

2024:BHC-AS:34812



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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1897 OF 2019

Nanji Dana Patel
Flat No.2, 1st Floor, Sona Shopping
Centre, A-31, Hill Road, Bandra (W),
Mumbai – 400 050

...Petitioner

Versus

1. State of Maharashtra
Through Government Pleader,
Original Side, Bombay High Court
2. The Inspector General of Registrar
and Controller of Stamps, Ground
Floor, Opposite Vidhan Bhavan,
New Administrative Building Pune,
Maharashtra – 411 001
3. Collector of Stamps, Andheri Taluka
'A' Building, Opp. M. M. R. D., Ekta
Society, Parsi Colony, Bandra Kurla
Complex, Bandra (E) Mumbai – 400 053
4. Sub-Registrar of Assurance, Andheri
'A' Building, M. M. R. D., Ekta
Society, Parsi Colony, Bandra Kurla
Complex, Bandra (E) Mumbai – 400 053
5. Additional Collector of Stamps
Head Stamp Office, Nagar Bhavan,
Fort, Mumbai – 400 001

...Respondents

Mr. Bernardo Reis i/b. Mr. Shailesh Rai for Petitioner.
Mr. Shahaji Shinde, A Panel Counsel a/w Mr. Sandip Babar, AGP for
Respondents.

CORAM : K. R. SHRIRAM &
JITENDRA JAIN, JJ.

DATED : 27th AUGUST 2024

ORAL JUDGMENT :- (Per K. R. Shriram, J.)

1. Rule. Rule made returnable forthwith. By consent of the parties, heard finally.
2. Petitioner is impugning an order dated 3rd July 2018 passed by Respondent No.2, rejecting Petitioner's application for refund of stamp duty that was paid. Rejection has been on the sole ground that it was filed beyond the period of six months mandated under Section 48(1) of the Maharashtra Stamp Act, 1958 ("the Stamp Act").
3. Though the petition was served over five years ago and on 12th February 2019, time was taken by AGP for seeking instructions, no reply has been filed till date.
4. The petition was originally listed before Single Judge of this Court and in view of the amendment to the petition by which the Petitioner has challenged constitutional validity of Section 53(1)A of the Stamp Act, matter has been listed before the Division Bench. We are not inclined to grant any time to Respondents to file affidavit-in-reply. The issue in the petition is very narrow, i.e., whether the application could have been rejected under the provisions of Section 48(1) of the Stamp Act.
5. Briefly stated, Petitioner had entered into a development agreement with one Keshav Krishanlal Syngal on 3rd March 2014.

Admittedly, stamp duty of Rs.78,65,000/- has been paid by way of challan dated 3rd March 2014. Admittedly, this deed has been registered on 3rd March 2014. Subsequently, a supplementary agreement dated 4th July 2014 was entered into by Petitioner with the said Keshav Krishanlal Syngal and on payment of stamp duty of Rs.300/- and registration fees of Rs.1,720/-, the supplementary agreement was registered.

6. Thereafter, the parties decided to cancel the development agreement and it was agreed instead, the said Keshav Krishanlal Syngal would convey the property to Petitioner for valuable consideration. Accordingly, Petitioner and the said Keshav Krishanlal Syngal executed a cancellation deed dated 24th June 2015 for cancelling the development agreement dated 3rd March 2014. Admittedly, the cancellation deed has been registered on 26th June 2015 vide Serial No.BDR1-5760-2015.

7. Petitioner and the said Keshav Krishanlal Syngal entered into conveyance deed also executed on 25th June 2015 by which the property was conveyed to Petitioner. On the conveyance deed, Petitioner has paid stamp duty of Rs.1 crore and the conveyance deed is registered vide registration No.BDR1-5757-2015 dated 26th June 2015.

8. Thereafter, Petitioner filed an application for refund of the stamp duty paid on the development agreement and this application was filed on 15th February 2018 seeking refund of Rs.78,65,000/- paid on the development agreement that was cancelled on 26th June 2015.

The application for refund, therefore, has been filed, according to Mr. Babar, 2 years, 7 months and 20 days late from the date of registration. Mr. Babar submitted that the application should have been made within 6 months from the date of registration of the cancellation agreement and since it was not so filed the impugned order came to be passed rejecting the application.

9. Mr. Reis submitted, as a consequence of cancellation of the development agreement on which the Government had collected stamp duty amounting to Rs.78,65,000/- and then on execution of conveyance deed between the same parties, State has collected stamp duty amounting to Rs.1 crore. This would in effect mean, the Government has collected stamp duty twice on the same property / plot and on transaction between the same parties. Mr. Reis submitted that the Government is entitled to only Rs.1 crore that has been paid on the conveyance deed and if the refund is not granted by the State it would amount to unjust enrichment and if the refund is granted no loss would be caused to the Government.

10. Mr. Reis also relied upon a judgment of the Apex Court in *Bano Saiyed Parwad vs. Chief Controlling Revenue Authority and Inspector General of Registration and Controller of Stamps & Ors.*¹ to submit that when State deals with a citizen it should not ordinarily rely on technicalities, and if the State is satisfied that the case of citizen is a

¹ 2024 SCC OnLine SC 979

just one, even though legal defences may be open to it, it must act, as an honest person.

11. Mr. Reis also submitted that in *Bano Saiyed Parwad (supra)* where the appellant's case was for refund of stamp duty, it was observed that the period of limitation prescribed under any law should not come in the way because it may bar remedy, but not the right.

12. Section 48 of the Stamp Act reads as under:-

“48. The application for relief under section 47 shall be made within the following period, that is to say,—

(1) in the cases mentioned in clause (c)(5), within [six months] of the date of the instruments :

Provided that, where an agreement to sale of immovable property on which stamp duty is paid under Article 25 of the SCHEDULE I, is registered under the provisions of the Registration Act, 1908 and thereafter such agreement is cancelled by a registered cancellation deed for whatsoever reasons before taking the possession of the property which is the subject matter of such agreement, within a period of five years from the date of execution of the agreement to sale, then the application for relief may be made within a period of six months from the date of registration of cancellation deed.

(2) in the case when for unavoidable circumstances any instrument for which another instrument has been substituted cannot be given up to be cancelled, the application may be made within six months after the date of execution of the substituted instruments ;

(3) in any other case, within 6[six months] from the date of purchase of stamps.”

Though it does provide an outer limit of 6 months to make the application from the date of instruments, it does not say that application made beyond the period 6 months will not be entertained. In the Stamp Act, there is no provision conferring power of condonation

to the authority under the Act or any provision which states that power of condonation cannot be exercised after the extended period of limitation.

13. The Apex Court in *Bano Saiyed Parwad (supra)* in paragraph Nos.14 to 17 held as under:-

“14. In *Committee-GFIL v. Libra Buildtech Private Limited & Ors.*, wherein the issue of refund of stamp duty under the same Act was in question, this Court has observed and held inter alia as under:

29. This case reminds us of the observations made by M.C. Chagla, C.J. in *Firm Kaluram Sitaram v. Dominion of India* [1953 SCC OnLine Bom 39: AIR 1954 Bom 50]. The learned Chief Justice in his distinctive style of writing observed as under in para 19: (*Firm Kaluram case, SCC OnLine Bom*) "19.... we have often had occasion to say that when the State deals with a citizen it should not ordinarily rely on technicalities, and if the State is satisfied that the case of the citizen is a just one, even though legal defences may be open to it, it must act, as has been said by eminent Judges, as an honest person."

We are in respectful agreement with the aforementioned observations, as in our considered opinion these observations apply fully to the case in hand against the State because except the plea of limitation, the State has no case to defend their action.

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32. In our considered opinion, even if we find that applications for claiming refund of stamp duty amount were rightly dismissed by the SDM on the ground of limitation prescribed under Section 50 of the Act yet keeping in view the settled principle of law that the expiry of period of limitation prescribed under any law may bar the remedy but not the right, the applicants are still held entitled to claim the refund of stamp duty amount on the basis of the grounds mentioned above. In other words, notwithstanding dismissal of the applications on the ground of limitation, we are of the view that the applicants are entitled to claim the refund of stamp duty amount from the State in the light of the grounds mentioned above."

15. The legal position is thus settled in *Libra Buildtech (supra)* that when the State deals with a citizen it should not ordinarily rely on technicalities, even though such defences may be open to it.

16. We draw weight from the aforesaid judgment and are of the opinion that the case of the appellant is fit for refund of stamp

duty in so far as it is settled law that the period of expiry of limitation prescribed under any law may bar the remedy but not the right and the appellant is held entitled to claim the refund of stamp duty amount on the basis of the fact that the appellant has been pursuing her case as per remedies available to her in law and she should not be denied the said refund merely on technicalities as the case of the appellant is a just one wherein she had in bonafide paid the stamp duty for registration but fraud was played on her by the Vendor which led to the cancellation of the conveyance deed.

17. *For the foregoing reasons, the appeal is allowed, and we set aside the impugned order dated 02.08.2019 as well as orders of respondent nos.1 and 2 dated 09.06.2015 and 25.02.2016 and direct the State to refund the said stamp duty amount of Rs. 25,34,400/- deposited by the appellant.”*

14. The Apex Court in the recent judgment in case ***Mool Chandra vs. Union of India & Anr.***² has observed that it is not the length of delay that would be required to be considered while examining the plea for condonation of delay, it is cause for delay which has been propounded will have to be examined. If the cause for delay would fall within the four corners of “sufficient cause”, irrespective of length of delay same deserves to be condoned.

15. On an analysis of the Stamp Act, we find that there is no provision which excludes applicability of Section 5 of the Limitation Act, 1963 to the Stamp Act and more particularly in Section 48 of the said Act which provides for time limit for making the application for refund of stamp duty. We also note that the authority constituted under the Stamp Act does not have the power to condone the delay if the application is made beyond the time specified in Section 48 of the said

² 2024 SCC OnLine SC 1878

Act. However, the present petition is filed under Article 226 of the Constitution of India for seeking condonation of delay in making application for refund of the stamp duty. Admittedly, there is no dispute that Petitioner is entitled to apply for the refund under consideration, but the only ground of the denial of the refund is the delay on the part of Petitioner in making the refund application. The merits have not been discussed in the impugned order. In our view, the present petition is to be treated as an application under Section 5 of the Limitation Act which provides that any application may be admitted after the prescribed period if the applicant satisfies the Court that he had sufficient cause for not making the application within the period specified. In the instant case, Petitioner has averred in the petition that as he was ill-advised, there was a delay in making the application for refund. However, that would *prima-facie* not result into Respondent-State to retain the amount which, is admittedly refundable to Petitioner. Moreover, retention of stamp duty of the amount of Rs.78,65,000/- would be contrary to Article 265 and 300A of the Constitution of India. Therefore, in our view, the present petition can be treated as an application under Section 5 of the Limitation Act and accepting the reason for the delay, the petition is required to be allowed by condoning the delay in making the refund application.

16. The view which we have taken above by invoking Section 5 of the Limited Act, 1963 is supported by a recent decision of the Supreme

Court in *Mohd. Abaad Ali & Anr. Vs. Directorate of Revenue Prosecution Intelligence*³, wherein the Supreme Court observed that unless there is an express or implied bar to the applicability of the Limitation Act in a particular Special Act, the provisions of Section 5 of the Limitation Act would apply. That was a case where a belated appeal against acquittal was filed under Section 378 of the Code of Criminal Procedure and the appeal was accompanied by an application for condonation of the appeal. The delay condonation application was allowed by Delhi High Court and, thereafter, an application was moved for recalling of the said order on the ground that Section 5 of the Limitation Act would not apply, since the period of filing an appeal against acquittal has been prescribed under Section 378(5) of the Code of Criminal Procedure itself and there is no provision for condonation of delay. The said application came to be dismissed which was challenged before the Supreme Court and the Supreme Court after analysing the provisions of the Code of Criminal Procedure, 1973 and Limitation Act, 1963 held that the benefit of Section 5 can be availed in an appeal against acquittal in the absence of exclusionary provision under Section 378 of the Code of Criminal Procedure or at any other place in the Court. In our view, the ratio laid down by the Supreme Court would apply to the facts of the present Petitioner before us moreso, when this Court is exercising its extra-ordinary jurisdiction under Article 226 of the Constitution of India and when there is no dispute that Petitioner is

³ (2024) 7 SCC 91

admittedly entitled to apply for refund. The fiscal lis is not an adversarial proceeding but if a particular person is entitled to refund, since he has paid the excess tax then certainly the State cannot retain it. Therefore, in our view, the belated application made by Petitioner for refund of the duty is required to be considered on merits by condoning the delay in making such application.

17. Mr. Reis submits that Petitioner was ill-advised and did not make the requisite application within the prescribed period of 6 months, but it does not take away the fact that a total amount of Rs.1,78,65,000/- has been paid by him for a transaction where only Rs.1 crore had to be paid as stamp duty. Respondents have collected a surplus amount of Rs.78,65,000/- and Petitioner only wants the refund of that amount which according to Petitioner, the Revenue is not entitled to collect. In our view, Respondents should consider the matter on merits and pass an order then rejecting on technicalities.

18. Therefore, we condone the delay in filing the application for refund. The authorities will decide the application for refund of the stamp duty of Rs.78,65,000/- that was paid on the development agreement on merits.

19. Consequently, the impugned order dated 3rd July 2018 is hereby quashed and set aside. The matter is remanded to Respondent No.2 for *denovo* consideration on merits only. The application for

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refund shall be disposed on merits on or before 31st October 2024 by passing a reasoned order dealing with all submissions of Petitioner, notice for personal hearing shall be given atleast 5 working days in advance. After personal hearing, if Petitioner wishes to record what transpired during the personal hearing or what was submitted during the personal hearing, Petitioner may file written submissions within 3 working days thereof.

20. Petition disposed.

[JITENDRA JAIN, J.]

[K. R. SHRIRAM, J.]