



WEB COPY



W.P.No.26590 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.26590 of 2021

RC Colour Private Limited,
Represented by C.Jayakumar,
Managing Director,
No.3/510, Kuppendampalayam,
Tirupur – 641 605.
Petitioner

...

-Vs-

1. The Inspector General of Registration,
No.120, Santhome High Road,
Bharathi Nagar, Raja Annamalaipuram,
Chennai – 600 028.

2. The District Registrar,
Anjal Nagar, Tiruppur.

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the 2nd respondent in Na.Ka.No.705/B1/2019 dated 28.05.2019 and quash the same as illegal, competent and without jurisdiction and further direct the 2nd respondent to register the decree of this Court in C.P.No.273 & 274 of 2016 on 27.04.2018 and thereby render justice.



W.P.No.26590 of 2021

For Petitioner : Mr.V.Raghavachari
For Respondents : Mr.Yogesh Kannadasan
Special Government Pleader

ORDER

The prayer sought for herein is for a writ of certiorarified mandamus to quash the impugned proceedings of the 2nd respondent in Na.Ka.No.705/B1/2019 dated 28.05.2019 as illegal, competent and without jurisdiction and further direct the 2nd respondent to register the decree of this Court in C.P.Nos.273 & 274 of 2016 on 27.04.2018 and thereby render justice.

2. The petitioner got an approval of demerger from the orders of this Court in C.P.Nos.273 & 274 of 2016 by order dated 03.01.2017.

3. The said order ought to have been presented before the Registering Authority within the meaning of Section 23 of the Registration Act, 1908.



W.P.No.26590 of 2021

4. However the order should be filed along with the scheme of demerger, for which, they already approached the Registrar of Companies, where there has been some delay, in order to condone the said delay within the meaning of Section 231 of the Companies Act, 2013, the petitioner had already approached the National Company Law Tribunal, Special Bench at Chennai, who passed an order on 20.03.2018 to the following effect:

“The applicant prayed for condoning the delay of 11 months 16 days in filing the order of the High Court of Madras with the Sub Registrar. The scheme of demerger sanctioned by the Hon'ble High Court is to be enclosed for the purpose of Registration under Section 23 of the Registration Act, 1908. A copy of the decree or an order may be presented within 4 months from the date on which decree or order was made. The applicant has submitted that he had filed the order of the Hon'ble High Court with the Registrar of Companies, Coimbatore on 01.02.2017 and did not take steps to file the order with the Sub-Registrar within 4 months from the date of order. This application has been filed under Section 231 of the Companies Act, 2013.

In terms of the provisions of Section 231(3) the delay in filing the scheme of arrangement with the office of



W.P.No.26590 of 2021

the Registrar for the purpose of giving effect to the same is hereby condoned. The order of this Tribunal may be filed within the time limits prescribed under the Registration Act, 1908. In terms of the above directions, the CP/271/2018 is disposed of.

5. After getting this order, when the petitioner approached the Registering Authority i.e., second respondent to register the judgment passed by this Court dated 03.01.2019 along with the order passed by the National Company Law Tribunal, the same has been rejected through the impugned order passed by the second respondent. Challenging the same, the present writ petition has been filed.

6. Heard Mr. V.Raghavachari, learned counsel appearing for the petitioner, who would submit that, insofar as the reasons stated by the second respondent in the impugned order by citing the provisions of Section 23 of the Registration Act, 1908 is concerned, the issue has already been settled as number of orders have been passed by this Court, where Courts have taken a view that though a limitation of four months period have been prescribed under Section 23 of the Registration Act, 1908, insofar as the registration of the judgment and decree passed by the Court of law is concerned, since which is continuously in effect and



W.P.No.26590 of 2021

therefore, such kind of strict limitation cannot be put against the Registration of Court's judgment and decree.

7. In this context, this Court already passed number of orders, the learned counsel for petitioner relied upon the following citations:

- 1. K.Krishnan Vs. The Inspector General of Registration and Anr.[W.P.(MD).No.13896 of 2019 dated 20.06.2019]***
- 2. K.Girija Vs. The Inspector General of Registration and Ors. [W.P.No.32876 of 2022 dated 07.12.2022]***
- 3. M.Venkatesan Vs. The District Registrar(Administration) and Anr. [2022-5-L.W. 1010]***

8. Relying upon these decisions, learned counsel appearing for petitioner would contend that the reasons cited in the impugned order may not be justifiable and therefore, on that ground, the impugned order is liable to be interfered with and the writ petition can be allowed, he contended.

9. Heard Mr. Yogesh Kannadasan, learned Special Government



W.P.No.26590 of 2021

Pleader appearing for the respondents, who would submit that, insofar as the refusal made by the second respondent through the impugned order in registering the order passed by this Court dated 03.01.2017 with regard to the demerger of the companies followed by the subsequent order passed by the National Company Law Tribunal as referred to above for the purpose of condoning the delay within the meaning of Section 231 of the Companies Act, 2013 is concerned, it may not come within the purview of Section 23 of the Registration Act. Strictly speaking, as judgment and decree, as these documents admittedly have been filed before the respondents/Registering Authority beyond the four months period of registration prescribed therein, therefore, on that ground refusal made by the respondents can very well be justified, hence, the learned Special Government Pleader wants to sustain the impugned order.

10. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

11. Insofar as the impugned order passed by the respondents is concerned, whether the document i.e., the order passed by this Court as



W.P.No.26590 of 2021

well as the National Company Law Tribunal can be treated as a pending document for any other reason is a question to be decided.

12. Insofar as the said document having been kept as a pending document is concerned, for the purpose of any stamp duty and if the stamp duty is payable by the petitioner, there could be some justification on the part of the respondents to seek for such payment of stamp duty. However, if the documents are kept as pending document without registering the same merely because, these documents have been filed after the limitation prescribed under Section 23 of the Registration Act, 1908, certainly that reasons would not stand in the legal scrutiny in view of the settled legal position in so many judgments including the judgments referred to above.

13. Therefore, this Court has no hesitation to hold that for the said reason of limitation within the meaning of Section 23 of the Registration Act, 1908, the documents in question i.e., order passed by this Court as well as the National Company Law Tribunal cannot be held back as a pending document by the respondents. However, the respondents are free to demand any stamp duty, if it is payable by the petitioner.

14. In view of the aforesaid, this Court is inclined to dispose of this



W.P.No.26590 of 2021

writ petition with the following order:

WEB COPY

- ◆ That the impugned order is set aside and the matter is remitted back to the respondent for re-consideration.
- ◆ While reconsidering the same, the above legal position shall be borne in mind by the respondents in registering the Court decrees and judgments including the two documents one is, the order passed by this Court and another is, order of the National Company Law Tribunal and accordingly, register the same, provided if no other impediment is available for the respondents to register the same including the alleged stamp duty, if any payable by the petitioner. Apart from these two reasons, for the purpose of limitation within the meaning of Section 23 of the Registration Act, 1908, the document shall not be held back or shall not be refused to be registered.
- ◆ It is made clear that, insofar as the liability of stamp duty payable by the petitioner, if any, legal position projected by the petitioner by citing decisions shall also be taken into consideration by the Registering Authority and accordingly, they shall decide the issue.
- ◆ In view of this order passed, the appeal if any filed by the petitioner



W.P.No.26590 of 2021

WEB COPY

before the Inspector General of Registration, which according to the learned Special Government Pleader is pending till date will become otiose. Therefore, no order need to be passed in the said appeal.

With this direction, this writ petition is disposed of. No costs.

06.01.2023

Index : Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No

mp

To

1. The Inspector General of Registration,
No.120, Santhome High Road,
Bharathi Nagar, Raja Annamalaipuram,
Chennai – 600 028.
2. The District Registrar,
Anjal Nagar, Tiruppur.

R. SURESH KUMAR, J.



WEB COPY



W.P.No.26590 of 2021

mp

Writ Petition No.26590 of 2021

06.01.2023