

THE HONOURABLE SRI JUSTICE N.V.SHRAVAN KUMAR

WRIT PETITION No.26029 of 2022

ORDER:

Heard learned counsel for the petitioners and learned Assistant Government Pleader for Stamps and Registration appearing for the respondents.

2. With the consent of learned counsel for the parties, this writ petition is disposed of at the stage of admission.

3. This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioners, wherein the following prayer is made:

"....to issue an appropriate writ, order or direction more particularly one in the nature of Writ of Mandamus directing the 1st respondent to register the sanction order and the scheme of Demerger such that the transfer of immovable properties is reflected in their respective encumbrance certificates and to pass such other or further orders as this Court deems fit...."

4. The facts of the case in brief are that the petitioners' companies filed a petition (being CP (CAA) No.436/230/HDB/2018) before the National Company Law

Tribunal, Hyderabad (for short, 'NCLT') under Sections 230 to 232 of the Companies Act, 2013 seeking sanction of their scheme of demerger. After satisfying itself of the due compliance of the provisions under the Companies Act, 2013, NCLT was pleased to *inter alia* sanction the scheme of demerger *vide* the sanction order dated 24.08.2020. Thereafter, the petitioners applied for a certified copy of the sanction order and the same was received on 24.09.2020. Thereafter, petitioner No.1 filed a copy of sanction order with the Registrar of Companies, Hyderabad on 01.10.2020 in Form No. INC 28 as per the provisions of the Companies Act, 2013. Thereafter, on 29.01.2021, petitioner No.1 issued a letter to respondent No.1 requesting for registration of the sanction order and the scheme of demerger in terms of the Registration Act, 1908. Petitioner No.1 states that it was of the *bona fide* belief that since a substantial portion of the land being transferred to petitioner No.2 consequent to the demerger, which is situated in a special economic zone, was not required to pay stamp duty consequent to the demerger by virtue of G.O.Ms.No.659 dated 12.05.2008 read with G.O.Ms.No.757 dated 18.12.2001. Therefore, petitioner No.1

sought registration of the sanction order and the scheme of demerger without the requirement of payment of stamp duty and registration fee. Along with the first letter, petitioner No.1 enclosed copies of the scheme of demerger and the sanction order for the consideration of respondent No.1. As there was no response from respondent No.1 to the first letter, petitioner No.1 once again issued a letter to respondent No.1 on 14.06.2021 requesting respondent No.1 to acknowledge the scheme of demerger and to take necessary steps thereafter. While so, petitioner No.1 came to understand that it was not exempted from payment of stamp duty under GOMs.No.659 dated 12.05.2008 read with G.O.Ms.No.757 dated 18.12.2001 and that it was required to pay stamp duty of 2% on the value of shares transferred under the scheme of demerger in line with Article 20(d) of Schedule 1A of the Indian Stamp Act, 1899. Immediately upon realizing so, petitioner No.1 issued letter dated 20.09.2021 to respondent No.1 *inter alia* undertaking to pay stamp duty of Rs.88,00,000/- for registration of the scheme of demerger. Along with the letter, dated 20.09.2021, petitioner No.1 also submitted the required documents. In

line with its undertaking in the third letter dated 20.09.2021, petitioner No.1 paid stamp duty to a tune of Rs.88,00,000/- on 29.09.2021. On 04.10.2021, pursuant to the payment of stamp duty, respondent No.1 issued a certificate dated 04.10.2021 bearing file No.1744/AR/2021 under Section 32 of the Indian Stamp Act, 1899, noting that petitioner No.1 has paid the required stamp duty towards the transfer of shares under the scheme of demerger. Thereafter, petitioner No.1 appeared before respondent No.1 several times and requested that the registration of the scheme of demerger be expedited. In response, respondent No.1 orally stated that petitioner No.1 presented the sanction order and the scheme of demerger for registration after the period prescribed under Section 23 of the Registration Act, 1908 and the delay was also beyond the condonable period prescribed under Section 25 of the Registration Act, 1908. It is submitted that limitation prescribed under Sections 23 and 25 of the Registration Act, 1908 is applicable only to documents which are compulsorily registrable under Section 17 of the Registration Act, 1908. It is further submitted that decrees or orders of courts are registrable only at the option of the

parties. The limitation prescribed under Sections 23 and 25 of the Registration Act, 1908 does not apply when a decree or order of Court is presented for registration. It is further submitted that registration of the scheme of demerger is crucial for the petitioners, as consequent to the demerger, petitioner No.1's undivided interest in lands admeasuring Acs.16.73 cts situated at Sy.No.66/1 of Raidurgam Village, Serelingampally Mandal, Ranga Reddy District, is being transferred to petitioner No.2. Without registration of the scheme of demerger, the change in ownership would not be reflected in the said land's encumbrance certificates, consequent to which the true ownership of the said lands would not be known to the public at large and without registration of scheme of demerger, the petitioners and other stakeholders including the public at large would stand to suffer irreparable loss.

5. Sri Sunil B.Ganu, learned Senior Counsel appearing for the petitioners would submit that petitioner No.1 was under a *bona fide* belief that since a substantial portion of the land being transferred to petitioner No.2 consequent to the demerger, it is exempted from payment of

stamp duty consequent to the demerger by virtue of G.O.Ms.No.659 dated 12.05.2008 read with G.O.Ms.No.757 dated 18.12.2001, but petitioner No.1 subsequently realized that it was required to pay the stamp duty of 2% on the value of shares transferred under the scheme of demerger. Without having proper understanding on the said G.O.Ms.No.659 dated 12.05.2008 read with G.O.Ms.No.757 dated 18.12.2001, petitioner No.1 could not pay the stamp duty, but however, upon realizing the same, petitioner No.1 has taken steps and paid Rs.88,00,000/- for registration of the scheme of demerger in line with Article 20(d) of Schedule 1A of the Indian Stamp Act, 1899. Pursuant to payment of stamp duty, respondent No.1 issued a certificate dated 04.10.2021 under Section 32 of the Indian Stamp Act, 1899 noting that petitioner No.1 has paid the required stamp duty towards the transfer of shares under the scheme of demerger. It is further submitted that petitioner No.1 submitted letters dated 29.01.2021, 14.06.2021 and 20.09.2021 and also appeared before respondent No.1 several times, considering the period prescribed as four months for presentation of documents for registration under Section 23 of the Registration Act, 1908,

and that in the petitioner's case, there was only a delay of six days. He would further submit that the petitioner No.1 has paid an amount of Rs.88,00,000/- on 29.09.2021 and a certificate to that extent has been issued by respondent No.1 on 04.10.2021 under Section 32 of the Indian Stamp Act, 1899 certifying that stamp duty of Rs.88,00,000/- has been paid by petitioner No.1 in line with Article 20(d) of Schedule 1A of the Indian Stamp Act, 1899. The main grievance of the petitioners is that in spite of payment of stamp duty of Rs.88,00,000/-, respondents are not registering the scheme of demerger. Hence, the present writ petition is filed by the petitioners on 06.06.2022.

6. This Court in W.P.No.26029 of 2022 *vide* order, dated 29.06.2022 has directed respondent Nos.1 and 2 to dispose of the representations of petitioner No.1 dated 29.01.2022, 14.06.2021 and 20.09.2021. Thereafter, respondent No.1 has passed an order on 27.07.2022 while referring to the order dated 29.06.2022 passed in W.P.No.26029 of 2022 wherein it is stated that there is time limit under the Registration Act, 1908 for registration of a Court decree. It is further stated in the order dated

27.07.2022 that the petitioners have referred to the order issued by the High Court of Madras wherein the Court has held that there is no time limit applicable in respect of Court decree. Respondent No.1 has further stated in the order dated 27.07.2022 that the orders of the Madras High Court cannot be made applicable to this State. Therefore, respondent No.1 informed the petitioners to take further action for registration of NCLT order dated 24.08.2020 by presenting it before Joint Sub-Registrar-I, RO, Ranga Reddy, who is the competent authority under the Registration Act, 1908 to receive and process the document as per the provisions of the Registration Act, 1908. It is further stated that the District Registrar is not empowered under the Registration Act, 1908 to register the order dated 24.08.2020 of the NCLT.

7. Respondent No.1 filed counter-affidavit stating that the petitioners instead of approaching the Joint Sub Registrar-I, RO (OB) Ranga Reddy District, who is the competent authority to receive and register documents, have approached respondent No.1 who is not empowered under the Registration Act, 1908 with the duties of registration of

documents. The petitioners cannot lay the blame at the door of respondent No.1 instead of approaching the registering officer and present them within the time prescribed under the provisions of Registration Act and get them registered. It is further submitted that action was already taken in terms of the order, dated 29.06.2022 in W.P.No.26029 of 2022.

8. Learned Senior Counsel for the petitioners submits that the petitioners instead of approaching the Joint Sub-Registrar-I, RO, Ranga Reddy District, who is the competent authority under the Registration Act, 1908, has approached respondent No.1 under the *bona fide* belief that respondent No.1 is empowered to receive and process the document. In view of the time limit prescribed under Section 23 of the Registration Act, 1908, respondent No.1 rejected the request of the petitioners for registration of the scheme of demerger on the ground that there is a delay of six days. When the petitioner No.1 submitted a representation dated 24.08.2022 to the Joint Sub-Registrar-I, R.O., Ranga Reddy District, and the Joint Sub-Registrar-I has refused to register the document on the ground that Section 23 of the Registration Act, 1908 stipulates time for presenting the document including decrees

of Courts. It is further stated that the provisions of Section 71 of the Registration Act, 1908 read with Rule 161 of the Registration Rules framed under the Registration Act, 1908, which has been adapted in the State of Telangana, deliberates reasons for refusal of the documents in absence of non-adherence of the provisions of the Registration Act, 1908 and one among them is Section 23 of the Registration Act, 1908 which stipulates four months period for registration of any document including decrees of Courts.

9. Learned Senior Counsel for the petitioners also drawn attention of this Court to the fact that the period during which the petitioners sought registration of document was a period where India was under COVID restrictions i.e., from 15.03.2020 to 15.09.2022, which also prevented them to take timely measures.

10. Learned Senior Counsel also drawn attention to Sections 23 and 25 of the Registration Act, which 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 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 comes final."

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 ³⁶ [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. State Amendment Rajasthan: In section 25—

(a) in sub-section (1), for the word "Registrar", the words "Registering Officer", for the words "direct that", the words "register the document" and for the expression "such document shall be accepted for registration", the words "on such document" shall be substituted; and

(b) sub-section (2) shall be omitted. [Vide Rajasthan Act 18 of 1989, sec. 3 (w.e.f. 18-9-1989)].

11. Learned Senior Counsel for the petitioners further submitted that the petitioners are ready to follow Section 25 of the Registration Act, 1908, which prescribed extension

period beyond four months on payment of fine. He would further submit that the petitioners herein had no dishonest intention to avoid or to evade stamp duty and it was only purely on lack of proper guidance and improper understanding of the G.O.Ms.No.659 dated 12.05.2008 read with G.O.Ms.No.757 dated 18.12.2001 and that they are willing to pay differential amount in terms of Section 25 of the Registration Act, 1908.

12. In support of his submissions, learned Senior Counsel for the petitioners has relied on the judgment of the Supreme Court in ***M.P.Steel Corporation v. Commissioner of Central Excise***¹, wherein the applicability of Section 14 of the Limitation Act, 1963 was considered by the Apex Court and referred about it in para No.31, which is extracted hereunder :

“This judgment is in line with a large number of authorities which have held that Section 14 should be liberally construed to advance the cause of justice – see: Shakti Tubes Ltd. v. State of Bihar, (2009) 1 SCC 786 and the judgments cited therein. Obviously, the context of Section 14 would require that the term “court” be liberally construed to include within it quasi-judicial Tribunals as well. This is for

¹ Civil Appeal No.4367 of 2004, dt.23.04.2015

the very good reason that the principle of Section 14 is that whenever a person bonafide prosecutes with due diligence another proceeding which proves to be abortive because it is without jurisdiction, or otherwise no decision could be rendered on merits, the time taken in such proceeding ought to be excluded as otherwise the person who has approached the Court in such proceeding would be penalized for no fault of his own. This judgment does not further the case of Shri Viswanathan in any way. The question that has to be answered in this case is whether suits, appeals or applications referred to by the Limitation Act are to be filed in courts. This has nothing to do with "civil proceedings" referred to in Section 14 which may be filed before other courts or authorities which ultimately do not answer the case before them on merits but throw the case out on some technical ground. Obviously the word "court" in Section 14 takes its colour from the preceding words "civil proceedings". Civil proceedings are of many kinds and need not be confined to suits, appeals or applications which are made only in courts *stricto sensu*. This is made even more clear by the explicit language of Section 14 by which a civil proceeding can even be a revision which may be to a quasi-judicial tribunal under a particular statute.

Whether the Principle of Section 14 would apply to an appeal filed under Section 128 Customs Act.

"128. Appeals to Commissioner (Appeals).—(1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a Commissioner of Customs may appeal to the Commissioner (Appeals) within

[sixty days] from the date of the communication to him of such decision or order:

[Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.] [(1-A) The Commissioner (Appeals) may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing :

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.] (2) Every appeal under this section shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf." Prior to its amendment in 2001, the said Section read as under: -

"128. Appeals to Collector (Appeals).—(1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a Collector of Customs may appeal to the Collector (Appeals) within three months from the date of the communication to him of such decision or order:

Provided that the Collector (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three

months, allow it to be presented within a further period of three months.

(2) Every appeal under this section shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf." We have already held that the Limitation Act including Section 14 would not apply to appeals filed before a quasi-judicial Tribunal such as the Collector (Appeals) mentioned in Section 128 of the Customs Act. However, this does not conclude the issue. There is authority for the proposition that even where Section 14 may not apply, the principles on which Section 14 is based, being principles which advance the cause of justice, would nevertheless apply. We must never forget, as stated in *Bhudan Singh & Anr. v. Nabi Bux & Anr.*, (1970) 2 SCR 10, that justice and reason is at the heart of all legislation by Parliament. This was put in very felicitous terms by Hegde, J. as follows:

"Before considering the meaning of the word "held" in Section 9, it is necessary to mention that it is proper to assume that the lawmakers who are the representatives of the people enact laws which the society considers as honest, fair and equitable. The object of every legislation is to advance public welfare. In other words as observed by Crawford in his book on Statutory Constructions the entire legislative process is influenced by considerations of justice and reason. Justice and reason constitute the great general legislative intent in every piece of legislation. Consequently where the suggested construction operates harshly, ridiculously or in any other manner contrary to prevailing

conceptions of justice and reason, in most instances, it would seem that the apparent or suggested meaning of the statute, was not the one intended by the law-makers. In the absence of some other indication that the harsh or ridiculous effect was actually intended by the legislature, there is little reason to believe that it represents the legislative intent.

13. This Court in W.P.No.15986 of 2020, dated 10.06.2022 had an occasion to consider the scope of Section 23 of the Registration Act, which specifies time for presenting documents, by considering the earlier order passed by this Court in W.P.No.313 of 2020, dated 01.10.2020 at para 10 which is extracted hereunder:

“...since there is no period of limitation to register the document, once it was presented before the authority concerned within four (4) months after its execution and when it was accepted for registration, registering the document at a later stage i.e., on 31.08.2019 (after lapse of 22 years) cannot be faulted.”

The Hon'ble Apex Court *vide* its order dated 10.01.2022 in Miscellaneous Application No.2 of 2022 in Miscellaneous Application No.665 of 2021 in Suo Motu Writ Petition (C) No.3 of 2020 considering the impact of the surge of the virus on public health and adversities faced by the general public

directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded from the purposes of limitation as may be prescribed under any general or special law in respect of all judicial or quasi judicial proceedings.

14. As regards the quantum of fine, learned Senior Counsel relied on the judgment of the Hon'ble Supreme Court in ***Trustees of H.C. Dhanda Trust v. State of Madhya Pradesh and others***² and referred to para No.25 which reads as follows:

"25. No other reasons have been given either by the Collector or by the High Court justifying the imposition of maximum penalty of ten times. It is not the case of Collector that the conduct of the appellant was dishonest or contumacious. The High Court in its judgment has noticed that although the resolution was passed on 06.04.2005 to execute the deed of transfer by Trustees in favour of Jogesh Dhanda and Ishan Dhanda, but later on they deliberately executed the deed in the name of Deed of Assent on a stamp paper of Rs.200/-. For the reason given by the Collector as well as by the High Court that there was intention to evade the stamp duty in describing the document as Deed of Assent the imposition of the penalty was called for but in the facts and circumstances and the reasons which have

² C.A.Nos.3195-3196 of 2020, dt.17.09.2020

been given by the Collector of Stamps as noticed above we are satisfied that this was not a case of imposition of extreme penalty of ten times of deficiency of stamp duty. Taking into consideration all facts and circumstances of the case, we are of view that ends of justice will be served in reducing the penalty imposed to the extent of the half i.e. five times of deficiency in the stamp duty.

In result the appeals are allowed the order of the Collector of Stamps dated 22.09.2008 is modified to the extent that penalty imposed of ten times of Rs.12,80,97,000/- is modified into five times penalty i.e. Rs.6,40,48,500/-. The appeals are partly allowed to the above extent."

15. Learned Senior Counsel submits that the NCLT under Sections 230 to 232 of the Companies Act was pleased to sanction the scheme of demerger *vide* sanction order dated 24.08.2020. Certified copy of the sanction order, dated 24.08.2020 was received on 24.09.2020, which would mean that four months period as stipulated under Section 23 of the Registration Act would end by 23.01.2021. The petitioner submitted the document on 29.01.2021 only with a delay of six(6) days and stamp duty was paid on 29.09.2021.

16. Learned Senior Counsel submits that the petitioners had no dishonest intention to avoid or to evade stamp duty and it was only purely on lack of proper guidance and improper understanding of the G.O.Ms.No.659 dated 12.05.2008 read with G.O.Ms.No.757 dated 18.12.2001 and that they are willing to pay differential amount in terms of Section 25 of the Registration Act, 1908.

17. Learned Assistant Government Pleader for Stamps and Registration would submit that under Section 72 of the Registration Act, 1908, an appeal lies to Registrar from orders of Sub-Registrar refusing registration on ground other than denial of execution. The petitioners instead of approaching the Registrar by filing an appeal, has approached this Court by filing a writ petition.

18. Considering the submissions made by learned counsel for the parties and in the light of the decision of the Supreme Court in ***M.P.Steel Corporation*** (1 supra), ***Trustees of H.C. Dhandra Trust's case*** (2 supra) and also in view of the order, dated 10.06.2022 passed by this Court in W.P.No.15986 of 2020, and in view of the preceding analysis,

this Court is of the considered opinion that unless the registration is completed, the Court order which has sanctioned the scheme of demerger cannot be implemented in all aspects and that the true ownership of the said lands would not be known to the public at large/potential/investors/buyers and thereby they would suffer irreparable loss. Consequently, it may also effects the rights of the third parties. To meet the ends of justice, this Court deems it appropriate to permit the petitioners to approach respondent No.3-Joint Sub-Registrar-I, Ranga Reddy District by filing a representation within two(2) weeks from the date of receipt of a copy of this order to consider the document for registration i.e., to register the sanction order and scheme of demerger, such as, transfer of immovable properties is reflected in their respective encumbrance certificates, in view of payment of stamp duty of Rs.88,00,000/- on 29.09.2021. It is left open to respondent No.3 to pass appropriate orders, strictly in accordance with law, in terms of Section 25 and Section 71 of the Registration Act, 1908, after giving fair opportunity to the petitioners within a period of three(3) weeks thereafter. It is also open

to the Registering Authority to refuse to register the documents, but the registering authority has to specifically assign the reasons in terms of Section 71 of the Act and communicate the said decision to the petitioner.

19. Accordingly, the Writ Petition is disposed of. There shall be no order as to costs.

Miscellaneous applications, if any pending, shall stand closed.

JUSTICE N.V.SHRAVAN KUMAR

Date: 18.12.2023
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