

(2019) 01 CAL CK 0091

In the Calcutta High Court

Case No : Writ Petition (W.p) No. 24336(W) Of 2018

Smt. Uma Mukherjee

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 24-01-2019

Acts Referred:

Limitation Act, 1963 — Section 5, 14
West Bengal Co-Operative Societies Act, 2006 — Section 75, 102(2), 102(3)
Indian Stamp Act, 1899 — Section 33, 35, 38
Constitution Of India, 1950 — Article 226

Citation : (2019) 01 CAL CK 0091

Hon'ble Judges : Rajasekhhar Mantha, J

Bench : Single Bench

Advocate : Biswarup Biswas, Nirmalendu Patra, Debasish Kundu, Pradip Roy, Shraboni Sarkar, Krishnendu Banerjee, Md. Idrish

Final Decision : Allowed

Judgement

Rajasekhhar Mantha, J

A fundamental error leading to an irregularity has been committed by the West Bengal Co-operative Tribunal in affirming an apparently perverse and improper order passed by the Arbitrator in favour of the fifth respondent herein.

Some facts of the case must be noticed for adjudication of the instant writ petition. Admittedly, an unregistered purported agreement dated May 5, 2011 [hereinafter referred to as the said agreement], which was signed before a Notary Public on May 11, 2011, was entered into by the petitioner's father (since deceased) with the fifth respondent. The agreement is unregistered and not stamped.

By the said agreement the deceased father is stated to have agreed to sell a flat unit in the said co-operative society to the fifth respondent for consideration money of Rs.6,50,000. The fifth respondent is stated to have paid only

Rs.1,50,000 in three instalments under the said agreement. The society is stated to have approved the said agreement and had directed registration. The writ petitioner being the daughter and legal heir of the deceased has refused to comply with the agreement alleging breach and failure to perform.

Initially, the fifth respondent approached the Consumer Forum under provisions of the Consumer Protection Act, 1986. The said proceedings were dismissed as not maintainable, in view of the provisions and remedies available under the West Bengal Co-operative Societies Act, 2006.

A complaint case was thereafter filed under the West Bengal Co-operative Societies Act, 2006 before the Assistant Registrar of Co-operative Societies (ARCS) concerned under which the Registrar appointed an Arbitrator. Before the Arbitrator an application for condonation of delay is stated to have been filed by the fifth respondent which admittedly had not been served on the petitioner. The note-sheet before the ARCS indicates that by an order dated June 13, 2014 the ARCS has condoned the delay under section 102(3) of the 2006 Act.

The writ petitioner is aggrieved inter alia by such order, since she submits that she was never served with the application for condonation of delay and did not have an opportunity to meet the cause, if any, shown by the fifth respondent before the ARCS for delay in filing the complaint.

Learned counsel for the State and the private respondents submit that provisions of section 5 of the Limitation Act have no application to the 2006 Act. It is also argued that once an application is entertained by the ARCS, there is deemed condonation of delay, if any, by reason of reference of the ARCS of the dispute to an Arbitrator.

In this regard it is relevant to quote sub-sections (2) and (3) of section 102 of the West Bengal Co-operative Societies Act, 2006:-

"S.102.(2) Any dispute mentioned in sub-section (1) other than a dispute relating to recovery of money shall be filed before the Registrar within three months from the date on which the cause of action arises.

(3) Notwithstanding anything contained in this section or in any other law for the time being in force, the Registrar may admit any dispute after the expiry of the period of limitation provided in sub-section (2), if the applicant can show sufficient cause for not filing the dispute within such period of limitation and the dispute so admitted shall not be barred by limitation."

A plain reading of the aforesaid provisions would indicate that firstly sub-section (2) of section 102 of the 2006 Act prescribes for a period of limitation of three months of the accrual cause of action within which any dispute must be referred to the Registrar concerned. Sub-section (3) provides that the Joint Registrar is required to record reasons for condonation of delay upon cause being shown by the applicant.

It must also be noted that the civil courts and consumer forum are specifically excluded from the jurisdiction of the disputes arising under the 2006 Act. The Act therefore is a complete code.

The provisions of limitation as contained in the Limitation Act, 1963 and as laid down in dicta of the Hon'ble Supreme Court in various decisions are meant to put claimants of causes of action on notice that they are required to agitate the claims before the statutory fora within time stipulated under various Articles attached to the Schedule of the Limitation Act. In default of availing of the remedies and asserting cause of action within the time stipulated under the Articles in question, valuable rights accrue to the other side/defendant/respondent. Such rights are indeed more relevant and valuable in respect of private disputes and more so in the case of immovable property. The claims with regard to immovable property and rights thereunder, particularly suits for specific performance, must be asserted within time. It is also now well-settled by the Hon'ble Supreme Court that delayed action for enforcing contracts in suit for specific performance of immovable property must be viewed strictly as property prizes, particularly in this country have a habit of escalating in substantial proportions.

A claimant for immovable property under an agreement as in the instant case should therefore have been vigilant and could not have allowed the period of limitation stipulated under the statute to expire.

It is also equally well-settled that in respect of unexplained and inordinate delay initiation of a proceeding asserting cause of action, either under the civil law or even any specific statutes, cannot, under any circumstance, be extended/condoned. Such causes of action are deemed to extinguish.

In the light of the above, it is abundantly clear that valuable rights may have accrued to the writ petitioner. The Joint Registrar has failed to give any reason whatsoever for condoning 758 days' delay, as claimed by the fifth respondent before him. Admittedly, the said application for condonation of delay was not served on the writ petitioner, preventing her from being heard which, in my view, should have been addressed, either by the Joint Registrar himself or the Arbitrator. I find that the Joint Registrar has not given an opportunity to the writ petitioner to make her submission as to why the cause for delay shown by the fifth respondent is not sufficient and that valuable rights have accrued to her.

The fifth respondent relied upon a decision of the Hon'ble Supreme Court in the case of *N. Balaji v. Virendra Singh & Ors.* reported in (2004) 8 SCC 312. In the said case the Supreme Court was considering a challenge to an election dispute under the Multi State Co-operative Societies Act, 2002. The Registrar had condoned a delay of about 1 year in filing the dispute which was set aside by a Division Bench of the Delhi High Court. The Supreme Court in the facts of the case found that the election that was held on August 17, 2002 and was challenged before and after the said date. It was also found that the Registrar

dealing with the matter after being referred by the Delhi High Court. It is in that context that the Hon'ble Supreme Court has held that the question of limitation under section 75 of the Multi State Co-operative Act, 2002 was a smaller procedural issue.

In the instant case, while it may be partially true that a formal application under section 5 of the Limitation Act may not be mandated. Sufficient and convincing cause must be shown by a complainant or plaintiff under sub-section (3) of section 102 of the 2006 Act as to why the claim is not barred by limitation. These are mandatory and vital provisions of law and must be followed by the Registrar and/or the Arbitrator.

The decision of the Supreme Court in N. Balaji's case (supra) has no application to the facts of the case. It is now well-settled that judgments of courts are not to be read as statutes, and that the ratio therein must be viewed in the context of the facts of the case.

The Joint Registrar's order dated June 13, 2014 is ridiculous and completely contrary to the basic tenets of adjudication. The order is wholly and completely without any reasons, laconic and mechanical. The same is therefore liable to be set aside. The Arbitrator has conveniently overlooked the same and the tribunal has equally committed gross error in this regard. These are glaring facts that called for interference under Article 226 of the Constitution of India.

There is yet another factor to be noticed. The agreement under which the fifth respondent has asserted rights that has been upheld by the Arbitrator and the Tribunal in his unregistered document. The provisions of Registration Act and the Indian Stamp Act mandate stamp duty to be paid to the State in this regard before assertion of any right thereunder.

The Joint Registrar and/or the Arbitrator and/or the Tribunal ought to have impounded the document being the purported agreement dated May 5, 2011 under the provisions of section 33 of the Indian Stamp Act and sent the same for adjudication of penalties and stamp duty. Reference may be made to the decision of the Hon'ble Supreme Court in the case of Omprakash v. Laxminarayan reported in (2014) 1 SCC 618. At paragraphs 16 and 18 of the aforesaid case the Hon'ble Supreme Court has held as follows:-

"16. From a plain reading of the aforesaid provision, it is evident that an authority to receive evidence shall not admit any instrument unless it is duly stamped. An instrument not duly stamped shall be admitted in evidence on payment of the duty with which the same is chargeable or in the case of an instrument insufficiently stamped, of the amount required to make up such duty together with penalty. As we have observed earlier, the deed of agreement having been insufficiently stamped, the same was inadmissible in evidence. The court being an authority to receive a document in evidence to give effect thereto, the agreement to sell with possession is an instrument which requires payment of the stamp duty applicable to a deed of conveyance. Duty as required, has not

been paid and, hence, the trial court rightly held the same to be inadmissible in evidence.

18. To put the record straight, the correctness of the impugned judgment, Laximinarayan v. Omprakash came up for consideration before a Division Bench of the High Court itself in Writ Petition No.6464 of 2008 (Mansingh v. Rameshwar) and the same has been overruled by the judgment dated 22-1-2010. The High Court observed as follow: (MPLJ p.142, paras 8-9)

8. A document would be admissible on basis of the recitals made in the document and not on the basis of the pleadings, raised by the parties. In the matter of Laxminarayan, the learned Single Judge with due respect to his authority we do not think that he did look into the legal position but it appears that he was simply swayed away by the argument that as the defendant was denying the delivery of possession, the endorsement/recital in the document lost all its effect and efficacy.

9. It would be trite to say that if in a document certain recitals are made then the court would decide the admissibility of the document on the strength of such recitals and not otherwise. In a given case, if there is an absolute unregistered sale deed and the parties say that the same is not required to be registered then we do not think that the court would be entitled to admit the document because simply the parties say so. The jurisdiction of the court flows from Sections 33, 35 and 38 of the Stamp Act and the court has to decide the question of admissibility. With all humility at our command we overrule the judgment in Laxminarayan."

We respectfully agree with the conclusion of the High Court in this regard."

There is gross failure on the part of the authorities below right from the Joint Registrar, Arbitrator and the Tribunal in this regard. No adjudication of any right could have been made by the authorities below on an unregistered instrument. The same cannot be admitted in evidence before any authority. The said agreement is non est in law.

This court notes with sadness and pain that the tribunal and/or the Arbitrator and/or the Joint Registrar have miserably failed in noticing the above. The writ petitioner therefore has substantial reasons to be aggrieved.

In view of the above, the order impugned dated July 30, 2018 passed by the West Bengal Co-operative Tribunal in Appeal No.7 of 2014 and Appeal No.11 of 2014 also the award dated November 17, 2014 in Dispute Case No. 4 of 2014-15 are hereby set aside.

Since the order of the Joint Registrar dated June 13, 2014 has been set aside by this court, the Arbitrator shall enter upon the reference afresh upon being appointed in this regard by the Joint Registrar. The Arbitrator shall be entitled to adjudicate even the condonation of delay application, if he so deems fit by trial on evidence. The said issue along with the question of the validity and legal

consequences to be followed in respect of an unregistered agreement shall be strictly complied with by the Arbitrator.

With the above directions, the writ petition is allowed. No order as to costs.

Certified website copy of this order, if applied for, shall be given to the parties.