

Prajakta Vartak

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 7691 OF 2022
WITH
INTERIM APPLICATION NO. 10445 OF 2022**

Parkwest LLP & Anr. ...Petitioners
Vs.
The Joint Sub-Registrar of Assurances & Ors. ...Respondents

Mr. Shardul Singh a/w. Ms. Saloni Shah and Ms. Sayali Diwadkar i/b. DSK
Legal for the petitioners.

Mr. Sachin H. Kankal, AGP for the State/respondent nos. 2 and 3.

Mr. J.P. Sen, Senior Advocate, Mr. Narayan Sahu, Mr. Sharad Bansal a/w.
Mr. Murtuza Federal, Mr. Veer Ashar, Mr. Aarooha Kulkarni i/b. Federal &
Company for the applicant/intervener.

**CORAM : G.S. KULKARNI, J.
DATE : MARCH 02, 2023**

P.C.:

1. This petition assails an order dated 06 January, 2022 passed by the
Joint Sub-Registrar (Division – 2), Andheri No.2, Mumbai Suburban
District, whereby conveyance dated 30 March, 2021 entered between the
petitioners which was presented for registration by the petitioners on 06
January, 2022, is refused to be registered on the ground that there was
delay of one month in presenting the same considering the provisions of
Sections 23 and 25 of the Registration Act, 1908 (for short, the
“Registration Act”).

2. Mr. Singh, learned counsel for the petitioners has fairly pointed out that an appeal against such order was filed by the petitioners before the Collector, Mumbai Suburban District. He submits that the said appeal was inadvertently filed before the said authority, in as much as the Collector, Mumbai Suburban District would not be the appropriate authority and it ought to have been presented before the appropriate appellate authority exercising powers under Section 72 of the Registration Act. He submits that the petitioners are agreeable to present their appeal before the appropriate appellate authority as per the provisions of Section 72 of the Registration Act.

3. In my opinion, the submission as made by Mr. Singh is required to be accepted for the reason that there is a substantive order passed by the Joint Sub-Registrar (Division – 2), Andheri No.2, Mumbai Suburban District refusing registration of the conveyance, which is an appealable order under Section 72 of the Registration Act and hence, it would be appropriate for the petitioners to assail such order before the appellate authority. It may also be observed that once an appellate remedy is available to the petitioners under law, it may not be appropriate for this Court to exercise jurisdiction under Articles 226 and 227 of the Constitution, under which the present proceedings are filed. The petition

is accordingly disposed of by the following order:-

ORDER

- i. The petitioners are at liberty to file an appeal before the appropriate appellate authority as constituted under Section 72 of the Registration Act, 1908 assailing the order dated 06 January, 2022 passed by the Joint Sub-Registrar (Division – II), Andheri, Mumbai Suburban District. Let such appeal be filed within a period of 10 days from today.
- ii. If such an appeal is filed by the petitioners as directed above, the same shall be decided in accordance with law and without an objection as to limitation considering the fact that the petitioners were bonafidely pursuing proceedings before a wrong forum i.e. the Collector as also before this Court.
- iii. Considering the fact that petitioner no.2 is 84 years old, the appellate authority is requested to decide the appeal as expeditiously as possible and within a period of three months from the date of presentation of appeal.
- iv. All contentions of the parties are expressly kept open.
- v. Disposed of in the above terms. No costs.
- vi. Interim application would not survive. It is accordingly disposed of.

[G.S. KULKARNI, J.]