

Ram Piston and Rings Limited Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Aug-16-2012

Reported in : 2012AIR(NOC)301

Judge : A.P. Sahi

Appeal No. : Civil Misc. Writ Petition No.58068 of 2005

Appellant : Ram Piston and Rings Limited

Respondent : State of U.P. and Others

Judgement :

The petitioner has come up assailing the order dated 15.7.2005 passed by the Registrar exercising powers under of the Registration Act, 1908, whereby he has refused to register the agreement to sell presented by the petitioner in relation to Plot No.B-6 (B-6/1) measuring 3747 Sq.Mtrs.

The facts on record are that the plot was allotted to M/s Seema Enterprises on lease hold (Respondent No.4 herein) by the Uttar Pradesh State Industrial Development Corporation through a registered deed dated 13.3.2003. The extent of land allotted to Respondent No.4 was approximately a little over 10000 Sq. Mtrs. The petitioner required the said land which was adjacent to it and the Respondent No.4 is stated to have agreed to transfer the said plot which was situated at the back side of the petitioner industrial unit. The two companies entered into an agreement on 18.11.2004; copy whereof has been filed as

Annexure-1. The dispute centres round the registration of this document.

The contention of the petitioner is that an application was moved on 24.1.2005 before the U.P. State Industrial Development Corporation for permitting the said transfer to be made. The petitioner alleges that all the partners of Respondent No.4 had given an undertaking for sub-division and transfer but after the moving of the said application and with passage of time, the partners of Respondent No.4 firm started taking a different attitude. The petitioner was informed as late as on 1.6.2005 for the first time that the respondent No.4 firm did not intend to further proceed with the said agreement and that the application for sub-division before the UPSIDC has been withdrawn.

It is at this stage that the petitioner moved an application on 1.7.2005 under Section 25 of the Registration Act 1908 before the Registrar seeking his permission to allow the processing of the registration of the said agreement. The petitioner contends and has indicated in paragraph Nos. 13 and 14 of the writ petition that it was under a mis-impression and a false assurance given by the partners of the respondent No.4 firm that the petitioner waited for this long and ultimately moved the application on 1.7.2005. There was no deliberate delay on the part of the petitioner which was unintentional and unavoidable. The registration ought to have been done. Coupled with this, the petitioner also moved another application seeking permission to make good the deficiency in the stamp duty if any and the said application was entertained by the Registrar on which an order was passed on 13.7.2005 permitting the petitioner to pay the deficient stamp duty with penalty; copy of the said order has been filed as Annexure-5 to the writ petition. The petitioner claims to have deposited a sum of Rs. 3,83,533/- as against the said reported deficiency and was issued a receipt in respect thereof.

The dispute arose when respondent No.5 - Harpeet Roopal is alleged to have moved an objection on 8.7.2005 against the application moved by the petitioner on 1.7.2005. The other partners also moved an objection on 15.7.2005 and joined hands with the respondent No.5. On the very same day, the Registrar - Respondent No.2 passed the impugned order without putting the petitioner to any notice of the said objections or providing any opportunity of personal hearing and

also overlooking the order dated 13.7.2005 whereby the petitioner had already been called upon to make good the deficiency in the stamp duty. Aggrieved the petitioner has come up before this Court and prays for quashing of the said order.

Sri K.L. Grover, learned Senior Counsel for the contesting respondent, submits that the writ petition should be dismissed on a preliminary point that was raised at the time when the petition was entertained, and as also raised in the counter-affidavit, to the effect that the petitioner has an alternative remedy of filing a Suit under Section 77 of The Registration Act, 1908 against an order passed by the Registrar refusing to register a document under Section 76 thereof. This Suit has to be filed within 30 days of passing of the order and, as such, the petition does not deserve to be entertained and has to be rejected. The amount of Rs. 15 Lacs, which had been tendered by the petitioner to the respondents for this negotiation, had never been deposited and as a matter of fact had been returned back.

Replying to the said preliminary objection raised by Sri Grover, Sri Kesari Nath Tripathi, learned senior counsel for the petitioner, submits that the writ petition was presented on 27.8.2005 and the same was entertained by the following order on 13.9.2005:-

“Learned Standing Counsel has accepted notice on behalf of respondents No.1 and 2, whereas Sri Arvind Srivastava has accepted notice on behalf of respondent No.3. Issue notice to respondents No. 4 to 8. Each one of the respondents is granted six weeks' time to file counter-affidavit. Rejoinder-Affidavit may be filed within two weeks thereafter.

List on 10.11.2005.

Any action taken during this period shall abide by final order of this Court.”

He contends that the petition having been entertained and the Affidavits having been exchanged, the petition should not be thrown out on the ground of alternative remedy after 6 years of it's pendency. He contends that alternative remedy is not an absolute bar, more so when the impugned order is perverse and is in violation of the principles of natural justice. He contends that in view of the law laid down in

the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai, and others, (1998) 8 SCC 1, and as explained and followed in a subsequent judgment in the case of Harbanslal Sahnia and another Vs. Indian Oil Corporation Ltd. And others, (2003) 2 SCC 107, the writ petition should not be dismissed on the ground of availability of the said alternative remedy.

Before proceeding further, Section 76 and Section 77 are quoted hereunder:-

“76. Order of refusal by Registrar.--(1) Every Registrar refusing--

(a) to register a document except on the ground that the property to which it relates is not situate within his district or that the document ought to be registered in the office of a Sub-Registrar, or

(b) to direct the registration of a document under section 72 or section 75,

shall make an order of refusal and record the reasons for such order in his Book No.2, and, on application made by any person executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded.

(2) No appeal lies from any order by a Registrar under this section or section 72.

77. Suit in case of order of refusal by Registrar.--(1) Where the Registrar refuses to order the document to be registered, under section 72 or a decree Section 76, any person claiming under such document, or his representative, assign or agent, may, within thirty days after the making of the order of refusal, institute in the Civil Court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office if it be duly presented for registration within thirty days after the passing of such decree.

(2) The provisions contained in sub-sections (2) and (3) of Section 75 shall, mutatis mutandis, apply to all documents presented for registration in accordance with any such decree, and, notwithstanding anything contained in this Act, the documents shall be receivable in evidence in such suit.”

A perusal of Section 77, therefore, makes it abundantly clear that a suit can be filed within 30 days of the order of refusal. Admittedly, the petitioner has been non-suited on the finding recorded in the impugned order dated 19.7.2005 and, as such, the petitioner could have instituted a Suit under Section 77 for the redressal of his grievances. The said Statutory remedy has not been availed of by the petitioner.

The issue, therefore, is that should this Court entertain this petition treating it to be falling within the exceptions as pointed out in the judgments of the Apex Court referred to herein above.

The first ground taken by Sri Kesari Nath Tripathi is the ground of violation of the principles of natural justice prior to passing of the impugned order. Sri Tripathi submits that a document having been not presented in time, can still be registered under the provisions of Section 25 of the Act. The time for presenting the document is provided for under Part-IV of the 1908 Act. Section 23 prescribes a period of 4 months from the date of its execution. Section 23-A further gives a leverage for a period of another 4 months under the contingencies prescribed therein. If a document is sought to be presented after the expiry of the said period, then it can be done only on an order to be passed on an application moved under Section 25 of the Act. Section 25 for ready reference is quoted below:-

“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.”

A perusal of the provisions of Section 25 indicate that a document after the expiry of the period prescribed can be presented for registration if owing to urgent

necessity or unavoidable accident, the document could not have been presented earlier, that too even in cases where the delay in presentation does not exceed 4 months of the period provided for under Section 23. In some and substance such an application can be moved only within 8 months of the date of the execution of the document.

In the instant case, the document is dated 18.11.2004 and a period of 8 months would expire on 17th of July 2005. The application was moved on 1.7.2005 about which there is no dispute. From the records, it does not appear as to how the Registrar proceeded to pass an order on 13.7.2005 for deposit of the deficiency in stamp when according to the petitioner himself the application for condoning the delay and accepting the document for registration had simultaneously been filed on 1.7.2005. The order dated 13.7.2005 for depositing of the amount was passed on an application of 1.7.2005 itself. The order dated 13.7.2005 nowhere indicates any adjudication on the extension of period of time. The said order also does not indicate the objections that are stated to have been filed by the respondent on 8.7.2005 and the subsequent objection dated 15.7.2005.

Sri Tripathi contends that the said objection dated 8.7.2005 was not in the knowledge of the petitioner nor any copy thereof was served on the petitioner. It is on the subsequent objection dated 15.7.2005 which was also entertained without any notice to the petitioner that the impugned order has been passed on the same day. On these facts, Sri Tripathi submits that the impugned order being in violation of the principles of natural justice, the bar of alternative remedy would not impede the filing of the present writ petition. Paragraph 16 of the counter-affidavit filed on behalf of the contesting respondent gives a reply to paras 22 and 23 of the writ petition which does not effectively deny the facts stated in the petition. According to the petitioner the contention relating to violation of principles of natural justice, remain unanswered.

Sri K.L. Grover countered this submission by contending that Section 25 of the Act casts an obligation on the person moving the application to explain the urgent necessity or unavoidable accident in the presentation of the document in order to seek the condonation of delay. The application moved by the petitioner, according

to Sri Grover, does not contain any such ingredient and he has invited the attention of the Court to Annexure-3 to the writ petition which is the application moved for the said purpose.

The said application indicates that it was on the assurance given by the respondent that the petitioner waited till 1.6.2005 when for the first time the respondents disclosed their mind refusing to act upon the agreement. Sri Grover submits that this is neither an unavoidable accident nor is this an explanation of urgent necessity.

This is not a case of unavoidable accident. The issue relating to urgent necessity has to be dealt with on the basis of the circumstances and the background in which the refusal is alleged to have been communicated to the petitioner. The words used in the Section "urgent necessity" casts an obligation on the person presenting the document to explain as to why it was so urgent to move the application. The explanation given by the petitioner is the pendency of the negotiations and the assurance having been given by the respondents. From the records, this aspect of the matter as to how the assurance was extended and as to how it came to be withdrawn is undecipherable except the last date given i.e. 1.6.2005. The issue relating to the urgent necessity, therefore, has to be decided on the basis of the facts alleged and it cannot be a case of mere convenience or inconvenience. It is for the said reason that the Statute has provided for a remedy of filing a Suit under Section 77 of the Act.

Even after 1.6.2005 when the petitioner alleges to have received the communication, it took the petitioner one month to present the document on 1.7.2005. It is not indicated as to what efforts were made during this period except for the fact that subsequently the petitioner managed to get an order of deposit of deficiency on a separate application of the same date which is Annexure-4 to the writ petition.

Accordingly, the ingredients of Section 25 prima facie did not exist either in the application or even in the pleadings that have been placed before this Court. A necessity has to be coupled with an urgency. The urgency has to be such that the matter cannot wait any longer. The refusal according to the petitioner was formally

announced on 1.6.2005. The application was filed one month thereafter. This lapse remains unexplained which casts a doubt about urgency. An urgent notice to be taken for performing an act means something which requires prompt attention. A diligent act with immediate execution is said to be done urgently. Waiting without any reasonable cause for a month, therefore, does require some more material to make it look urgent which is absent on record inspite of full opportunity even before this Court. This issue, therefore, becomes purely a matter of evidence.

The Registrar has, however, while recording that no evidence is available to condone the delay, travelled a little astray in delving into the objection of the respondent that they no longer intended to go by the agreement or that some of the partners had not intended to enter into the agreement. The Registrar can only look into the factum of execution and is not to adjudicate on the intention of the parties to the agreement. His limited role is to the presentation and registration of the document in such a dispute. A Suit under Section 77 of the Act also is for the said purpose only. So far as the intention of the parties to an agreement about the contract would fall within the realm of specific performance and is outside the scope of the Registration Act 1908 in a dispute relating to refusal of registration under Section 25 of the Act.

It is quite possible that had a Suit been filed in this regard by the petitioner, evidence would have been led for the said purpose which remedy was voluntarily not availed of by the petitioner. It is true that violation of principles of natural justice does carve out exceptions for entertaining a writ petition, but in the instant case the Statutory provisions as explained herein above, in my opinion, clearly require an institution of a Suit in order to establish as to whether a person was prevented from presenting a document out of an unavoidable accident or there was an existence of urgent necessity. This being a subject matter of evidence, cannot be gone into in the exercise of jurisdiction under Article 226 of the Constitution of India particularly where there is lack of evidence leaving the Court handicapped in assessing the evidence as placed on record. As noted above, the ground taken for presenting the application is that of an alleged assurance and the mis-impression of the petitioner. This obviously has to be backed up by corroborative evidence both oral and documentary where the parties to the agreement are taking cross

stands. Accordingly, in my opinion, a mere violation of principle of natural justice would not be sufficient to avoid the alternative remedy of filing a Suit on the facts of this case. The Registrar in his discretion exercised his jurisdiction on the basis of the material disclosed in the application which was not sufficient to condone the delay. The power of the Registrar is discretionary and in the absence of any clinching material, the order impugned cannot be said to be perverse, more so when no such material has been satisfactorily demonstrated before this Court. The law has been illustratively explained in the case of Balu Mal Vs. Chandani , AIR 1977 Rajasthan 14 (paras 19 to 29) relating to the contingency in which such a discretion is available to the Registrar.

The contention that the writ petition has been entertained cannot be a ground to proceed with it further when the respondents had initially taken this objection and the petition had not been admitted. The risk, therefore, was taken by the petitioner and the same cannot be a ground to reject the preliminary objection raised on behalf of the respondents which still survives.

The writ petition is, accordingly, dismissed.

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