(2015) 02 GUJ CK 0062

In the Gujarat High Court

Case No : Special Civil Application No. 14579 of 2014

Ladha Enterprise APPELLANT

Vs

State of Gujarat and Others RESPONDENT

Date of Decision : 10-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Gujarat Stamp Act, 1958 — Section 27, 31, 32A, 39, 40

Citation : (2015) 2 GLR 1339

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : Amit V. Thakkar, for the Appellant; P.P. Banaji, A.G.P., Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Abhilasha Kumari, J.

1. Rule. Mr. P.P. Banaji, learned Assistant Government Pleader waives service of notice of Rule on behalf of the respondents. On the facts and in the circumstances of the case and with the consent of learned Counsel for the respective parties, the petition is being heard and decided, finally. This petition under Art. 226 of the Constitution of India, has been preferred with a prayer to quash and set aside the orders dated 24-7-2014 and 1-9-2014, passed by respondent No. 2-Chief Controlling Authority, whereby the appeal of the petitioner against the order dated 11/12-2-2014, passed by the Deputy Collector, Stamp Duty Valuation (respondent No. 3), has not been accepted on the ground of limitation. The petitioner has also challenged the order dated 11/12-2-2014 passed by respondent No. 3, and the consequential notice dated 8/13-8-2014.

2. The brief facts of the case, to the extent they are relevant, are that the petitioner purchased property bearing Shop Nos. 305 to 309 and 312 to 314 in a building known as "Shanti Market", constructed on land bearing Sub-Plot No. 2 of Final Plot No. 139 of Town Planning Scheme No. 8 (Umarwada), in an auction

conducted by Dena Bank under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act" for short). The petitioner paid the sale consideration of Rs. 62.75 lacs to Dena Bank and a Sale Certificate was issued in its favour. Pursuant thereto, Dena Bank executed a Deed of Conveyance in favour of the petitioner, registered vide Serial No. 19532, on 18-8-2008. After a period of three years, in the year 2011, the petitioner was served with notices dated 3-8-2011 and 13-10-2011, to which he replied vide communication dated 2-11-2011. Not satisfied with the reply of the petitioner, respondent No. 3 passed the impugned order dated 11/12-2-2014, which was received by the petitioner on 13-2-2014, whereby the petitioner was called upon to pay the differential stamp duty of Rs. 3,08,450/-. Aggrieved by the said order, the petitioner preferred an appeal before respondent No. 2 on 12-5-2014, under Sec. 53(1) of the Gujarat Stamp Act, 1958 ("the Act" for short). By the impugned order dated 24-7-2014, respondent No. 2 refused to accept the appeal of the petitioner on the ground that it has been filed beyond the prescribed period of limitation. The petitioner again wrote to respondent No. 2 vide communication dated 8-8-2014, submitting that the appeal filed by him was within the prescribed period of limitation of ninety days as per Sec. 53(1) of the Act. In the said communication, the petitioner has also given the calculation for the period of limitation. By the impugned communication dated 1-9-2014, respondent No. 2 reiterated his earlier stand that the appeal of the petitioner was beyond the prescribed period of limitation. Aggrieved by the orders dated 24-7-2014 and 1-9-2014, the petitioner is before this Court.

3. Mr. Amit V. Thakkar, learned Advocate for the petitioner submits that, as per the provisions of Sec. 53(1) of the Act, the maximum period of limitation to file an appeal is ninety days from the date of the order of the Collector (respondent No. 3). The order of respondent No. 3, against which an appeal was to be filed before respondent No. 2 is dated 11/12-2-2014. The appeal has been filed on 12-5-2014. If a calculation is made from 12-2-2014, which is one of the dates in the impugned order, the appeal has been presented within a period of eighty-nine days, and is, therefore, within the prescribed period of limitation. It is further submitted that even if the period of limitation is calculated from 11-2-2014, it comes to ninety days. The appeal has been filed on the 90th day and not thereafter. Looking at it from any angle, the appeal of the petitioner is within the period of limitation prescribed in Sec. 53(1) of the Act. The action of respondent No. 2, in not accepting the appeal on the ground of limitation, is therefore, not sustainable in law.

3.1. The learned Advocate for the petitioner has further submitted that in a case where the order is passed some time after the hearing is concluded in the absence of the concerned party or his representative, the concerned party may be unable to file an appeal within ninety days from the date of the order. It is submitted that the words "from the date of the order" occurring in Sec. 53(1)(a) of the Act have been interpreted by this Court in Special Civil Application No. 8679 of 2012 (Ramjibhai Shambhubhai Koradia v. State of Gujarat). The impugned order in the present case bears two dates, that is, 11th and 12th February, 2014. The date of the order ought to be taken as 12-2-2014, as it is evident that the order was still lying in the hands of respondent No. 3, on that date. The appeal is, therefore, filed within the period of limitation.

4. Mr. P.P. Banaji, learned Assistant Government Pleader has opposed the submissions advanced by the learned Advocate for the petitioner and has taken the Court through the contents of the affidavit-in-reply filed by respondent No. 2. It is submitted that as the respondent No. 2 found that the appeal of the petitioner was time-barred, he did not accept it, and there is no illegality in the impugned order.

5. This Court has heard learned Advocates for the respective parties, perused the averments made in the petition, contents of the impugned order and other documents on record.

6. At this stage, it would be pertinent to advert to Sec. 53 of Gujarat Stamp Act, which reads as below:

"53. Control of and statement of case to Chief Controlling Revenue Authority:

(1) The powers exercisable by a Collector under Chapter III except sub-sec. (3) of Sec. 32A Chapter IV and Chapter V and under clause (a) of the first proviso to Sec. 27 shall in all cases be subject to the control of the Chief Controlling Revenue Authority.

Provided that the Chief Controlling Revenue Authority shall not entertain an application made by a person under sub-sec. (1) unless.

(a) such application is presented within a period of ninety days from the date of order of the Collector.

(b) such person deposits twenty-five per cent of the amount of duty or as the case may be, amount of difference of duty payable by him in respect of subject-matter of the instrument for which application has been made.

(2) If any Collector, acting under Sec. 31, Sec. 32A, Sec. 39 or Sec. 40, feels doubt as to the amount of duty with which any instrument is chargeable, he may draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue Authority.

(3) Such authority shall consider the case and send a copy of its decision to the Collector, who shall proceed to assess and charge the duty (if any) in conformity with such decision."

7. From a perusal of the above provisions of law, it is clear that the Chief Controlling Revenue Authority cannot entertain an application (or an appeal) made by a person under sub-sec. (1) if it is presented beyond a period of ninety days. Another condition is that twenty-five per cent of the amount of differential duty is required to be paid by the applicant.

8. In the present case, there is no dispute regarding the fact that the petitioner has paid twenty-five per cent of the differential duty as determined by the order dated 11/12-2-2014, passed by respondent No. 3. While making submissions, the learned Advocate for the petitioner has tendered Challan No. 3, to show that twenty-five per cent of the amount has been deposited on 9-5-2014. The appeal has been filed on 12-5-2014. The said Challan is taken on the record of the case.

9. The short, but fundamental issue that arises for determination by this Court is whether the appeal of the petitioner was presented within the prescribed period of limitation as per Sec. 53(1)(a) of the Act. The order of respondent No. 3, against which the petitioner is desirous of preferring an appeal, bears two dates on the top right-hand side (11th and 12th February, 2014). This becomes clear from a perusal of a copy of the said order annexed as Annexure-C to the petition. In the last line of the order, it is stated that it has been passed on 11-2-2014. However, the very fact that the order bears two dates i.e. "11/12-2-2014", indicates that it was still lying with respondent No. 3 on 12-2-2014, and had not been dispatched to the petitioner. The petitioner has averred, in Paragraph 2.3 of the petition, that the said order dated was received by him on 13-2-2014.

10. The term "from the date of order of the Collector" mentioned in clause (a) of Sec. 53(1) of the Act has been interpreted by this Court (Coram: K.M. Thaker, J.) in the judgment delivered in Special Civil Application No. 8679 of 2012 Ramjibhai Shambhubhai Koradia v. State of Gujarat, in the following terms:

"15.4. However, if the order is passed some time after the hearing is over and when the order is not passed or it is not pronounced in presence of the concerned party, then the concerned party would not be aware about the details of the decision-order and/or about the date on which the adjudicating authority passed the order.

15.5. Consequently, in the cases where the order is passed sometime after the hearing gets concluded and it is not passed or not pronounced in presence of the concerned party or his representative, the concerned party may not be able to file application within 90 days ''from the date of older'' as the concerned party will come to know that any order is passed only when the concerned party is informed the date of the order and the decision of the first adjudicating authority or when copy of the order is served to him.

15.6. Therefore, the phrase "... from the date of the order..." has to be construed keeping in focus the said fact.

15.7. The actual "date of the order" can be considered and taken into account as the "relevant date" only if the order is passed or if it is pronounced in presence of the concerned party or his representative and the concerned party or his representative is aware about the date of the order and the decision of the authority.

15.8. When the order is not passed or pronounced in presence of the petitioner or his representative and when the petitioner is not aware about and/or informed about the order, period of delay should not be calculated-considered from the date of the order.

15.9. Otherwise, the purpose and object of the said Section would become otiose and would be rendered ineffective.

15.10. So as to make the provision under Sec. 53 of the Act meaningful and effective in real sense and if it has to serve its real purpose and object, then the "relevant date" for the purpose of determining and calculating the period of limitation in those cases where the order is not passed or if the order is not pronounced in presence of the concerned party or his representative should be the date of the service of order to the concerned party.

16. Therefore, the competent authority under Sec. 53 of the Act should not, mechanically and without further consideration, take the date of the order as "relevant date" unless it is apparent and evident from the record that the concerned party was aware about or informed about the order and decision of the authority or that the order was passed or pronounced in presence of the concerned party.

16.1. In other cases, i.e. the cases where order is not passed or is not pronounced in presence of concerned party or his representative, it is obligatory for the competent authority under Sec. 53 to ascertain the date of service of order to the concerned party and to determine and calculate the period of limitation from the "relevant date", i.e. the date of service/knowledge of the order to the concerned party.

16.2. Otherwise, the spirit and purpose of the said provision would stand frustrated."

(Emphasis supplied)

11. In the present case, the order dated 11/12-2-2014 was not passed by respondent No. 3 in the presence of the petitioner. As already stated above, the order bears two dates, that is, 11th and 12th February, 2014. Admittedly, the order was received by the petitioner on 13-2-2014 and the appeal against this order was presented on 12-5-2014.

12. In the communication dated 8-8-2014 addressed by the petitioner to respondent No. 2, a break-up of the calculation of the period of limitation as prescribed under Sec. 53(1) of the Act, has been given, as below:

13. This calculation has been made taking the order of respondent No. 3 to have been passed on 11-2-2014. Even if 11-2-2014 is taken to be the date of the passing of the order, the period comes to ninety days and not beyond. As per the said calculation, the appeal was presented on the 90th day, which cannot be said to be beyond the period of limitation. However, in the view of this Court, when the order of respondent No. 3 reflects two dates, that is, 11th and 12th February,

2014, and as the petitioner was not present on the date when the order was pronounced, it is evident that the order was still lying with respondent No. 3, on 12-2-2014. Therefore, it would be just and proper to take the date of the order as 12-2-2014, and calculate ninety days "from the date of the order", that is, from 12-2-2014. Thus calculated, it is found that the appeal has been filed within a period of eighty-nine days, which is within the prescribed period of limitation, as below:

14. Viewed from any angle, the appeal does not exceed the prescribed period of limitation of ninety days as per Sec. 53(1) of the Act. The impugned orders dated 24-7-2014 and 1-9-2014 passed by respondent No. 2, appear to have been passed without proper application of mind, in a mechanical manner. By passing the said orders, the valuable legal right of the petitioner to file an appeal has been frustrated. Hence, the said orders deserve to be quashed and set aside.

15. As the condition of deposit of twenty-five per cent of the amount of differential duty as per the order dated 11/12-2-2014 passed by respondent No. 3 has already been fulfilled by the petitioner, there remains no impediment in the way of respondent No. 2 in accepting the appeal of the petitioner.

16. For the aforestated reasons, the following order is passed:

The impugned orders dated 24-7-2014 and 1-9-2014 passed by respondent No. 2 are quashed and set aside. Respondent No. 2 is directed to accept the appeal of the petitioner and hear and decide it, in accordance with law, after granting an adequate opportunity of hearing to the petitioner.

The petition is partly-allowed in the above terms. Rule is made absolute, accordingly.

It is clarified that the Court has not expressed any opinion on the merits of the matter.