

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Writ Petition No.30906 of 2021

ORDER:

The challenge in this writ petition is to the proceedings of the District Registrar (East), Pantakaluva Road, Vijayawada /3rd respondent vide letter in E1/1930/2021 dated 21.12.2021 whereunder he refused to receive the GPA dated 10.02.2020 executed by writ petitioner's sister Pedapudi Deena Pricsilla, resident of Canada in favour of the writ petitioner authorizing him to act as her GPA to sell her residential apartment situated in JD Residency, D.No.48-4-2, Ashoka Gardens, Gunadala, Vijayawada on the ground that the GPA was executed on 10.02.2020, notarized on 11.02.2020 and the same was received in India on 06.03.2020 and presented before 3rd respondent on 21.12.2021 i.e., more than three months after the document was received in India for validation purpose, in violation of the Indian Stamp Act, 1899 (for short, 'the Stamp Act'). Thus, in essence the document was refused on the ground that the GPA was presented after expiry of the limitation period of three months as envisaged in Section 18.

Hence, the writ petition.

2. Heard the arguments of Sri B.V.S. Chalapathi Rao, learned counsel for petitioner, and learned Assistant Government Pleader for Revenue representing the respondents.

3. Learned counsel for the petitioner would submit that the GPA was received by the petitioner in the sealed cover to his permanent address in Madipakkam, Chennai on 06.03.2020 and as per Section 18 of the Stamp Act he had time of three months for producing for validation before the

registering authority and in the meanwhile, COVID-19 pandemic started and consequently lockdown was imposed throughout the country including Tamilnadu as well as Andhra Pradesh and therefore, he could not move out. In those circumstances, he could not be able to produce the GPA for validation on 16.12.2021. Learned counsel would emphasize that but for the restrictions of the movements of the citizens due to lockdown, he would have presented the GPA before the respondents 3 & 4 in time and in the entire episode, there was no negligence or default much less willful default on his part. Learned counsel argued that the 3rd respondent ought to have considered those aspects and received the GPA for validation considering that the lockdown was imposed by the Central and State Governments while exercising the power under the Disaster Management Act, 2005 and the provisions of the said act will have overriding effect on all other laws or instruments which are inconsistent with the said Act. He would seek to argue that since three months period for validation of GPA was expired during the lockdown period, the 3rd respondent ought to have considered the said aspect and validated the GPA.

(a) Secondly he argued that in the Hon'ble Supreme Court in Miscellaneous Application No.665/2021 in SMW (C) No.3/2020 extended the period of limitation for suits, appeals, applications or proceedings from 15.03.2020 till 02.10.2021 and made it clear that consequently if any balance period of limitation remaining as on 15.03.2020, shall be available with effect from 03.10.2021 and notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation of 90 days from 03.10.2021. Therefore, the limitation period in this case which commenced on 07.03.2020 i.e., on the next day of receiving the GPA in India, would be

available to him after 03.10.2021 also. In expatiation, he would submit that out of three months limitation period, only 9 days i.e., in between 07.03.2020 and 15.03.2020 were expired and remaining 2 months and 16 days were available to him. This period will be available to him from 03.10.2021. However, in view of the direction of the Supreme Court, the flat period of 90 days will be available to him from 03.10.2021. In that view, the GPA presented by him on 16.12.2021 should have been considered as within time and validated by 3rd respondent. Finally he argued that even assuming that the 3rd respondent did not wish to extend the limitation, he ought to have impounded the document and collected stamp duty penalty as per law. He thus prayed to allow the writ petition.

4. In oppugnation, while supporting the impugned order of 3rd respondent, learned Assistant Government Pleader for Stamps & Registration would vehemently argue that though admittedly the movement of the citizens was restricted due to lockdown, however, the petitioner has not produced any material to show that his movement was restricted from Tamilnadu to Andhra Pradesh till 16.12.2021, the day on which he belatedly produced the GPA before 3rd respondent. Nextly, he argued that the petitioner cannot take advantage of the order of the Hon'ble Supreme Court in Miscellaneous Application No.665/2021 in SMW (C) No.3/2020 because the said order mainly applies to suits, appeals, applications or other proceedings, which ought to be filed within a specific period of time and could not be filed because of the COVID restrictions and considering the predicament of the parties who were restrained from filing the judicial proceedings in various Courts and Tribunals, the Apex Court extended the

period of limitation. He argued that the case of the petitioner is not a judicial proceeding and therefore, he cannot take shelter under it. So far as the payment of stamp duty and penalty for validation of the document is concerned, he left it to the order of this Court.

5. The point for consideration is whether there are merits in the writ petition to allow?

6. **Point:** Admittedly, in this case the petitioner received the GPA from his sister at Canada on 06.03.2020 to his permanent address at Madipakkam, Chennai and he presented the document for validation only on 16.12.2021 and in the impugned order the 3rd respondent having observed that it was presented before his office only on 21.12.2021 i.e., after expiry of time prescribed in Section 18 of the Indian Stamp Act, held that the GPA cannot be validated. In this regard, Section 3 of the Indian Stamp Act deals with instruments which are chargeable with duty. It reads thus:

3. Instruments chargeable with duty — Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefore, respectively, that is to say—

(a) every instrument mentioned in that Schedule which, not having been previously executed by any person, is executed in [India] on or after the first day of July, 1899;

(b) every bill of exchange payable otherwise than on demand or promissory note drawn or made out of India on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated in India; and

(c) every instrument (other than a bill exchange or promissory note) mentioned in that Schedule, which not having been previously executed by any person, is executed out of India on or after that day, relates to any property situate, or to any matter or thing done or to be done, in India and is received in India:

(a) Thus, clause (c) is germane for our purpose and it says that every instrument mentioned in schedule 1 or schedule 1-A other than bill of exchange or promissory note which was not previously executed by any person and is executed outside India on or after 01.07.1899 relates to any

property situate, or to any matter or thing done or to be done, in India and is received in India shall be chargeable with duty of an amount indicated in that schedule as proper duty. As per Article 48 of the Schedule 1, a power of attorney is chargeable with duty as mentioned in that Article. Therefore, if a Power of Attorney is executed outside India and received in India, it is excisable to stamp duty. Thus, Section 3 is a charging section. Then we have to read Section 18 of the Indian Stamp Act. It reads thus:

18. Instruments other than bills and notes executed out of India.—

(1) Every instrument chargeable with duty executed only out of India and not being a bill of exchange, or promissory note, may be stamped within three months after it has been first received in India.

(2) Where any such instrument cannot, with reference to the description of stamp prescribed therefor, be duly stamped by a private person, it may be taken within the said period of three months to the Collector, who shall stamp the same, in such manner as the State Government may by rule prescribe, with a stamp of such value as the person so taking such instrument may require and pay for.

7. As can be seen, such instrument which was not being a bill of exchange or promissory note executed only outside India and not duly stamped, may be presented within three months after it has been first received in India before the Collector for stamping such document as per the law. It goes without saying that if a document which was executed out of India and was duly stamped with a non-judicial stamp before or at the time of its execution, Section 18 will have no application. My view gets fortified by the judgment in **Anitha Rajan W/o. Angoor Rajan v. The Revenue Divisional Officer**¹ wherein, in respect of Ex.P1 Power of Attorney executed on Indian non-judicial stamp paper of Rs.150 at Dubai in the presence of Vice Counsel in Indian Consulate at Dubai and produced before the Sub-Registrar, Tripayar, learned Judge observed thus:

¹ 2010 SCC Online Ker 546

“It is only in cases where an instrument chargeable with duty is executed out of India but is not duly stamped that the law stipulates that when such instrument cannot be duly stamped by a private person, it may be taken within a period of three months to the Collector who shall stamp the same in such manner as the Government may by rules prescribe, with a stamp of such value as the person so taking such instrument may require and pay for. As the original of Ext.P1 is a power of attorney executed on Indian non-judicial stamp paper of value of Rs.150/- which was the stamp duty payable during the relevant time on that power of attorney in terms of Article 44 (f) of the Kerala Stamp Act, 1959, it was not necessary for the petitioner to take it before the Collector for getting it stamped as required under section 18 of the Kerala Stamp Act, 1959.”

8. Be that it may, in the instant case, the petitioner has not claimed that the GPA dated 10.02.2020 which was executed at Canada was already duly stamped with Indian non-judicial stamp. Hence, he admits that the procedure envisaged in Section 18 of the Indian Stamp Act needs to be followed. However, his case is that the three months period as laid down in Section 18 has no application, firstly because during the relevant period and also till he produced the document before 3rd respondent on 16.12.2021, he was prevented by the lockdown imposed by the Central and State Governments due to COVID-19 pandemic.

9. I gave my anxious consideration to the above arguments. It is a well-known fact that since March 2020 the entire world was shuddered and fear stricken due to Covid-19 pandemic and in order to take effective measures to prevent the spread of Covid-19 pandemic, the Central and State Governments have declared it as Pandemic and issued guidelines under the Disaster Management Act, 2005. One of the guidelines which is germane for our purpose is the lockdown imposed by the Central and State Governments. The lockdown no doubt restricted the movement of the citizens throughout the country in different spells. It is also true that transport services like air, rail, roadways etc were suspended with few

exceptions. The guidelines and lockdown orders were issued by the National Executive Committee exercising powers under Section 10 of the Disaster Management Act

Section 72 of the said Act reads thus:

“72. **Act to have overriding effect.**—The provisions of this Act, shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. ”

10. Therefore, the provisions of the said Act shall have the overriding effect on all the other laws and instruments which are inconsistent with the said Act. To that extent there is no demur. However, as rightly contended by the learned Assistant Government Pleader, the petitioner has not produced any relevant material to show that from 07.03.2020 till 16.12.2021 there were continuous lockdown orders imposed by the Tamilnadu and A.P. State Governments, due to which he could not move out. Therefore, there is no material before this Court to hold that there was a continuous lockdown imposed in Tamilnadu as well as in A.P. restricting the movement of the petitioner. Hence, the petitioner cannot bask under the said ground.

(a) The next ground sought to be projected by the petitioner is that in view of the orders of the Supreme Court in Miscellaneous Application No.665/2021 in SMW (C) No.3/2020, the limitation period would be extended to him for three months after 03.10.2021. The order of the Hon’ble Apex Court reads thus:

“1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.

2. In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period

of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.”

11. In my considered view, the benefit of exclusion of the limitation granted by the Hon’ble Apex Court will be applicable to only those matters i.e., suits, appeals, applications or proceedings to be instituted in Courts and other Tribunals only, but not to the matters of the present nature as rightly argued by the learned Assistant Government Pleader. Therefore, the petitioner cannot take shelter under the above order. Then the question is what is the remedy for the petitioner.

12. In **Malaysian Airlines Systems BHD v. STIC Travels (P) Ltd.**², a GPA dated 15.02.1997 executed at Kuala Lumpur was not properly stamped according to the Indian Stamp Act and on that ground when the said GPA was produced in an application filed under Section 11 of the Arbitration & Conciliation Act, 1996, it was objected. In that context, the Hon’ble Apex Court dealt with the aspect of impounding the said Power of Attorney which was executed outside India and presented in India for using the proceedings before the Supreme Court. The Hon’ble Apex Court considering the provisions under Sections 3(c), 33 and Article 48 of Schedule I of the Stamp Act, impounded the power of attorney and directed the petitioner to deposit due stamp duty and also directed the Registrar Judicial to make an endorsement upon production of the challan from the treasurer that the document was impounded by the Court and stamp duty and penalty has been paid and thereupon to place the document before the Court.

² (2001) 1 SCC 451

13. In that view of the matter, though the instrument was executed outside India and it was not duly stamped and presented before 3rd respondent within the period of three months, the said authority can impound the same and collect the required stamp duty and penalty and validate the document. Instead the action of 3rd respondent in rejecting the document cannot be countenanced.

14. Accordingly, this writ petition is allowed and the respondents 3 & 4 are directed to receive the GPA dated 10.02.2020 executed in favour of the petitioner and if it not duly stamped, then collect the required stamp duty and penalty as per law and validate the aforesaid GPA and release the document within two weeks from the date of receipt of a copy of this order. No costs.

As a sequel, interlocutory applications pending, if any, shall stand closed.

21.03.2022
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U.DURGA PRASAD RAO, J