



W.P.No.3185 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2024

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.3185 of 2024

Vetrivel

... Petitioner

versus

The Sub Registrar,
Sankarapuram Sub Registrar Office,
Sankarapuram,
Kallakurichi District.

.....Respondent

Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the impugned order dated 15.12.2023 refusal No.RF1/Sankarapuram/97/2023 issued by the respondent and quash the same and consequently directing the respondent to register the decree in O.S.No.15 of 2021, dated 05.10.2023.

For Petitioner	:	Mr.V.Gunasekar
For Respondent	:	Mr.Yogesh Kannadasan Special Government Pleader



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ORDER

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Mr.Yogesh Kannadasan, learned Special Government Pleader accepts notice for the respondents. With the consent of both the parties, this writ petition is taken up for final disposal at the admission stage itself.

2. The prayer sought for in this writ petition is to quash the impugned refusal No.RF1/Sankarapuram/97/2023, dated 15.12.2023 issued by the respondent and consequently direct the respondent to register the decree in O.S.No.15 of 2021, dated 05.10.2023.

3.The learned counsel for the petitioner submitted that the petitioner has filed a suit in O.S.No.15 of 2021 on the file of the III Additional District Court, Kallakurichi, for declaration and permanent injunction against her sister and the same was decreed *ex-parte* 05.10.2023. The defendant therein has not challenged the said *ex-parte* decree till date. When the petitioner presented the said decree for registration, the respondent refused to register the same and passed the impugned refusal check slip stating that as per the Circular in ந.க.எண்.34930/சு1/2019 நாள் 27.02.2023, there is a bar for registering



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an *ex-parte* decree. The learned counsel for the petitioner further submitted that the said judgment and decree had not been set aside or reversed or modified. As per the provisions of the Registration Act, 1908, the respondent concerned is duty bound to register the document/order issued by the Court. Therefore, the respondent has no jurisdiction to pass the impugned refusal check slip and hence, the same is liable to be dismissed.

4. Heard both sides and perused the materials available on record.

5. As per Section 23 of the Registration Act, 1908, the respondent can refuse to register the document only when the decree was presented for registration beyond the stipulated period of 4 months. In the present case, the petitioner has got *ex-parte* decree from the competent Court on 05.10.2023 and presented before the respondent for registration within four months i.e. on 15.12.2023. However, the reason given by the respondent for not registering the decree is that it was an *ex-parte* decree and hence as per the Circular in ந.க.எண்.34930/சு1/2019 நாள் 27.02.2023, issued by the Inspector General of Registration, Chennai, *ex-parte* decree cannot be registered.



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6. The proviso to Section 23 of the Registration Act, 1908 reads as follows :

23. Time of presenting document.- *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 date on which it becomes final.

7. Even Section 17(2)(vi) of the Registration Act, 1908, is also very clear that if any decree or order is passed by a Court, the Registrar/Sub-Registrar can register the same.

8. For better appreciation Section 17(2)(vi) of the Registration Act, 1908 is extracted hereunder :

" 17. Documents of which registration is compulsory :-

(1)



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(2) Nothing in clauses (b) and (c) of sub-section

(1) applies to

(vi) any decree or order of a Court [except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject matter of the suit or proceedings]; or"

9. It is settled proposition of law that no Circular will prevail over the Act or Rules. If the order/decreed holder gives a valid reason for presenting the decree for registration, the same has to be considered, unless the said decree was subsequently set aside or over-ruled or modified. Even otherwise, if any dispute arises regarding the same, the aggrieved party can work out their remedy before the civil Court. The Registrar is not the competent authority to testify as to whether the *ex-parte* decree presented before him/her is a valid and executable one or not. Unless the decree presented for registration is subsequently set aside or over-ruled or modified by the competent forum, the said decree is an executable decree, and it is the duty of the Registrar to register the document, if the document is otherwise in order and within the purview of the Registration Act. Therefore, the



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reason given by the third respondent for not registering the *ex-parte* decree based on the said circular, is against the provisions of law and hence, the same cannot be accepted. Circular is only for internal communication and not to by-pass or over rule or modify the Act. This Court has come across several writ petitions wherein, the Registrars, by citing the said circular, have refused to register the *ex-parte* decree. The specific portion in the Circular ந.க.எண்.34930/சு1/2019 நாள் 27.02.2023 directing the registering authority not to register the *ex-parte* decree, which is against Act or Rule, was already quashed by this Court in W.P.No.36564 of 2023, dated 05.01.2024. Further, this Court, time and again interpreted the proviso that if any under decree or order passed by this Court is presented for registration and the same is otherwise in order, the concerned authority has to register the same. Instead of registering the same, the respondent herein referred to the circular and refused registration, which is highly deprecated. Therefore, the impugned refusal check slip dated 15.12.2023 passed by the respondent is liable to be quashed.

10. In view of the above, this writ petition is allowed and the



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impugned refusal check slip dated 15.12.2023 passed by the respondent is quashed. The respondent is directed to register the judgment and decree dated 05.10.2023 passed in O.S.No.15 of 2021 on the file of the III Additional District Court, Kallakurichi, if the same is otherwise in order, within a period of four weeks from the date of receipt of a copy of this order and the petitioner has paid the registration fees as well as stamp duty. There shall be no order as to costs.

13.02.2024

Index: Yes/No
Speaking Order : Yes/No
Neutral Citation Case : Yes/No
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To
The Sub Registrar,
Sankarapuram Sub Registrar Office,
Sankarapuram,
Kallakurichi District.



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P.VELMURUGAN, J.
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