9392 OF 2022

N.Ramkumar ...Petitioner

Vs

1.The Chief Revenue Control Officer,
Inspector of Registration,
Santhome, Chennai.

2.The Special Deputy Collector (Stamps)
Cuddalore District, Cuddalore.

3.The Sub Registrar Joint -II,
Kallakurichi. ...Respondents

Prayer :- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent in his proceedings Mu.Mu.No.2749/N3/2022 dated 07.02.2022 and quash the same as being illegal unconstitutional in law and for a consequential direction to the first respondent to consider the petitioner's appeal filed on 27.12.2021 under Section 47(A)(5) of Indian Stamp Act 1899 and represented on 19.03.2022 along with condone delay petition and dispose of the appeal on merits within a time frame fixed by this Court.

For Petitioner : Mr.R.Ramachandran

For Respondents : Mr.Yogesh Kannadasan, SGP

ORDER

This writ petition is filed seeking to quash the proceedings of the first respondent in Mu.Mu.No.2749/N3/2022, dated 07.02.2022 and to direct the first respondent to consider the petitioner's appeal filed on 27.12.2021 under Section 47(A)(5) of Indian Stamp Act 1899 and represented on 19.03.2022 along with condone delay petition and dispose of the appeal on merits within a time frame fixed by this Court.

2. The case of the petitioner is that he has produced a document before the 3rd respondent for registration with respect to the property situated in SF No.127/2020, however, without registering the document, the 3rd respondent put the document as pending document No.P2/2021. The third respondent fixed the guideline value for the above property as Rs.4020/- per sq. ft., for which, the petitioner made objection through his advocate against the order dated 12.03.2021 before the second respondent. After making several complaints and representations, the 3rd respondent numbered the document as Doc. No.2002/2021. The sale consideration was arrayed as Rs.7,87,500/- i.e. Rs.804 per sq. ft. as per guideline value. The second respondent passed an order by fixing the stamp duty as Rs.15,000/- per sq. ft. for the above said property, though the special Tahsildar had fixed the guideline value as Rs.4020/- per sq. ft. without verifying the guideline value given in the registration website, the second respondent mechanically fixed stamp duty as Rs.15,000/- per sq. ft. and rejected the claim of the petitioner on 30.07.2021. Aggrieved over the same, the petitioner filed appeal under Section 47 (A)(5) of the Indian Stamp Act before the first respondent and the said appeal was rejected/dismissed on the ground that the appeal has been filed with a delay of 117 days. Challenging the rejection order of the first respondent, the present writ petition has been filed.

3. The learned counsel for the petitioner submitted that the second respondent passed an order on 30.07.2021 and directed the petitioner to pay a sum of Rs.3,82,200/- as stamp duty. The time limit prescribed for preparing the appeal is 60 days. However, due to unavoidable situation, the petitioner filed appeal along with condone delay petition before the first respondent under Section 5 of the Limitation Act and he has clearly explained the reason for the delay. However, without considering the condone delay application, the first respondent rejected the said application on the ground that the first respondent have no power to condone the delay , which is not fair and injustice. The learned counsel for the petitioner placed reliance on the decision of the Hon'ble Division Bench of this Court reported in 2005 (3) CTC 529 and 2005 (1) CTC 733 wherein it has been held that the application to condone the delay can be entertained by the appellate authorities and they are entitled to pass appropriate orders even in the absence of any provision. However, without considering the decision rendered by this Court, the respondent have rejected the condone delay petition, which is not admissible. Hence, the learned counsel prays to allow the writ petition.

4. The learned Special Government Pleader appearing on behalf of the respondents submitted that though the petitioner

filed appeal along with condone delay petition under Section 5 of the Limitation Act. But in the absence of any provision in the Stamp Act, the petitioner's application has been rejected and the same cannot be entertained. Therefore, the learned counsel prays to dismiss the writ petition.

5. Heard, the learned counsel for the petitioner as well as the learned Special Government Pleader appearing for the respondents, and perused the materials available on record.

6. In the considered view of this Court, the issue involved in the present writ petition is squarely covered by the earlier order passed by the Hon'ble Division Bench of this Court reported in 2005(3) CTC 529 in the case of M.Kaliammal Vs.The Special Deputy Collector (Stamps), Salem-Namakkal-Dharmapuri and Krishnagiri at Salem and another. The relevant portions in the order are extracted hereunder :-

> ''4. A Division Bench of this Court in the judgment Indira Devi v. Inspector General of Registration, dealing with a similar situation had held that since the provisions of the Limitation Act is not excluded in matters relating to filing of an appeal, Section 5 of the Limitation Act gets attracted. Having that law laid down by this Court, we perused the entire papers placed before us. Having regard to the nature of the order passed by the first respondent, which is challenged before the second respondent, viz., demanding difference in payment of stamp duty payable on the ground of under valuation we are of the firm opinion that ends of justice definitely requires the delay in filing the appeal, whether it is 50 days or six months, to be condone. We find from the materials placed on record that the appellant had satisfactorily explained the delay. Consequently, the impugned order is set aside and the appeal is allowed. Now costs. The second respondent is directed to take up the appeal on file and dispose it of in accordance with law. CMP No. 7257 of 2005 is closed.''

7. This Court, while passing the above order had taken into consideration the earlier judgement passed by the Division Bench of this Court in [Indira Devi Vs. Inspector General of Registration, Chennai and others] in 2005 (1) CTC 733. The relevant portions in the order are extracted hereunder :-

> ''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 within a similar circumstance, the Division Bench has concluded thus:

"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."

6. Inasmuch as there is a specific provision enabling the aggrieved person to file an appeal to the appellate authority, the first respondent herein viz., the Inspector General of Registration, as rightly observed by the Division Bench, unless the copy of the order is furnished/served on the aggrieved person, it would not be possible for him to file the appeal. We are in respectful agreement with the view expressed by the Division Bench.

7. In addition to this, as rightly pointed out by the learned counsel for the petitioner, inasmuch as there is no specific exclusion of Section 5 of the Limitation Act in the Rules, we are of the view that taking note of the fact that copy of the order passed by the second respondent dated 28.11.2002 has been served/received by the appellant only on 17.12.2002 and the appeal filed by the appellant on 10.2.2003 before the first respondent is well within time. The first respondent has committed error in dismissing the appeal stating that the same is barred by limitation. The impugned order of the first respondent dated 10.3.2003 is set aside. The first respondent is directed to hear the appeal on merits within a period of three months from the date of receipt of copy of this order after affording opportunity to all the parties concerned.''

8. On perusal of the above said orders of this court, the Division Bench had categorically held that the appellate authorities have power to condone the delay while admitting the appeal. In the present case, the petitioner filed appeal along with condone delay petition and clearly explained the reason for the delay. In view of the same, this Court has to necessarily interfere with the impugned proceedings of the first respondent.

9. In view of the above discussion, the impugned order passed by the first respondent dated 07.02.2022 is hereby quashed and remanded the matter back to the first respondent. There shall be a direction to the first respondent to entertain the petitioner's appeal and pass appropriate orders on merits and in accordance with law within a period of twelve weeks from the date of receipt of a copy of this order.

10. This writ petition is allowed with the above directions. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IV)

// True Copy //

Sub Assistant Registrar

Rli

To

1.The Chief Revenue Control Officer,
Inspector of Registration,
Santhome, Chennai.

2.The Special Deputy Collector (Stamps)
Cuddalore District, Cuddalore.

3.The Sub Registrar Joint -II,
Kallakurichi.

+1cc to Mr.R.Ramachandran, Advocate Sr.No.28770

+1cc to the Government Pleader Sr.No.29694

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and
WMP.No.9392 of 2022

NR(CO)
RVM(01/06/2022)