



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9657 OF 2022

Satish Buba Shetty ...Petitioner

vs.

Inspector General of Registration and
Collector of Stamps and Others ...Respondents

Mr. Rishi Bhatt a/w. Mr. C.K. Mhatre i/b. Mr. Sameer Khedekar, for
the Petitioner.

Mr. S.H. Kankal, AGP for the Respondents-State.

CORAM : N. J. JAMADAR, J.
RESERVED ON : AUGUST 19, 2023
PRONOUNCED ON : JANUARY 11, 2024

JUDGMENT :

1. Rule. Rule made returnable forthwith. With the consent of the parties, heard finally at the stage of admission.

2. By this petition under Article 227 of the Constitution of India, the petitioner assails the legality, propriety and correctness of an order dated 9th February, 2022 passed by the Chief Controlling Revenue Authority, Maharashtra State, Pune in Appeal No. 111 of 2021 whereby the Chief Controlling Revenue Authority was persuaded to dismiss the appeal under section 53(1A) of the Maharashtra Stamp Act, 1958 (Stamp Act, 1958) by affirming the order dated 27th April, 2021 passed by the Collector of Stamps,

Vishal Parekar

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Borivali declining refund of the stamp duty under section 48 of the Stamp Act, 1958.

3. Shorn of superfluities, the background facts can be stated in brief as under:-

A] The petitioner, who is a retired bank official, had on 10th November, 2014 entered into an Agreement to Purchase a flat in a building known as “ERA” with M/s. Vijaykamal Properties Private Limited (the Developer). The said agreement was duly registered on 19th November, 2014 with the Registrar of Assurances, stamp duty of Rs. 4,76,000/- was paid vide receipt number 7271 dated 19th November, 2014 along with registration charges of Rs. 30,000/-. Under the terms of the agreement, the developer had agreed to deliver possession of the flat by 30th June, 2017.

B] The Developer neither developed the building nor refunded the consideration parted with by the petitioner. Hence, the petitioner was constrained to approach the Real Estate Regulatory Authority (RERA). By an order dated 26th December, 2017 RERA directed the Developer to refund the consideration and also execute a Deed of Cancellation. On account of the breach on the part of the Developer to comply

with the aforesaid order, the petitioner was constrained to file an Execution Application under section 63 of Real Estate (Regulation and Development) Act, 2016. Thereupon by an order dated 13th March, 2018 RERA imposed penalty of Rs. 5,000/- per day till the compliance of the order, on the Developer.

C] Being aggrieved, the Developer preferred an appeal before RERA Appellate Tribunal. By an order dated 21st August, 2018 the Appellate Tribunal stayed the order passed by RERA subject to payment of 50% due amount along with interest by the Developer.

D] In view of the default on the part of the Developer to comply with the order of Appellate Tribunal as well, the appeal preferred by the Developer came to be dismissed for want of compliance by an order dated 16th October, 2018. The petitioner laid execution before the RERA Appellate Tribunal.

E] In the said proceeding, the Developer and the petitioner arrived at a settlement and consent terms were executed. In accordance with the consent terms, the Developer agreed to refund the amount in four installments. The last installment was released on 22nd February, 2021. Consequently, a Deed of Cancellation was came to be executed by the petitioner on 9th

March, 2021. Thereupon the Execution Application came to be disposed of by the RERA Appellate Tribunal on 19th March, 2021.

F] On 31st March, 2021 the petitioner applied for refund of stamp duty paid on the Agreement for Sale registered on 19th November, 2014.

G] By an order dated 27th April, 2021, the Collector of Stamps rejected the claim for refund holding that as Agreement for Sale was not cancelled within the five years of the execution thereof, the claim for refund was not sustainable in view of the proviso to section 48(1) of the Stamp Act, 1958.

H] Being aggrieved, the petitioner preferred a revision before the Chief Controlling Revenue Authority. By an order dated 9th February, 2022, the Chief Controlling Revenue Authority was also persuaded to dismiss the appeal holding that the interdict contained in the proviso to section 48(1) of the Stamp Act came into play as the registered instrument was cancelled beyond five years of its execution.

4. Being further aggrieved, the petitioner has invoked the writ jurisdiction of this Court.

5. I have heard Mr. Rishi Bhatt, learned counsel for the petitioner, and Mr. S.H. Kankal, the learned AGP for the respondents-State.

6. Mr. Bhatt, learned counsel for the petitioner submitted that the authorities under the Stamp Act have committed a manifest error in refusing to grant refund. Taking the Court through the copies of the orders passed by the authorities under the RERA Act and the impugned orders, Mr. Bhat submitted that the fact that the applicant had applied within weeks of the execution of Cancellation Deed was completely lost sight of. The petitioner had approached the authorities under RERA and despite the orders passed by the RERA and Appellate Tribunal, the Developer did not execute the Deed of Conveyance. In the circumstances, it was impossible for the petitioner to have the Deed of Cancellation executed within five years of the execution of Agreement for Sale. The impossibility of performance of the condition within the period stipulated by the proviso was not properly appreciated by the authorities under the Stamp Act, 1958. It was submitted that a genuine claim of a bonafide home buyer who is in his late 60s, was unjustifiably rejected by the authorities below.

7. To lend support to the aforesaid submissions, Mr. Bhatt placed a strong reliance on the judgments of the Supreme Court in the cases of **Shaikh Salim Haji Abdul Khayumsab v/s. Kumar and Others¹**; **Committee GFIL vs. Libra Buildtech Private Limited and Others²**; and **Rajeev Nohwar vs. Chief Controlling Revenue, Authority Maharashtra State, Pune and Others³**

8. Mr. Kankal, learned AGP, countered the submissions on behalf of the petitioner. Mr. Kankal urged that the petitioner had obtained the entire benefit under the Agreement for Sale. The petitioner had never sought the cancellation of the agreement for sale within the period prescribed under the proviso to section 48(1) of the Stamp Act, 1958. It was further submitted that the Stamp Act, 1958 being a fiscal statute is required to be construed strictly. The authorities under the Act, 1958 have thus committed no error in declining to refund the stamp duty on the Agreement for Sale which was cancelled beyond the prescribed period as the claim was made after six year and four months.

9. Section 47 is subsumed in Chapter V of the Stamp Act, 1958 under the title, "Allowances For Stamps In Certain Cases". Section

1 (2006) 1 Supreme Court Cases 46.

2 (2015) 16 Supreme Court Cases 31.

3 2021 SCC OnLine SC 863.

47 reads as under :-

S.47 Allowance for spoiled stamps :-

Subject to such rules as may be made by the State Government as to the evidence to be required, or the inquiry to be made, the Collector may, on application, made within the period prescribed in section 48, and if he is satisfied as to the facts, make allowance for impressed stamps spoiled in the cases hereinafter mentioned, namely :—

(a) the stamp on any paper inadvertently and undersignedly spoiled, obliterated or by error in writing or any other means rendered unfit for the purpose intended before any instrument written thereon is executed by any person;

(b) the stamp on any document which is written out wholly or in part, but which is not signed or executed by any party thereto ;

(c) the stamp used for an instrument executed by any party thereto which—

(1) has been afterwards found 1[by the party] to be absolutely void in law from the beginning ;

[(1A) has been afterwards found by the Court, to be absolutely void from the beginning under section 31 of the Specific Relief Act, 1963 ;]

(2) has been afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended ;

(3) by reason of the death of any person by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, cannot be completed so as to effect the intended transaction in the form proposed ;

(4) for want of the execution thereof by some material party, and his inability or refusal to sign the same, is in fact incomplete and insufficient for the purpose for which it was intended ;

(5) by reason of the refusal of any person to act under the same, or to advance any money intended to be thereby secured, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose ;

(6) becomes useless in consequence of the transaction intended to be thereby effected by some other instrument between the same parties and bearing a stamp of not less value ;

(7) is deficient in value and the transaction intended to be thereby effected had been effected by some other instrument between the same parties and bearing a stamp of not less value;

(8) is inadvertently and undersignedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped :

Provided that, in the case of an executed instrument, 1[except that falling under sub-clause (1A)], no legal proceeding has been commenced in which the instrument could or would have been given or offered in evidence and that the instrument is given up 2[to be cancelled or has been already given up to the Court to be cancelled.

Explanation.—The certificate of the Collector under section 32 that the full duty with which an instrument is chargeable has been paid is an impressed stamp within the meaning of this section.

10. Evidently, section 47 is subject to the rules as may be framed by the State Government. Secondly, an application for refund has to be made within the period stipulated in section 48. Thirdly, it enumerates the contingencies in which, upon being satisfied, the Collector of Stamps can make allowance for impressed stamps. One of the category specified in sub clause (c) is the stamp used for an instrument executed by the party thereto which by reason of the refusal of any person to act under the same, or to advance any money intended to be thereby secured, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose.

11. It would be advantageous to immediately notice the time stipulated by section 48, to make an application for relief under section 47. Section 48 reads as under:-

48. Application for relief under section 47 when to be made :-

The application for relief under section 47 shall be made within the following period, that is to say the following period, that is to say,—
(1) in the cases mentioned in clause (c)(5), within 3 [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 can not be given up to be cancelled, the application may be made within six months after the date of execution of the substituted instrument.

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

12. The controversy at hand, is governed by the proviso to sub section (1) of section 48. Indisputably, the stamp used for execution of the Agreement for Sale has not been used for the intended purpose as by reason of the default on the part of the Developer to convey the property, the transaction did not materialize.

Undoubtedly, the proviso to sub section (1) of section 48 envisages a condition that the Agreement to Sale of immovable property on which stamp duty is paid under Article 25 of the Schedule I, should be cancelled by registered Cancellation Deed before taking possession of the subject property within a period of five years from the date of execution of Agreement to Sale and, thereupon, the application for refund under section 47 can be made within a period of six months from the date of registration of Cancellation of Deed. The proviso to sub section (1) of section 48 thus envisages two time limits. One, the registered Agreement for Sale must have been cancelled by another registered instrument within a period of five years of the execution of the Agreement for Sale. Two, the application for relief under section 47 be made within a period of six months from the date of registration of the Cancellation Deed.

13. In the case at hand, the authorities under the Act, 1958 have declined to grant the relief on the premise that there was non-fulfilment of the first condition of cancellation of the Agreement for Sale within five years of its execution.

14. The learned counsel for the petitioner made a painstaking effort to draw home the point that the aforesaid approach of the

authorities under the Stamp Act, 1958 is not in consonance with law and, in any event, betrays a complete disregard to the equitable considerations and the bonafide of the petitioner. The fact that there was, in a sense, an enforced impossibility of fulfillment of said stipulation was not properly appreciated by the authorities under the Stamp Act, 1958, urged Mr. Bhatt.

15. The aforesaid submission if considered in the light of the facts which have transpired and noted above, cannot be said to be unworthy of consideration. In the evening of their life, the petitioner and his wife had booked a flat with the Developer. An Agreement for sale was duly registered on 19th November, 2014. They had parted with 25% of the total consideration of Rs. 95 lakhs. On account of default on the part of the Developer, the petitioner was required to work out his remedies before the RERA Authority. Despite the order of RERA Authority to refund the consideration and execute a Deed of Cancellation, the Developer did not execute such Deed of Cancellation. The petitioner was made to take out Execution Application. The order passed in the Execution Application was challenged by the Developer in an appeal before RERA Appellate Tribunal. Even the order passed by the RERA Appellate Tribunal was not complied with. The petitioner was

constrained to file an Execution Application before RERA Appellate Tribunal to purportedly to execute the interim order. Only thereafter, the Developer turned up for the resolution of the dispute. Eventually, the Deed of Cancellation came to be executed on 9th March, 2021. The petitioner lodged the claim for refund on 31st March, 2021.

16. The aforesaid facts would indicate that there was no indolence or other blameworthy conduct attributable to the petitioner. The petitioner promptly approached the Authorities under RERA. The remedies before the Authorities under RERA were diligently pursued. The delay in execution of the Cancellation Deed surely could not have been attributed to the petitioner.

17. The question that wrenches to the fore is, in such a situation, can a party who does all that which is in its control, be saddled with the consequence of non-compliance of a statutory prescription ? In my considered view, the answer has to be in the negative. The law recognizes impossibility of performance as a ground to relieve a person from forfeiture and penalty.

18. In the case of **Shaikh Salim Khayumsab** (supra) wherein the

question arose in the context of the extension of time to file written statement beyond 90 days, the Supreme Court, inter alia, adverted to two maxims, “*actus curiae neminem gravabit*”; an act of Court shall prejudice no man. And “*lex non cogit ad impossibilia*”; the law does not compel a man to do what he cannot possibly perform. And found that, in the facts of the said case, the petitioner therein deserved the extension of time beyond 90 days. The observations in paragraph 20 read as under:-

20] In the facts and circumstances of the case, the maxim of equity, namely, *actus curiae neminem gravabit*, an act of court shall prejudice no man, shall be applicable. This maxim is founded upon justice and good sense which serves a safe and certain guide for the administration of law. The other maxim is, *lex non cogit ad impossibilia*, the law does not compel a man to do what he cannot possibly perform. The law itself and its administration is understood to disclaim as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of law must adopt that general exception in the consideration of particular cases. The applicability of the aforesaid maxims has been approved by this Court in Raj Kumar Dey v. Tarapada Dey (1987 (4) SCC 398), Gursharan Singh v. New Delhi Municipal Committee (1996 (2) SCC 459) and Mohammad Gazi v. State of M.P. and others (2000(4) SCC 342).

(emphasis supplied)

19. In the facts of the case, the first of aforesaid maxims may have an application in the context of the time which was consumed in prosecuting the remedies before the authorities under RERA. The petitioner could have compelled the Developer to execute the Deed

of Cancellation if the transaction was not to materialize, only by invoking the remedies under the law. The time spent in pursuing legitimate remedies, in the absence of any bad faith or want of due diligence, can not be arrayed against the petitioner.

20. Secondly, the petitioner could not have lodged a claim for refund of the stamp duty without there being a registered instrument to cancel the registered Agreement to Sale. Cancellation of earlier registered Agreement to Sale by another registered instrument is a prerequisite for the applicability of the proviso to sub section (1) of section 48, which provides an enhanced period for making a claim for relief under section 47. Thus non cancellation of the Agreement for Sale within the stipulated period of five years cannot be construed as a default on the part of the petitioner. To insist for the compliance of the said stipulation in the circumstances of the case, would amount to compelling a party to perform the impossible.

21. The aforesaid principle was reiterated by the Supreme Court in the case of **Committee- GFIL** (supra). In the said case, the question of refund of the stamp duty on the transaction which failed on account of reasons beyond the control of the parties, arose for

consideration. The Supreme Court observed, inter alia, as under:-

26] In our considered opinion, while deciding a case of this nature, we have to also bear in mind one maxim of equity, which is well settled namely "*actus curiae neminem gravabit*" meaning - an act of the Court shall prejudice no man. In Broom's Legal Maxims 10th edition, 1939 at page 73 this maxim is explained saying that it is founded upon justice and good sense and afforded a safe and certain guide for the administration of law. This maxim is also explained in the same words in (Jenk. Cent.118. This principle is fundamental to any system of justice and applies to our jurisprudence. (See: Busching Schmitz Pvt. Ltd. vs. P.T. Menghani & Anr.(1977) 2 SCC 835 and Raj Kumar Dey & Ors. vs. Tarapada Dey & Ors. (1987) 4 SCC 398).

27] It is thus a settled principle of law based on principle of equity that a person cannot be penalized for no fault of his and the act of the court would cause no prejudice to any of his right.

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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.

22. **Rajeev Nohwar** (supra) was a case for refund of stamp duty which was purchased but no Agreement to Sale was executed. The Supreme Court found that the provisions of section 47 had no

application to the facts of the said case. Yet, the Supreme Court allowed the application for claim for refund observing, inter alia, that a rejection of the application for refund would violate equity, justice and fairness where the applicant is made to suffer the brunt of judicial delay. The observations of the Supreme Court in paragraph Nos. 30 to 33 are material and, hence, extracted below.

30] Evidently, and for the reasons that we have indicated above, the application filed by the appellant did not fall within the ambit of Sections 47, 52 and 52A. It is true that the application for refund was titled with reference to the provisions of Section 47. But, it is well settled that a reference of a wrong statutory provision, cannot oust the citizen of an entitlement to refund which otherwise follows in terms of a statutory provision.

31] In the present case, the stamp paper was purchased bona fide in view of the agreement to sell which was to be executed by the appellant with the developer. There was a dispute with the developer which led to the institution of the proceedings before the NCDRC. There was nothing untoward in the conduct of the appellant and certainly no unreasonable delay on the part of the appellant in awaiting the outcome of the proceedings. The NCDRC allowed the complaint giving the option to the appellant of either going ahead with the agreement along with an award of compensation or, in the alternative, to seek a refund with interest. The appellant having exercised the latter option applied within two months from the order of the NCDRC for the grant of refund. The conduct of the appellant, therefore, cannot be held to be unreasonable nor was there any intentional or wanton delay on the part of the appellant in applying for a refund of stamp duty. Such an application must be filed within a reasonable period.

32] In Committee-GFIL (supra), a two-judge Bench of this Court was dealing with the issue of limitation prescribed in the Indian Stamp Act 1899. In this case,

an auction sale of immovable properties was held by a committee constituted by this Court. Successful bidders deposited with the committee, the entire sale consideration along with the stamp duty. However, the transaction failed due to reasons beyond the control of the parties. The Court cancelled the transaction and directed the committee to refund the sale consideration with interest and permitted the purchasers to approach the State Government for refund of the stamp duty. The applications of the auction-purchasers seeking refund of stamp duty was rejected on the ground that the applications were time-barred. An application against the rejection of the refund applications was filed before this Court. This Court allowed the application on three grounds: (i) the transaction which was Court-monitored, could not be fulfilled for reasons beyond the control of the auction-purchasers. No act of the Court should prejudice a person; (ii) in view of the principle of restitution embodied in Section 65 of the Contract Act, any advantage received by a person under a void contract or a contract that becomes void is bound to be restored; and (iii) in light of equity and justice, the six months limitation period prescribed in Section 50 of the Indian Stamp Act 1899 must be read to mean six months from the date of the order of this Court.

33] We are conscious of the fact that as a general rule of law, the right to refund is a statutory creation. A refund can be sought in terms envisaged by statute. As discussed above, the case of the appellant is not specifically barred by any substantive provision. It is an established principle that this Court while exercising its power under Article 142 of Constitution must not ignore and override statutory provisions but must rather take note of the express statutory provisions and exercise its discretion with caution. Therefore, if a statute prescribes a limitation period, this Court must be slow to interfere with the delay under Article 142. However, in the case of an eventuality such as the instant case where the facts of the case are not covered by the statute, this Court under Article 142 will have the power to do complete justice by condoning the delay. We are of the view that since the delay in filling the application for refund in the instant case was due to the prolonged proceedings before the NCDRC, the application cannot be rejected on the ground of delay. A litigant has no control over

judicial delays. A rejection of the application for refund would violate equity, justice and fairness where the applicant is made to suffer the brunt of judicial delay. Therefore, this is a fit case for the exercise of the power under Article 142 of the Constitution.

(emphasis supplied)

23. I am mindful the Supreme Court has resorted to the plenary power under Article 142 of the Constitution. However, in my considered view the principle enunciated by the Supreme Court that where a party would suffer consequences of judicial delay or would be prejudiced for non-compliance of the condition which was impossible for it to perform, such course would violate equity, justice and fairness, deserves to be followed.

24. The authorities under the Stamp Act, 1958 may be justified in rejecting the application in strict adherence to the letter of the law. The statutory provision does not vest any discretion in the authorities. It is trite, refund of the amount paid under any enactment is a matter of a statutory right. Reading down the proviso to sub section (1) of section 48 of the Stamp Act, 1958 as directory may have serious repercussions on the revenue. But, the High Court in exercise of the extraordinary writ jurisdiction cannot be denuded of the power to delve into the question as to whether the non-compliance of the stipulation as to time was brought about by

factors which were beyond the control of the affected party and to insist performance would have amounted to compelling such party to do impossible and, thus, relieve such party of the hardship in deserving cases, where injustice is writ large.

25. In the backdrop of the circumstances which are adverted to above, refusal to grant refund would be wholly unjust and unconscionable.

26. For the foregoing reasons, I am inclined to allow the claim for refund of the stamp duty on the Agreement for Sale which came to be subsequently cancelled by a registered instrument.

Hence, the following order.

ORDER

1] The petition stands allowed.

2] The order dated 9th February, 2022 passed by the Chief Controlling Revenue Authority, Maharashtra State, Pune and the order dated 27th April, 2021 passed by the Collector of Stamps, Borivali are quashed and set aside.

3] The claim for relief under section 47 of the Stamp Act, 1958 stands allowed.

- 4] The petitioner shall be entitled to refund of the stamp duty paid on Agreement for Sale dated 19th November, 2014, in accordance with rules.
- 5] The claim for refund be processed within a period of two months of the communication of this order.
- 6] In the circumstances of the case, there shall be no order as to costs.
- 7] Rule made absolute in the aforesaid terms.

(N. J. JAMADAR, J.)