

indira Devi Vs. Inspector General of Registration and ors.

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Court : Chennai

Decided On : Oct-14-2004

Reported in : 2005(1)CTC733

Judge : P. Sathasivam and ;AR. Ramalingam, JJ.

Acts : Stamp Act, 1889 - Sections 47A(1), 47A(5), 47A(6) and 47A(10); Tamil Nadu Stamp (Prevention of Under-Valuation of Instruments) Rules, 1968; [Limitation Act, 1963](#) - Sections 5

Appeal No. : C.M.A. No. 1129 of 2003 and C.M.P. No. 7698 of 2003

Appellant : indira Devi

Respondent : inspector General of Registration and ors.

Advocate for Def. : J. Viswanathan, General Adv.

Advocate for Pet/Ap. : A. Sivaji, Adv.

Disposition : Appeal allowed

Judgement :

ORDER

P. Sathasivam, J.

1. By consent of both parties, the main appeal itself is taken up for disposal.

2. The appellant challenges the order of the Inspector General of Registration, Santhome High Road, Chennai-600028, the first respondent herein dated 10.3.2003 confirming the order of the second respondent dated 28.11.2002.

3. Heard the learned counsel appearing for the appellant as well as the learned Government Advocate for the respondents.

4. In the order which is under challenge, the first respondent herein rejected the appeal filed by the appellant on 10.2.3003 has been rejected on the ground that the same is barred by limitation as per Rule 9(1) of the Tamil Nadu Stamp (Prevention of Under-Valuation of Instruments) Rules, 1960. According to the learned counsel for the petitioner, the second respondent has passed the order in the petition filed under Section 47-A(l) of the Indian Stamp Act, 1989 on 28.11.2002 and the same order was received by the appellant only on 17.12.2002. In support of his claim, the appellant has produced a Xerox copy of the envelope which shows the postal seal made on 17.12.2002 and the said copy finds place at page 5 of the typed set filed along with the appeal.

5. There is no dispute that as per Rule 9(5)(a) of the said Rules, an appeal under Section (10) of Section 47-A shall be preferred within two months from the date of final order passed under Sub-section (5) or Sub-section (6) of Section 47-A. Though the relevant rule says that an appeal has to be preferred within two months from the date of final order passed, in the absence of specific exclusion regarding application of Section 5 of the Limitation Act, the learned counsel appearing for the petitioner drawing our attention to the decision of a Division Bench of this Court (Principal Seat) dated 31.3.2004 made in C.M.A. (NPD) Nos. 896 and 897 of 2004 would submit that the appeal filed by the appellant before the first respondent is well within time. In the said decision, the Division Bench had occasion to consider the similar claim under the very same provision i.e. Rule 9(5)(a) of the Rules referred to above. After referring to a judgment of the Supreme Court dealt with in a similar circumstance, the Division Bench has concluded thus:

'We, therefore, hold that the date of the order under Section 47-A for the purpose of deciding the limitation for filing appeals should be construed to mean the date of

the service of the order. Hence, the date of order under Rule 9 of the said Rules shall be construed to mean the date of service of the order for the purpose, of determining the time limit to prefer the appeals.'

6. Inasmuch as there is a specific provision enabling the aggrieved person to file an appeal to the appellate authority, the first respondent herein viz., the Inspector General of Registration, as rightly observed by the Division Bench, unless the copy of the order is furnished/served on the aggrieved person, it would not be possible for him to file the appeal. We are in respectful agreement with the view expressed by the Division Bench.

7. In addition to this, as rightly pointed out by the learned counsel for the petitioner, inasmuch as there is no specific exclusion of Section 5 of the Limitation Act in the Rules, we are of the view that taking note of the fact that copy of the order passed by the second respondent dated 28.11.2002 has been served/received by the appellant only on 17.12.2002 and the appeal filed by the appellant on 10.2.2003 before the first respondent is well within time. The first respondent has committed error in dismissing the appeal stating that the same is barred by limitation. The impugned order of the first respondent dated 10.3.2003 is set aside. The first respondent is directed to hear the appeal on merits within a period of three months from the date of receipt of copy of this order after affording opportunity to all the parties concerned.

8. The civil miscellaneous appeal is allowed. No costs. The connected C.M.P is closed.