33 19.03.2024
AN Ct. No. 01
RP

MAT 258 of 2024
with
IA No. CAN 1 of 2024
IA No. CAN 2 of 2024

The State of West Bengal & ors.
Vs.
A. J. Tea House Private Limited & Ors.

Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
... For the Appellant

Mr. Arindam Banerjee
Ms. Arpita Saha
Ms. Rituparna Chatterjee
Ms. Khusboo Chowdhury

... For the Respondent

1. We have heard learned counsel for all the parties elaborately.

2. There is a delay of 170 days. Though we are not fully satisfied with the reasons given in the application, but considering the submissions which the learned counsel representing the State appellant proposes to make, we exercise discretion and condone the delay in filing the appeal. Accordingly, the application being CAN 1 of 2024 is **allowed** and disposed of.

3. This intra-Court appeal by the State is directed against the order dated 08.09.2023 passed in WPA 12864 of 2019. The said writ petition was filed by the respondent herein praying for a direction upon the appellants to forthwith release/refund the sum of Rs. 73.17.714/- to the writ petitioners 1 and 3 alongwith the interest @ 18% p.a. with effect from 08.07.2015 till realization. The said prayer was made on the ground that excess stamp duty has been remitted by the appellant with regard to realization of payment pertaining to

immovable property. Initially, a sale agreement without possession was presented for registration before the concerned Registering Authority on 08.07.2015. On the said date, the entire stamp duty was remitted by the respondent/writ petitioner calculated based on the extent of the property qua guideline value fixed by the State. The Registering Authority, the Additional Registrar of Assurances-1, Kolkata (in short A.R.A.) refused registration by its order dated 10.07.2015. The reason for refusal being that the executants failed to appear and admit execution within the prescribed time under Section 34 read with Rule 34 of the Rules Act, 1908 read with the West Bengal Rules, 1962. Therefore, the registration of the documents was wholly refused under Section 35 of the Act. Subsequently, it appears that there was negotiation and the extent of the property had reduced and the writ petitioners appear to have approached the A.R.A. for return of the documents presented on 08.07.2015 which was refused since the parties had agreed upon the execution of a deed of conveyance and a deed of conveyance was presented for registration paying the stamp duty for the entire value of the property. The valuation part of it is not in dispute. The writ petitioner prayed for return of the stamp duty which was paid at the time of presentation of the sale agreement on 08.07.2015. This having not been considered, the writ petition was filed. Admittedly, the reason for refusal was by invoking Section 34 of the Registration Act which provides for enquiry before the registration by the Registering Officer. Sub-section 1 states that subject to the provisions contained in Part IV of the Act and in Sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under the Act, unless the persons executing such document or their representatives assigns or agents authorized as aforesaid, appeared before the Registering Officer within the time allowed for presentation under Sections 23, 24, 25 and 26 of the Act. The proviso states that if owing to urgent necessity or unavoidable accident, all such persons do not so appear, the Registrar, in all cases, where delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding 10 times the amount of the proper registration fee, in addition to the fine, if any, payable under Section 25, the document may be registered. Admittedly, the A.R.A. has not referred to Section 23 of the Act for refusal of registration but referred to only Section 34 and the ground of refusal is on account of the fact that the executants failed to appear and admit executions. If that be the position, the next step the A.R.A. should have taken is to return the document to the presenter who presented the document on 08.07.2015 and promptly refunded the stamp duty and the registration fee which was collected subject to deduction of any administrative expenses, if law provides so. Therefore, to retain the document as well as the stamp duty was wholly without jurisdiction.

4. Learned counsel representing the State appellant made elaborate submissions by referring to Sections 23, 24, 25, 34 and 72 of the Act. As pointed out earlier, the refusal of the registration was only in terms of Section 34 of the Act and reliance placed on the other provisions of the Act would not render any support to the case of the appellant. Reference was also made to the West Bengal Registration Rules, 1962, in particular, Rule 21. Rule 21 of the Rules deals with conditions of admissibility. This Rule has to be read alongwith Rule 22 which deals with the procedure in cases where registration is refused. Therefore, in case Rule 21 has been relied upon, then under Rule

22, the document shall be returned at once to the presentant with the endorsement “registration refused”. This having not been done, the A.R.A. had no jurisdiction to retain the stamp duty which was remitted by the appellant while presenting the sale agreement on 08.07.2015.

5. Thus, the ultimate conclusion and directions issued by the learned Single Judge does not call for any interference and the order is sustained on the reasons given by us in the preceding paragraphs.

6. In the result, the appeal stands **dismissed.** Consequently, the connected application being CAN 2 of 2024 also stands dismissed.

(T. S. Sivagnanam)
(Chief Justice)

(Hiranmay Bhattacharyya, J.)