(2017) 07 BOM CK 0065

In the Bombay High Court

Case No : 2796 of 2016

Snehanjali Electronics and Trading Private Limited — APPELLANT

Vs

Inspector of General of Registration and Controller of Stamps, Maharashtra, & Ors. — RESPONDENT

Date of Decision : 12-07-2017

Acts Referred:

Registration Act, 1908, Section 25, Section 23 - Provision where delay in presentation is unavoidable - Time for presenting documents

Companies Act, 1956, <a href=3949-39

Citation : (2017) 07 BOM CK 0065

Hon'ble Judges : R. M. Savant, Sadhana S. Jadhav

Bench : DIVISON BENCH

Advocate : Drupad Patil, Kedar Dighe

Final Decision : Allowed

Judgement

1. Rule. Considering the challenge raised in the above Petition, made returnable forthwith and heard.

2. The Writ jurisdiction of this Court is invoked by the Petitioner seeking a direction against Respondent No. 4, to immediately register the document being Exh. B to the above Writ Petition. It is not necessary to burden this order with unnecessary details having regard to the final directions that this Court proposes to issue.

3. The Petitioner herein had filed Company Scheme Petition No. 691 of 2014 in this Court. Similarly, Company Scheme Petition Nos. 690 and 692 of 2014 were filed by one Snehanjali Retail Private Limited and Snehanjali Electronics and Trading Private Limited seeking sanction of this Court under Section 391 to 394 of the Companies Act, 1956. This Court by Order dated 28/11/2014 was pleased to allow the said Company Scheme Petitions being Nos. 690 to 692 of 2014. The Petitioner thereafter, applied for certified copy on 29/11/2014. The certified

copies were supplied to the Petitioner on 26/12/2014. The facts which have unfolded thereafter and which are relevant for adjudication of the above Petition are tabulated thus : (i) 23/1/2015 : The Scheme of arrangement under Section 391 to 394 was submitted for adjudication i.e. the decree was submitted for adjudication to the Collector of Stamps.

(ii) 19/8/2015 : The Collector of Stamps passed interim order directing the Petitioner to deposit the stamp duty which is in the sum of Rs. 66,00,200/.

(iii) 24/8/2015 : The Petitioner deposited the stamp duty by EChallan.

(iv) After payment of the stamp duty, the document was sought to be presented. However, it is the case of the Petitioner that the said document was not accepted for registration by the SubRegistrar, Andheri, I on the ground that it was presented beyond four months.

(v) 5/3/2016 : The Petitioner vide letter of the said date addressed to the Administration Officer requested him to issue necessary directions to the concerned Registration Officer to register the said document. The said letter was sent by registered post on 10th March, 2016.

(vi) 27/4/2016 : Taking cognizance of the said letter dated 5/3/2016 of the Petitioner, the Joint District Registrar, Mumbai Suburban District, addressed letter dated 27/4/2016 to the Deputy Inspector General of Stamps seeking his opinion as to whether the document of the Petitioner can be registered.

(vii) 5/4/2016 : The Petitioner had addressed the letter dated 5/4/2016 to the Deputy Inspector of General of Stamps again requesting him to issue necessary direction for registration of the document.

(viii) 16/7/2017 : The Petitioner had submitted an application under the Right to Information Act requesting for the information as to whether any decision has been taken with respect to the opinion sought by the Joint District Registrar Class 1. The Petitioner was informed that by letter dated 17/5/2016 necessary directions were given to the Joint District Registrar Class I.

4. The aforesaid dates and events therefore, disclose that the Petitioner had presented the document for adjudication on 23/1/2015 and the adjudication was completed by the Collector of Stamps on 19/8/2015. The Petitioner had thereafter on 24/8/2015 deposited the stamp duty of Rs. 66,00,200/by EChallan. The Petitioner had thereafter, received the stamped copy with the certificate under section 32 B1 on 26/8/2015. The Petitioner had thereafter approached the SubRegistrar for registration of the document, however, it is the case of the Petitioner that the SubRegistrar refused to accept the document as it was presented after 4 months. The Petitioner had thereafter addressed the letter dated 5/3/2016 to the Administrator in the Office of the Collector of Stamps for registration of the document, which letter has been received by the Administrator on 11/3/2016. Hence, between the payment of the stamp duty by the Petitioner and the letter addressed by the Petitioner to the Administrator, there is a gap of

198 days.

5. Insofar as the delay which is occasioned on account of time taken for adjudication, it is now well settled by the Judgments of this Court that the said delay cannot be attributed to the party, who is seeking registration of the document and the period of four months has to be calculated after deducting the time taken for adjudication of the document. See Judgment of the Division Bench of this Court in Writ Petition No. 1480 of 2013 (Nestor Builders & Developers Pvt.Ltd & anr. V/s. State of Maharashtra & ors.) and Judgment of the learned Single Judge of this Court in Writ Petition No. 2662 of 2012 dated 17/1/2013, as also in Writ Petition No. 903 of 2014 dated 26/6/2014. In view of the said Judgments, the said issue is no more res integra.

6. The cause for moving the above Writ Petition seems to be the fact that the Office of the SubRegistrar, Andheri I is not accepting the document of the Petitioner for registration on the ground that the said document was submitted beyond the period of four months which is postulated in Section 23 of the Registration Act, 1908. As indicated above, it is the case of the Petitioner that after the payment of the entire stamp duty, the Petitioner had approached the SubRegistrar, Andheri I with a request to register the said document. However, according to the Petitioner, the SubRegistrar had refused to accept the said document on the ground that the same is presented beyond four months of the decree being passed in the said Company Petition. It is in the said context that Section 23 and 25 of the Registration Act, 1908 would have to be looked into. The same are reproduced hereinunder for the sake of ready reference.

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 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 day on which it becomes final.

17[23A.Re-registration of certain documents Notwithstanding anything to the contrary contained in this Act, if in any case a document requiring registration has been accepted for registration by a Registrar or Sub-Registrar from a person not duly empowered to present the same, and has been registered, any person claiming under such document may, within four months from his first becoming aware that the registration of such document is invalid, present such document or cause the same to be presented, in accordance with the provisions of Part VI for re-registration in the office of the Registrar of the district in which the document was originally registered; and upon the Registrar being satisfied that the document was so accepted for registration from a person not duly empowered to present the same, he shall proceed to the re-registration of the document as if it has not been previously registered, and as if such presentation for re-registration was a presentation for registration made within the time allowed therefor under Part IV, and all the provisions of this Act, as to registration of documents, shall apply to such re-registration; and such document, if duly re-registered in accordance with the provisions of this section, shall be deemed to have been duly registered for all purposes from the date of its original registration:

PROVIDED that, within three months from the twelfth day of September, 1917, any person claiming under a document to which this section applies may present the same or cause the same to be presented for re-registration in accordance with this section, whatever may have been the time when he first became aware that the registration of the document was invalid.]

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 18[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 registrationfee, such document shall be accepted for registration.

7. Reading of Section 23 therefore, discloses that the document can be accepted for registration only if it is presented to the proper officer within four months from the date of its execution. The proviso to the said Section carves out an exception. By the proviso, the said four months'' period is to be taken from the date on which the decree or order was made or where it is appeallable within four months from the date on which it becomes final. Hence, by the proviso, four months'' period which is the limitation provided by Section 23 in so far as the decree or order is concerned is to be calculated from the date on which it becomes final. In the instant case, by virtue of subsection 7 of Section 391 of the Companies Act, the decree became final after a period of one month had lapsed from the date of the decree i.e. on 28/12/2014.

8. Now coming to Section 25 of the said Registration Act, the provision vests a discretion in the Registrar in the circumstances mentioned in the said section. It provides that the Registrar in case where the delay in presentation does not exceed four months, may direct that on payment of fine not exceeding 10 times of the amount of the proper registration fee, such documents shall be accepted for registration. The said provision covers the cases where 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. Hence, a reading of the said Section makes it clear that the Registrar is vested with the power to extend the time for registration of the document even if the period of four months as postulated by Section 23 is over.

9. It is in the context of the aforesaid statutory provisions that the facts of the

instant case would have to be seen. As indicated above, the Petitioner has paid the entire stamp duty by Echallan on 24/8/2015 and it is the case of the Petitioner that it approached SubRegistrar I, Andheri for registration, who refused to accept the document on the ground that the same was presented beyond four months. Thereafter, the Petitioner addressed the letter dated 5/3/2016 to the Administrator in the office of the Registrar requesting him to direct the concerned officer to register the document.

10. It is significant to note that though such request was made vide letter dated 5/3/2016, instead of replying to the Petitioner, the authorities made a reference to the Deputy Inspector of General of Stamps whether such a document could be taken up for registration.

11. There is no dispute about the fact that the Petitioner did not receive any response to the said letter dated 5/3/2016. Hence, for the purpose of Section 23 the date 5/3/2016 assumes importance. It is on the said date i.e. 5/3/2016 that the Petitioner can be said to have made a request for the document to be registered. It is the case of the Petitioner that the Petitioner was orally informed by the Registrar in August, 2015 that the document could not be registered as it has been presented after the period of four months is over. In terms of the proviso to Section 23, the Petitioner is entitled to the leverage of one month, which is the period after which the decree has become final. Since the decree is dated 28/11/2014, the limitation of four months postulated under Section 23 would start to run from 28/12/2014. However, the period between 23/1/2015 when the document was submitted for adjudication and 19/8/2015 when the adjudication was complete would have to be left out.

12. The total period between 24/8/2015 and 5/3/2016 as calculated by the Respondent themselves is a period of 198 days. The limitation for registering the document would have to be calculated by leaving out the period taken for adjudication. Hence, the period between 23/1/2015 and 19/8/2015 as indicated above would have to be left out. Since the adjudication was completed on 19/8/2015, the initial period of 4 months would come to an end on or about 14/12/2015 and the further extension of 4 months in terms of Section 25 would come to an end in April, 2016. Since the Petitioner had applied by letter dated 5/3/2016, the said date being much prior to the extended period coming to an end in terms of Section 25, the SubRegistrar in our view was within his powers to extend the time under Section 25. The learned AGP sought to contend that the said document was never presented for registration, we are unable to accept the said contention, as it is impossible to believe that a party who has paid stamp duty to the tune of Rs. 66 Lakhs would not approach the SubRegistrar and present the document for registration. Hence, the case of the Petitioner that it has approached the SubRegistrar immediately after payment of stamp duty but the SubRegistrar refused to accept the said document as the period of 4 months was over, seems to be more probable and must be given credence to. The Petitioner had addressed the letter dated 05/03/2016 out of exasperation. The

said letter also went unheeded. The learned AGP however, fairly concedes the position that the letter dated 5/3/2016 of the Petitioner elicited in the least a response from the registering authority.

13. In out view therefore, on a conjoint reading of Section 23 and Section 25 of the said Act, the Registrar is within his powers to extend the time. Hence, even if the letter dated 05/03/2016 is taken as the starting point, the delay if any is between December, 2015 to 05/03/2016 for which the Petitioner would be liable to pay penalty in terms of Section 25 of the said Act.

14. In that view of the matter, the above Petition would have to be allowed and is accordingly allowed and the following directions are issued. (i) The Sub-Registrar i.e. the Respondent No. 4 herein is directed to take the document concerned for registration after carrying out the process mentioned in Section 25 of the Registration Act only to the extent of calculating the penalty payable by the Petitioner.

(ii) On the penalty being calculated the same to be communicated to the Petitioner forthwith.

(iii) On payment of the penalty by the Petitioner, the Respondent No. 4 would register the document in question.

15. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute, with parties to bear their respective costs.

