



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2361 OF 2014

Ms. Purnima Bhanuprasad Gohil
(Earlier known as Purnima Kumar)
Flat No.A-502, Rajkamal, 1210,
Raheja Complex of Yari Road,
Versova Andheri (West),
Mumbai – 400 061.

...Petitioner

Versus

1. State of Maharashtra
Through the office of the Government
Pleader, High Court, Mumbai.
2. The Collector of Stamps
Andheri District, MMRDA Building
1st Bandra-Kurla Complex,
Bandra (East), Mumbai – 400 051.
3. The Hon'ble Registrar/Administrative
Officer (AO) Mumbai Suburban District,
Bandra Family Court Building, Ground
Floor, Bandra-Kurla Complex,
Bandra (East), Mumbai – 400 051.
4. The Inspector General of Registration
and Controller of Stamps, Maharashtra
State, Pune Near New Administrative
Building, Ground Floor, Opp. Council
Hall, Pune – 411 001.
5. The Sub-Registrar,
Andheri – 1, Family Court Building,
Ground Floor, Bandra-Kurla Complex,
Bandra (East), Mumbai – 400 051.

...Respondents

Mr. Arun H. Mehta for Petitioner.

Mr. A. I. Patel, Addl. G. P. a/w Mr. P. G. Sawant, AGP for Respondent-
State.

CORAM : JITENDRA JAIN, J.

DATED : 3rd OCTOBER 2024

ORAL JUDGMENT:

1. This petition under Article 227 of the Constitution of India is filed challenging an order passed by the Appellate Authority dated 6th December 2013 and order passed by Collector of Stamps dated 28th August 2012 refusing to register the document titled as “Family Partition of Assets Settlement Deed” (“Settlement Deed”) on the ground that the said Settlement Deed was executed on 20th December 2011 and the document has been lodged for registration on 16th November 2012, which is beyond the period of 4 months provided under Section 23 of the Registration Act, 1908 (“the Act”).

Brief Facts:-

2. The genesis of the present petition arises out of a matrimonial dispute, between Petitioner and her husband, which landed before the Family Court. Petitioner and her husband decided to settle the dispute between themselves and, therefore, executed a Family Partition Of Assets Settlement Deed on 20th December 2011. As per the Settlement Deed, husband of the Petitioner was to transfer to Petitioner and their son two flats. A joint application was made before the Family Court on 22nd December 2011 to keep the original Settlement Deed in its custody till in the parties comply with the duties and obligation under the consent terms.

3. On 27th January 2012, Petitioner and her husband informed the Family Court that both the parties have complied with their respective obligations under the Settlement Deed and the Family Court may pass the decree in terms of said Settlement Deed. Pursuant to the said request, on 17th February 2012, decree of divorce came to be passed by the Family Court.

4. Since the decree in terms of the Settlement Deed involved immovable properties of two flats, Petitioner on 6th June 2012 lodged the copy of said decree and Settlement Deed with the Superintendent of Stamps for determination of stamp duty payable on the said document. The Stamp Authority processed the said application and on 28th August 2012 determined the stamp duty payable on the Settlement Deed by arriving at a figure Rs.2,29,450/- and penalty of Rs.27,534/-. The said two amounts were duly paid by Petitioner on 30th August 2012. On 12th September 2012, Petitioner made an application to the Family Court for return of original Settlement Deed dated 20th December 2011 for affixing the requisite stamps under the Bombay Stamp Act. The original document duly stamped were delivered on 13th September 2012 and Petitioner on 16th November 2012 lodged the Settlement Deed for registration.

5. On 17th December 2012, the authorities refused to register the document on the ground that the Settlement Deed is dated 20th

December 2011 which has been lodged for registration on 16th November 2012 and, therefore, same is lodged beyond period of 4 months provided under Section 23 of the Act. The said order was challenged by filing a writ petition before this Court. However, this Court relegated the Petitioner to alternative remedy of appeal. Pursuant thereto, Petitioner filed an appeal under Section 72 of the Act. The Appellate Authority on 6th December 2013 dismissed the appeal by relying upon reasoning giving by the lower authority on limitation.

6. It is on the aforesaid backdrop that the Petitioner has challenged original order and appellate order before this Court in the present petition.

7. Mr. Mehta, learned counsel for the Petitioner submits that the time taken by the stamp authorities for adjudication of the stamp duty from 6th June 2012 to 13th September 2012 should be excluded for the purpose of calculation of 4 months under Section 23 of the Act and if that is excluded then the Petitioner has lodged the document within 4 months and, therefore, there is no delay in lodging the document for registration. Learned counsel has relied upon a decision of this Court in *Kirti Jagdish Mulani Vs. The State of Maharashtra & Ors.*¹ in support of this submission and brought to the attention of this Court more particularly paragraph 9 to contend that the Co-ordinate Bench of this Court has taken identical view.

1 Writ Petition No.2662 of 2012 dated 17th January 2013

8. Per contra, Mr. Sawant, learned AGP vehemently opposed the petition on the ground the document is dated 20th December 2011, whereas the same has been lodged for registration on 16th November 2012 and since it is beyond the period of 4 months provided under Section 23 of the Act, the authorities were justified in rejecting the registration of the Settlement Deed.

9. I have heard learned counsel for the Petitioner and learned counsel for the Respondent.

10. It is important to note that the Appellate Order dated 6th December 2013 has been passed without giving any opportunity of hearing to the Petitioner. Normally this Court would have remanded back to the Appellate Authority, but in the light of the fact that 10 years have passed and the petition is pending before this Court and further the issue involved is also squarely covered by the decision of the Co-ordinate Bench of this Court, this Court deems fit to adjudicate the issue in the present petition rather than remanding the matter back to the Appellate Authority.

11. Section 23 of the Registration Act reads as under :-

“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.”

12. Section 34 of the Bombay Stamp Act, 1958 (now the Maharashtra Stamp Act) reads as under :-

*“34. Instruments not duly stamped in admissible in evidence etc.
- No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, **registered or authenticated** by any such person or by any public officer unless such instrument is duly stamped [or if the instrument is written on sheet of paper with impressed stamp [such stamp paper is purchased in the name of one of the parties to the instrument].*

[emphasis supplied]

13. The period from 20th December 2011 to 17th February 2012 is required to be excluded on account of first proviso to Section 23 of the Act. Also insofar as the period from 20th December 2011 to 6th June 2012 is concerned, the Settlement Deed was conditional upon Petitioner and her husband complying with certain obligation of fulfillment of their respective obligations. Petitioner and her husband informed the Family Court about the same and requested for decree to be passed in terms of the Settlement Deed after due compliance of their obligations. It is also important to note that the original Settlement Deed was in the custody of the Family Court from 20th December 2011. On the request being made by Petitioner and her husband, Family Court passed a decree of divorce in terms of the Settlement Deed on 17th February 2012. Therefore, in my view, time taken from 20th December 2011 to

17th February 2012 has to be excluded for determining the time provided under Section 23 of the Act. Now the issue arises of period post decree.

14. On a conjoint reading of Section 23 of the Registration Act and Section 34 of the Bombay Stamp Act, 1958, it is evident that until document is duly stamped, Registering Authority cannot register the said document. It is not disputed that since the Settlement Deed dealt with immovable property it was required to be compulsorily registered under the Registration Act read with Transfer of Property Act, 1882. In my view, on a conjoint reading of the aforesaid two provisions, the time taken by the stamp authority from 6th June 2012 till 13th September 2012 has to be excluded for calculating the 4 months period provided under Section 23 of the Act. This is so because, the said period cannot be attributed to the Petitioner and unless the stamp authorities adjudicate the stamp duty payable and Petitioner pays the stamp duty, the document cannot be registered as per Section 34 of the Stamp Act. Therefore, in my view, submission made by Petitioner is required to be accepted for excluding the period from 6th June 2012 to 13th September 2012 when the original document was delivered back. It is also important to note that in terms of the divorce decree certain payments had to be made between the parties and, therefore, on the same being paid during period 17th February 2012 to 6th June 2012, the application

for adjudication of the document came to be lodged on 6th June 2012.

15. In my view, on account of above reasoning, the period from 20th December 2011 till 30th September 2012 is required to be excluded for the purposes of Section 23 of the Act and, therefore, the Settlement Deed has been lodged within the period provided under Section 23 of the said Act.

16. Mr. Sawant, learned AGP could not distinguish the decision of the Co-ordinate Bench of this Court in the case of *Kirti Jagdish Mulani* (supra) nor anything has been brought to my notice that the said order has been reversed or is not a good law as of today. The decision of this Court in *Kirti Jagdish Mulani* (supra) also supports the case of Petitioner and the view which I have expressed above.

17. To conclude period from 20th December 2011 to 17 February 2012 is to be excluded under proviso to Section 23 and also on account of time taken for obtaining decree in terms of Settlement Deed. Time taken thereafter upto 16th November 2012 is required to be excluded on account of adjudication by Stamp Authority and affixing of stamps on the original Deed.

18. In view of above, I pass the following order :-

ORDER

- (i) The impugned orders dated 6th December 2013 and 28th

August 2012 is hereby quashed and set aside.

- (ii) “Family Partition of Assets Settlement Deed” dated 20th December 2011 being Exhibit-G to the present petition has been lodged for registration within the time provided under Section 23 of the Act.
- (iii) Respondents are directed to register Exhibit-G within 12 weeks from the date of uploading of the present order.
- (iv) Petitioner is directed to take necessary steps by giving notice or public notice for presence of her husband for registration of document or produce a death certificate to show that he has passed away or any other undertaking to the satisfaction of the Registration Authority for dispensing the presence of husband for registration of document.

19. Rule is made absolute in above terms. Petition disposed.

[JITENDRA JAIN, J.]