



W.P(MD)No.13439 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 01.07.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.13439 of 2024

and

W.M.P(MD)No.11853 of 2024

Thirumani Raja

... Petitioner

Vs.

The Joint Sub Registrar No.II,
Tuticorin.

... Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the Impugned Refusal check slip in RFL/2 Joint Sub Registrar Thoothukudi/29/2023 dated 27.12.2023 on the file of respondent and quash the same as illegal and consequently direct the respondent to register the Judgment and decree dated 30.06.2023 passed in O.S.No.153 of 2021 on the file of II Additional District Judge, Tuticorin.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondent : Mr.R.Ragavendran
Government Advocate



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ORDER

Heard both sides.

2.The petitioner filed O.S.No.153 of 2021 on the file of II Additional District Judge, Thoothukudi and obtained exparte money decree against the first defendant on 30.06.2023. The petitioner wanted to register the same. The petitioner's request was negated on the ground that it is an exparte decree. The respondent has relied on the circular dated 27.02.2023 issued by the Inspector General of Registration. Challenging the refusal check slip dated 27.12.2023 issued by the respondent, this writ petition came to be filed.

3.As rightly pointed out by the learned counsel appearing for the petitioner, the issue raised in the writ petition is no longer *res integra*. A learned Judge of this Court vide order dated 13.02.2024 in W.P.No.3185 of 2024 (Vetrivel Vs The Sub Registrar, Sankarapuram Sub Registrar Office, Sankarapuram, Kallakurichi District.) had held as follows:

“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



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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 e/f/vz;/34930-rp1-2019 ehs; 27/02/2023, issued by the Inspector General of Registration, Chennai, ex-parte decree cannot be registered.

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/SubRegistrar 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 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 bypass or over rule or modify the Act. This Court has come



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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 டி/க/எண்/34930-ஈ1-2019 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.”

This has been followed in a number of orders by me also. The learned counsel appearing for the petitioner has brought to my notice order dated 27.02.2024 made in W.P(MD)No.4454 of 2024 (Subbaiah Ambalam Vs The Inspector General of Registration & Others).

4.In this view of the matter, the impugned refusal check slip is quashed. The petitioner is permitted to re-present the decree. It shall be registered by the respondent subject to the fulfilment of other usual formalities.



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5.This writ petition is allowed accordingly. There shall be no order

as to costs. Consequently, connected miscellaneous petition is closed.

01.07.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

MGA

To

The Joint Sub Registrar No.II,
Tuticorin.

Copy to

II Additional District Judge, Tuticorin.



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G.R.SWAMINATHAN,J.

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