
(2014) 11 MAD CK 0102

In the Madras High Court

Case No : W.P. (MD) No. 4128 of 2010 and M.P.(MD) Nos. 1 and 2 of 2010

Srinidhi Industries Ltd.

APPELLANT

Vs

The Sub-Registrar, Manamadurai

RESPONDENT

Date of Decision : 18-11-2014

Acts Referred:

Companies Act, 1956 — Section 394(1), 394(2)

Registration Act, 1908 — Section 25, 25(2)

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 18, 18(1)(c), 18(6-A)

Stamp Act, 1899 — Section 14, 2(14), 3

Citation : (2015) 4 BC 398 : (2015) 1 CTC 530

Hon'ble Judges : K.B.K. Vasuki, J

Bench : Single Bench

Advocate : R. Sankaranarayanan, Advocates for the Appellant; K.P. Krishnadoss, Government Advocate, Advocates for the Respondent

Judgement

K.B.K. Vasuki, J.—The short point that arises for consideration herein is as to whether the document showing transfer of one Company on own to another Company under the Scheme of Rehabilitation is not an instrument and is not chargeable with any duty. The Petitioner herein is, as Public Limited Company, carrying on business in textile in Coimbatore and other places. There were two Textile Companies viz., Ayyappan Textile Limited and Varalakshmi Mills Limited, carrying on business in the same line situated in different places and both the Companies were managed by the same set of persons and the Board for Industrial and Financial Reconstruction (BIFR) under the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as "SICA Act"). Both the Companies were declared as Sick Companies and a common Rehabilitation Scheme was explored by the Operating Agency, appointed by BIFR, by merging both the Sick Companies with the Petitioner Company and the Scheme of Merger was approved by BIFR and an Order of Merger of the two Sick Companies with the Petitioner-Company was also passed on 16.6.2008 by BIFR.

2. As per the Order of Merger dated 16.6.2008, the undertaking shall be without any further act, instrument or deed, stand transferred to and vested in the transferee Company to become the estate, assets, rights, title and interest of the transferee Company and all the estate, assets, right, title and interest accrued to and or acquired by the transferor Company after the appointed date and prior to the effective date shall be deemed to have been accrued to and or acquired for and on behalf of the transferee Company upon coming into the effect of the Scheme. After obtaining the order of merger passed by BIFR, the Petitioner approached the Registrar of the Company for striking off the names of the Sick Companies and the same was permitted on 6.6.2009. Thereafter, the Petitioner approached the Respondent-Sub-Registrar for the purpose of registration of BIFR Order, dated 16.6.2008, along with the annexure to the said Order, as contemplated under Section 18 of the Act. The document was presented for registration on 4.1.2010, whereas the Respondent refused to receive the same through his proceedings, dated 5.1.2010, which is impugned herein, on the ground that the document is not presented for registration along with Stamp duty for the value of the property and Registration fees. Aggrieved against the same, the Petitioner has come forward with the present Writ Petition for quashing the impugned Order and for directing the Respondent Sub-Registrar to accept the same for registration without demanding Stamp duty.

3. According to the learned Counsel for the Petitioner, there was no transfer taken place individually between the transferor Companies and transferee Company, and the property of the transferor Companies was sought to be transferred only by virtue of the order passed under Sections 18(1)(c) and 18(6-A) of the SICA Act to the transferee Company. It is further contended before this Court that under Clause 20(1) of the sanctioned Scheme, the Company would be exempted from free Stamp duty for transfer of assets pursuant to the proposed merger wherever applicable, as such the Petitioner is not bound to pay any Stamp duty.

4. The learned Counsel for the Petitioner has also by relying upon the definition of "instrument" put forth an argument that every document evidencing transfer of any right or liability is an instrument and such an instrument, if falls within the ambit of Section 3 of the Indian Stamp Act, is chargeable with Stamp duty, but as the transfer of assets or liability of the transferor Companies to the transferee Company is made under Section 394(1) & (2) of the Companies Act by means of amalgamation, it does not amount to transaction falling within the ambit of Section 2(14) of the Indian Stamp Act and is hence not chargeable with any Stamp duty. The learned Counsel for the Petitioner has also relied on the judgment of the learned Brother Judge Justice S. Nagamuthu, reported in T.T. Krishnamachari and Co. Vs. Joint Sub-registrar-I and Another, , in support of the above stand taken by him.

5. On the contrary, the learned Government Advocate representing the Respondent Sub-Registrar would be relying upon the Judgment of the Hon''ble

Apex Court in the Judgment reported in Addl. Distt. Sub-Registrar Siliguri Vs. Pawan Kumar Verma and Others, , submit that the Decree obtained even in the Suit for Partition, when presented for registration, is chargeable with duty. It is also contended before this Court that there is delay in presenting the document for registration and as such the Petitioner is not entitled to seek any indulgence of this Court by way of direction to the Respondent for registration of the document.

6. Heard the rival submissions made on both sides and perused the records.

7. Before advertng to the other issue, this Court is, at the outset, inclined to go into the question of delay. As already referred to, the Order sought to be registered is the Order of Merger of two Companies by name Ayyappan Company Limited and Varalakshmi Textile Limited. The Petitioner herein is the transferee Company, Section 394(2) of the Companies Act provides for approval for transfer of any property or liability, by virtue of the Order passed under that Section and thus, the property shall be transferred to and vest in, and those liabilities shall be transferred to and become the liabilities of the transferee Company. The amalgamation will become complete only when the same is presented before the Registrar for registration and in compliance of other formalities. The Petitioner has obtained the Order from the Registrar of Companies on 18.8.2009. Section 18 provides for optional registration of such document within four months from the date of its execution and as per Section 25 the Registrar in cases where the delay in presentation exceeded by four more months may accept it for registration on payment of fine as contemplated that Section.

8. Here in this case the document was not admittedly presented for registration within four months time but it is presented only on 4.1.2010 with the delay of 17 days. However, the document was returned not on the ground of delay but on the ground of non-payment of Stamp duty. The delay in presenting the document for registration is raised only in the Counter filed by the Respondent herein. As rightly argued by the learned Counsel for the Petitioner, the Respondent cannot be permitted to raise any additional ground which is not reflected in the impugned Order. Even otherwise Section 25 empowers the Registrar to accept any document for registration on payment of fine. As the delay occurred in this case is within four months, this Court has no hesitation to pass appropriate direction to the Registrar to accept the document on payment of fine as contemplated under the Act for the total number of days of delay.

9. Regarding the payment of Stamp duty, the learned Counsel for the Petitioner has cited the judgment of the learned brother Judge of this Court reported in T.T. Krishnamachari and Co. Vs. Joint Sub-registrar-I and Another, , wherein the learned brother Judge has dealt with the issue as to whether the document transferring the properties and liabilities of the Sick Company to another under the Scheme of rehabilitation is an instrument as defined under Section 14 of the Stamp Act and is chargeable with duty. The learned Brother Judge has after duly analyzing and appreciating the definition of "instrument" and the scope of order

passed under Section 18(6-A) of SICA Act and Section 394(1) & (2) of the Companies Act is of the view that as the title of the property of the transferor Company vest with the transferee Company by virtue of the order made by BIFR under Section 18(6-A) approving the Scheme and as transfer of title had already been effected, no question of collecting any Stamp duty penalty and registration charges to the said document arises. The learned Brother Judge by observing so held the impugned notice as highly misconceived and requires to be quashed.

10. The view expressed by the learned Brother Judge is squarely applicable to the facts of the present case, wherein also the property vested on the transferee Company by virtue of the orders sanctioning Scheme by BIFR and such transfer takes place admittedly by operation of law and the transfer is hence an voluntary transfer and the Order of the BIFR cannot be construed to be an instrument of transfer of title from the transferor Company to the transferee Company. If that is so, the impugned Order returning the document for non payment of Stamp duty is to be necessarily held as contrary to law and highly misconceived.

11. In this regard, if G.O.Ms. No. 26, Commercial Taxes and Registration (J1) Department, dated 12.1.2007, relied on by the Respondent official is looked into, the same relates to voluntary transfer of property between the parent Company and subsidiary Company, and the exemption in payment of duty already granted in respect of such transfer of property is under G.O., as above referred to, withdrawn, but the same is not applicable to the transfer effected by operation of law by virtue of the Order passed by the BIFR. As far as the Judgment of the Hon"ble Apex Court relied on by the learned Government Pleader, the same relates to Partition Deed which is construed to be an instrument of conveyance under Section 47-A of the Indian Stamp Act and stands on different footing, whereas the Order passed by the BIFR is not an instrument as defined under Section 2(14) of the Indian Stamp act. That being so, the observation of the Hon"ble Apex Court in the above judgment is also not applicable to the order passed by the BIFR, which is presented for registration.

12. Viewing from any angle, the impugned Order is legally unsustainable and is, hence, liable to be set aside.

13. In the result, the impugned Order of the Respondent stands quashed. The Petitioner is permitted to approach the Respondent under Section 25(2) of the Registration Act with an Application for condoning the delay in presentation of the document for registration and on such Application, appropriate Orders will be passed by the Competent Authority for payment of fine within and in compliance with such direction, the document shall be accepted for registration and the Registration of the document shall be caused within two weeks thereafter. The Writ Petition is accordingly ordered. Consequently, connected Miscellaneous Petitions are closed. No costs.