

(2006) 04 BOM CK 0121

Bombay High Court

Case No: Writ Petition No. 4075 of 2002

Neeraj Kumar Umeshkumar Mor

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision: April 17, 2006

Acts Referred:

- Registration Act, 1908 - Section 23, 24, 25, 26, 34
- Registration Rules, 1908 - Rule 27

Citation: (2006) 4 ALLMR 142 : (2006) 5 BomCR 235 : (2006) 3 MhLj 695

Hon'ble Judges: Kshitij R. Vyas, C.J; D.Y. Chandrachud, J

Bench: Division Bench

Advocate: A.B. Ketkar, for the Appellant; M.P. Thakur, Assistant Government Pleader, for the Respondent

Final Decision: Allowed

Judgement

D.Y. Chandrachud, J.

Rule, by consent returnable forthwith. Learned Counsel are agreed to a hearing and final disposal at this stage.

2. By a sale deed dated 25th August, 1998, the petitioner purchased certain landed property from the Fourth respondent at Mauje Khambewadi, Taluka Karjat in the District of Alibag at and for a consideration of Rs. 9.55 lacs. The sale deed was stated to have been duly stamped and to have been executed by the petitioner and the Fourth respondent on 25th August, 1998. The Fourth Respondent lodged the sale deed in the office of the Sub-Registrar, Taluka Karjat on 25th August, 1998. The registration charges of Rs. 25,116/- were paid and a receipt was handed over to the Fourth respondent. The document was lodged in the office of the Third respondent under Sr. No. 1783/98, upon the General Manager of the Fourth respondent admitting execution of the document. It has been stated that the petitioner was prevented on account of his ill health from appearing before the Third respondent

and he eventually appeared before the Third respondent on 3rd February, 1999. A fine of Rs. 30,000/- was levied upon the petitioner taking into consideration the duration of delay and a receipt evidencing the payment of fine came to be issued to the petitioner. The Third respondent accordingly ordered the document to be registered and the document came to be duly registered on 19th February, 1999 against the payment of the aforesaid fine of Rs. 30,000/-. Thereafter a notice dated 30th December, 2000 was issued by the Third respondent to the petitioner stating that it was necessary to charge a fine of five times the registration charges viz. Rs. 80,000/- and since only a part payment of Rs. 30,000/- was recovered from the petitioner, additional payment of Rs. 50,000/- was sought within 50 days. The petitioner submitted a reply thereto on 27th March, 2001. Thereafter a notice dated 11th March, 2001 was issued to the petitioner informing him that the deficit of Rs. 50,000/- would be recovered from him as arrears of land revenue. That led to the institution of these proceedings.

3. Section 23 of the Registration Act, 1908 provides 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 a 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.

4. Section 25 contains a provision for the acceptance of a document for registration if owing to urgent necessity or unavoidable accident, a document which is executed is not presented for registration, till the expiry of the time prescribed in that behalf. Section 25 provides 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.

(2) Any application for such direction may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

5. In exercise of the rule making power, Rule 27 of the Rules that have been framed provides a Scale of fines to be imposed under Sections 25 or 34 as the case may be. Rule 27 provides as follows:

27. Scale of fines under Sections 25 or 34 -- The scale of fines to be imposed u/s 25 or 34 shall be as follows, namely:

(1) if the delay does not exceed one month - not exceeding 2 1/2 times the proper registration fee;

(2) if the delay exceeds one month but does not exceed two months not exceeding five times the proper registration fee;

(3) if the delay exceeds two months but does not exceed three months not exceeding 7 1/2 times the proper registration fee;

(4) if the delay exceeds three months but does not exceed four months not exceeding ten times the proper registration fee.

From the aforesaid narration it is clear that where the delay in presentation does not exceed four months, it is open to the Registrar to accept a document for registration on the payment of a fine not exceeding ten times the amount of the proper registration fee. The words "not exceeding" are important because it is not the mandate of the law that in every case a fine of ten times the registration fee should be imposed. Ten times is the upper limit and within that limit a judicial discretion has been vested in the Registrar to determine what if any fine should be levied. Similarly, each of the clauses of Rule 27 empower the imposition of a fine not exceeding a particular ceiling. Under Clause (2) thereto which is applicable in the present case where the delay exceeds one month but does not exceed two months, the fine is not to exceed five times the proper registration fee. In a case such as the present, where the petitioner had submitted that it was due to an illness he was unable to remain present for admitting the execution of the document before the registering officer, it was not incumbent as a matter of course to impose a fine of five times the registration fee. In fact initially as noted above, a fine of Rs. 30,000/- was imposed which was duly paid. In these circumstances, we find that the impugned order of the Third respondent is ex facie unsustainable. We would have been inclined to remand the matter back to the Third respondent, but having regard to the facts and circumstances of the case, we are of the view that the ends of justice would require that a finality should attach to the proceedings. There is no dispute about the fact that the proper registration fee was duly paid and even the fine of Rs. 30,000/- was paid as initially assessed. We, therefore, dispose of this Petition by quashing and setting aside the notices of the Third respondent dated 30th December, 2000 and 11th May, 2001. Instead and in substitution thereof, we direct that the petitioner shall deposit an additional amount of Rs. 10,000/- with the Third respondent over and above the fine that has already been deposited, no later than a period of two weeks from today. The petition stands allowed to the aforesaid extent and in the aforesaid terms. There shall be no order as to costs.