(2014) 09 MAD CK 0067

In the Madras High Court

Case No : Writ Petition (MD) No. 10456 of 2014

Laxmi Selvaraaj Tex. P. Ltd. APPELLANT

Vs

Inspector General of Registration and Others RESPONDENT

Date of Decision : 03-09-2014

Acts Referred:

Companies Act, 1956 — Section 392 — Registration Act, 1908 - Section 23, 24, 25, 25(1), 26

Citation : (2015) 190 CompCas 133 : (2016) 133 SCL 26

Hon'ble Judges : T.S. Sivagnanam, J.

Bench : Single Bench

Advocate : S.M.S. Johnny Basha, for the Appellant; K. Guru, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

T.S. Sivagnanam, J.?With the consent of both parties, this writ petition is taken up for final hearing. The petitioner in this writ petition is a private limited company and it seek for issuance of a writ of mandamus to direct respondents Nos. 1 to 3 to register the copy of the order dated April 8, 2011, passed in C.P. Nos. 153 and 154 of 2010.

2. The facts, which are necessary for the disposal of the writ petition are that the shareholders of M/s. Selvaraaj Tex P. Ltd., are also shareholders in the petitioner''s-company, both being held by the same family. A decision was taken to transfer some of the assets of M/s. Selvaraaj Tex P. Ltd., to the petitioner-company and towards this end a demerger scheme was floated and the scheme was sanctioned by the company court in C.P. Nos. 153 and 154 of 2010 on April 8, 2011. In terms of the sanction scheme, the appointed date is April 1, 2009 and the effective date is May 6, 2011.

3. In the meantime, a dispute arose while implementing the demerger scheme and an application was filed in Comp. A. No. 258 of 2012 in C.P. No. 153 of 2010 and an order was passed by the company court on August 24, 2013, as against

which an appeal was preferred in O.S.A. No. 359 of 2013, which was dismissed by the honourable Division Bench of the Principal Seat at Madras on April 4, 2014. Thus, on and after the judgment passed by the honourable Division Bench, the said scheme attained finality. After obtaining the judgment, the petitioner approached the registration authorities for registering the same along with demand draft of Rs. 16,00,000 towards registration charges. According to the petitioner, they are entitled to the benefit of the remission notification issued by the Government in G.O. Ms. No. 1224, dated April 24, 1964.

4. The petitioner would further state that they presented the document in time before the Registrar, as contemplated under section 23 of the Registration Act, 1908. Despite the same, the respondents refused to register the document, which compelled the petitioner to approach this court.

5. The third respondent filed a counter affidavit stating that the petitioner failed to adhere the provisions of sections 23 and 32 of the Registration Act to get the copy of the court order dated April 8, 2011, registered in time and after the expiry of the time limit allowed under the statute, the petitioner approached this court with distorted facts.

6. Further, by referring to the representation given to the Sub-Registrar, Chokkikulam, B.B. Kulam and Vadipatti, it is submitted that the petitioner did not produce the copy of the order dated April 8, 2011, for registration and the representation was only for mutation of ownership in the office records on the basis of the transformation of the status from the partnership firm into a private limited company, based on the scheme of demerger and since there was no provision for mutation of entries under the Registration Act, the same was not considered. Therefore, it is submitted that till 2014, the copy of the order was never sought to be registered in the manner known to law.

7. Further, it is submitted that the judgment passed in O.S.A. No. 359 of 2013, dated April 4, 2014, is not a judgment of the appeal against the order dated April 8, 2011 and no appeal was preferred as against the said order. Therefore, the petitioner sought for registration of the copy of the order dated April 8, 2011, after the expiration of more than two years beyond the time limit prescribed under sections 23 and 25 of the Registration Act.

8. Further, it is submitted that the copy of the court decree or order is not a compulsorily registrable document. However, if the petitioner desires to register the same, it should be presented in person at the proper Sub-Registrar office, within the time limit prescribed adhering to the provisions of sections 29(2), 32 and 23 of the Registration Act and since the petitioner brought the copy of the order dated April 8, 2011, belatedly during June 2014, the same was refused to be entertained and check memo to that effect was issued on June 19, 2014, which was refused to be received and acknowledged.

9. Heard learned counsel for the parties and perused the materials placed on record.

10. The short issue, which falls for consideration, is as to whether the petitioner presented the copy of the order sought to be registered within the time limit prescribed under section 23 of the Registration Act. The said provision reads as follows:

"23. Time for presenting documents.--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 decree or order may be presented within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final."

11. Further, in terms of section 25(1) of the Registration Act, four months is allowed on payment of fine and the said provision reads as follows:

"25. Provision where delay in presentation is unavoidable.--(1) If, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration fee, such document shall be accepted for registration."

12. Admittedly, the order dated April 8, 2011, which is sought to be registered was not presented within the time limit prescribed under the statute. The request made by the petitioner by way of representation to the Sub-Registrar, Chokkikulam, B.B. Kulam and Vadipatti was only for mutation of entries and not for registration of the copy of the order. Therefore, such request for mutation was rightly refused by the respondents.

13. The petitioner would state that the scheme of demerger attained finality only after the order passed by the honourable Division Bench in O.S.A. No. 359 of 2013. The respondent would take a stand that O.S.A. No. 359 of 2013 is not an appeal filed against the order dated April 8, 2011. If the period of limitation is to be reckoned from the date of the judgment passed by the Division Bench, the request made by the petitioner is well within the period of limitation prescribed under section 23 of the Act.

14. Somewhat an identical issue arose for consideration before the honourable Division Bench in the case of A.K. Gnanasankar v. Joint II Sub-Registrar, Cuddalore-2, W.A. No. 2395 of 2003, dated March 23, 2007 and taking into consideration of section 23 of the Registration Act, the honourable Division Bench of this court held as follows:

"8. It is useful to refer section 23 of the Registration Act, which speaks about the time for presenting documents and reads as follows:

''23. Time for presenting documents.--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 decree or order may be presented within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes filial.''

The above provision makes it clear that all documents except will are to be presented before a proper officer and the same shall be presented within four months from the date of its execution. If we consider the date on which the final decree was passed by the Subordinate Court, as rightly pointed out by the learned Government Advocate, the document presented before the respondent is hopelessly barred by time. However, the proviso appended to section 23 makes it clear that a copy of decree or order may be presented within four months from the day on which it was made or whether it is appealable within four months from the date on which it becomes final. It is not in dispute that unless the parties to the proceedings deposit the required stamps, final decree cannot be drafted. Taking into consideration the difficulties expressed, ultimately the court concerned accepted the case of the appellant/petitioner/first defendant and extended the time for depositing the required stamps. In view of the said order, which we have already adverted to, we are of the view that the appellant/ petitioner has satisfied the condition prescribed in section 23 of the Registration Act and we are unable to accept the contrary conclusion arrived at by the learned judge. When there is no dispute that the certified copy of the final decree will not be issued unless it is engrossed on the required stamp papers and in. view of the fact that after getting certified copy of the decree duly engrossed on the stamps the petitioner presented the same before the respondent within the period prescribed in section 23 of the Registration Act, we are of the view that the respondent ought to have registered the document, if the same is otherwise in order."

15. The scheme of demerger was approved by the company court by passing an order dated April 8, 2011, the appointed date being April 1, 2009 and the effective date being May 6, 2011. In the said company petition, an application was filed in Comp. A. No. 258 of 2012 by the petitioner, which is the demerged company, wherein prayer was made to direct the respondents to allot the shareholders of the first applicant 1,78,494 equity shares of the respondent in consideration for 16,22,668 shares of the first applicant held by the deponent of the affidavit and 27,500 equity shares of the respondent in consideration for the 2,50,000 shares of the first applicant held by the wife of the deponent of the affidavit in accordance with the order of sanctioning the scheme dated April 8, 2011. Thus, the said application had an effect on the final orders passed by the company court while approving the demerger scheme. Therefore, unless and until, the application was decided, the allocation of shares could not have been

determined and the matter could not be said to have attained finality.

16. As against the said order, the petitioner preferred an appeal before the honourable Division Bench of the Principal Seat at Madras in O.S.A. No. 359 of 2013 wherein, it was contended that the scheme of demerger itself is outside the scope of section 392 of the Companies Act, 1956, and beyond the scope of the application filed on behalf of the respondents therein. Since the removal of the second respondent is the subject matter of C.P. No. 57 of 2011 and C.P. No. 18 of 2012, pending on the file of the Company Law Board, Chennai, the learned single judge ought not to have decided the said issue.

17. The honourable Division Bench, after considering the entire submissions made on either side, held that the learned single judge had also relied on the findings of the chartered accountants appointed by the court to arrive at the conclusion that the second respondent had fulfilled his part of the obligations, as per the sanctioned scheme of demerger substantially and the appeal was dismissed as devoid of merits. Therefore, the very scheme of demerger as approved by the company court was the subject matter of issue before the honourable Division Bench, though the appeal in O.S. No. 359 of 2013 was filed against the order passed in Comp. A. No. 258 of 2012. The interpretation given by the respondents to compute the period of limitation is not tenable and the limitation shall commence to run from the date on which the petitioner was furnished with the certified copy of the judgment in O.S. No. 359 of 2013, dated April 4, 2014 and only then the petitioner is entitled to seek for registration of the order dated April 8, 2011, since the entire controversy was put to rest only after the dismissal of O.S.A. No. 359 of 2013. If the said date is reckoned as the date of starting point of computation of limitation for the purpose of section 25 of the Act, then the request made by the petitioner is well within the time. For all these reasons, the petitioner is entitled to succeed. In the result, the writ petition is allowed and the third respondent is directed to accept the certified copy of the order dated April 8, 2011, in C.P. Nos. 153 and 154 of 2010 for registering the same on the petitioner complying with the other formalities, within a period of four weeks from the date of receipt of a copy of this order. No costs.