

MJ Jadhav

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8232 OF 2016
WITH
WRIT PETITION (ST) NO. 8632 OF 2016**

M/s. Tharwani Realtors Through its Partner,
Shri. Anil Hardas Tharwani Having its Office
at No.310-313, 3rd floor, Persipolis Building,
Plot No.74, Sector-17, Vashi, Navi Mumbai ... Petitioner

Vs.

1. The State of Maharashtra, Through its
Secretary, Revenue Department, Having
office at mantralaya, Mumbai 400 032
2. The Deputy Inspector General of
Registration and Deputy Controller of
Stamps, Kokan Division, Thane Having its
office at Charai MTNL Building, 7th Floor,
Mavali Mandal Road, Charai, Thane - 1
3. The Collector of Stamps, Thane Collector
Office Building, 4th Floor, Thane (West),
District Thane ... Respondents

Ms. Shruti Tulpule for the Petitioner.

Ms. Savina Crasto, AGP for the State in WP/8232/2016.

Mr. Bapusaheb Dahiphale, AGP for the State in WPst/8632/2016.

CORAM : GAURI GODSE, J.

DATED : 19th NOVEMBER 2025

JUDGMENT:

1. Learner counsel for the petitioner in both the petitions seeks leave to amend the petitions to incorporate the invocation of Article 226 of the Constitution of India in the body of the petitions. Leave granted. Amendment to be carried out forthwith in the court.
2. Rule. Rule is made returnable forthwith.
3. Learned AGP waives notice for the respondents.
4. These petitions are filed to challenge the order passed by respondent no.2 dismissing the petitioner's appeal under Section 32B of the Maharashtra Stamp Act, 1958 ('Stamp Act') on the ground that it was filed after the period of limitation. A separate application filed for condonation of delay was also dismissed. The appeals were preferred to challenge the order passed by respondent no. 3 under Section 31 of the Stamp Act while adjudicating the development agreements executed in favour of the petitioner. Since there was a delay of one day in filing the appeal, the petitioner had filed a separate application for condonation of the delay. There were two separate development agreements executed in favour of the petitioner. Hence, there were two separate orders under Section 31 of the Stamp Act, and two separate appeals were filed, along with an application for condonation of delay. Since both

the petitions arise out of similar development agreements and the similar orders passed by the same authority, both petitions are decided by this common judgment.

5. Learner counsel for the petitioner submits that an application was made before respondent no.3 seeking adjudication of the payable stamp duty under Section 31 (1) of the Stamp Act. By order dated 15th December 2015, respondent no.3 passed an order adjudicating the payable amount of stamp duty on both the development agreements. The petitioner paid the stamp duty under protest, and both development agreements were executed and registered on 16th December 2015. Thereafter, the petitioner prepared appeals under Section 53 of the Stamp Act and approached the Chief Controlling Revenue Authority of Maharashtra State, having its office at Pune. However, the petitioner was advised that the order passed under Section 31 by respondent no.3 was appealable under Section 32B. Hence, the petitioner took immediate steps to file the appeals before respondent no.2 under Section 32B. The appeals were accordingly filed on 16th February 2016. The limitation period for filing the appeal expired on 15th February 2016. Since there was a delay of one day in filing the appeal, the petitioner also filed an application for condonation of the delay. However, respondent no.2, by the impugned orders, refused to condone the

delay and dismissed both the appeals on the ground that they were barred by limitation.

6. Learned counsel for the petitioner submits that the delay of one day has occurred only because the petitioner had inadvertently taken steps to file an appeal under Section 53 before the Chief Controlling Revenue Authority, Maharashtra State, at Pune. In the process of modifying the appeal for filing it before respondent no.2 at the Thane office, there was a delay of one day. She therefore submits that a delay of one day deserves to be condoned.

7. Learned counsel for the petitioner relies upon the decision of the Division Bench of this Court in the case of **Nanji Dana Patel Vs. State of Maharashtra**¹. The Division Bench of this Court, in exercise of powers under Article 226 of the Constitution of India, treated the petition filed before this Court as an application under Section 5 of the Limitation Act and condoned the delay, thereby directing the stamp authorities to decide the appeal on merits. She therefore submits that by applying the same principles, the delay of one day occurred in filing the appeals in the present case be condoned and respondent no. 2 be directed to decide the appeals on merits.

8. Learned counsel for the petitioner submits that though

1 2024 SCC OnLine Bom 2817

Section 5 of the Limitation Act does not apply to the authorities exercising powers under the Stamp Act, the Division Bench of this Court, by relying upon the legal principles settled in the decision of the Apex Court in the case of ***Mohd. Abaad Ali and Another Vs Directorate of Revenue Prosecution Intelligence***², treated the petition itself as an application for condonation of delay. She submits that considering that the delay is of a negligible nature of one day, the delay be condoned by applying the same principles applied by the Division Bench. Hence, learned counsel for the petitioner prays that the present petitions be treated as an application for condonation of delay and, the delay of one day be condoned.

9. Learned AGP submits that since there is no power vested with the authorities exercising powers under the Stamp Act, the appeal is rightly dismissed as barred by limitation under Section 32B as the appeal is permissible only within 60 days from the date of the impugned order. Since the appeal was filed beyond the period of 60 days, it is rightly dismissed by respondent no.2.

10. I have perused the papers of both petitions. There is no dispute on the initial facts recorded above, as pointed out by the learned counsel for the petitioner, regarding the adjudication done

² (2024) 7 SCC 91

by respondent no.3 on the stamp duty payable for registering the development agreements in favour of the petitioner. There is also no dispute that the petitioner paid the adjudicated stamp duty amount under protest and registered the development agreements. Section 32B provides for a period of 60 days from the date of receipt of an order under Section 31 for filing an appeal. The powers to condone delay are not provided under the Stamp Act. Hence, the appeals are dismissed as barred by limitation, and the applications for condonation of delay are dismissed.

11. The petition in the case of **Nanji Dana Patel**, filed to challenge the order rejecting the application for a refund of stamp duty, was initially listed before the Single Judge. In the facts of the said case, the petitioner's application for a refund of stamp duty was filed more than 2 years after the date of registration of the document. The petition was amended to challenge the constitutional validity of Section 53(1)A of the Stamp Act. Hence, it was listed before the Division Bench. Since the issue in the petition was whether the application for a refund of stamp duty could have been rejected under Section 48 (1) of the Stamp Act, the Division Bench decided the petition on merits without dealing with the challenge to the constitutional validity of Section 53(1)A of the Stamp Act. The Division Bench, after analysing the provisions of the Stamp Act, held

that there was no provision that excluded the applicability of Section 5 of the Limitation Act to the Stamp Act. However, it was also noted that the authority constituted under the Stamp Act does not have the power to condone any delay if an application is made beyond the specified period provided under Section 48 of the Stamp Act. Considering that the petition was filed under Article 226 of the Constitution of India and there was no dispute that the petitioner before the Division Bench was entitled to apply for a refund of stamp duty, the Division Bench treated the petition as an application under Section 5 of the Limitation Act and condoned the delay.

12. The Division Bench found support in the decision of the Apex Court in the case of **Mohd. Abaad Ali**. The Division Bench referred to the legal principles settled by the Apex Court, holding that unless there is an express or implied bar to the applicability of the Limitation Act in a particular statute, the provisions of Section 5 of the Limitation Act would apply. The Division Bench of this Court, therefore, held that the ratio laid down by the Apex Court would apply to the facts of the said case in exercising its extraordinary jurisdiction under Article 226 of the Constitution of India. Accordingly, the Division Bench condoned the delay and directed the authorities to decide the application for refund of stamp duty.

13. In the present case, there is no dispute that the petitioner is entitled to file an appeal under Section 32B of the Stamp Act before respondent no.2 for challenging the order of adjudication made by respondent no.3 under Section 31 of the Stamp Act. The delay in the present case is of one day, as the appeal was preferred before respondent no.2 on the 61st day, whereas the period prescribed under sub-section (1) of Section 32B is 60 days from the date of receipt of the order. The petitioner explains the one-day delay on the ground that, inadvertently, the petitioner approached the office of the Chief Controlling Revenue Authority, Maharashtra State, at Pune to file an appeal under Section 53 of the Stamp Act. However, as per legal advice, the petitioner took immediate steps to file the appeal before respondent no.2. Considering the explanation regarding the delay of one day, I do not see any reason not to apply the legal principles applied by the Division Bench in the case of **Nanji Dana Patel**. Considering the facts of the present case as discussed in the preceding paragraphs, the view taken by the Division Bench would also apply to the present case.

14. The present petitions invoke the powers under Articles 226 and 227 of the Constitution of India to challenge the order passed by respondent no.2 dismissing the appeal as time-barred. Separate application filed for condonation of delay is also dismissed by

respondent no.2. Hence, by treating the petitioner's prayer for condonation of delay of one day as a prayer under section 5 of the Limitation Act, the present petitions deserve to be allowed.

15. Hence, for the reasons recorded above, both petitions are allowed in the following terms:

ORDER

(i) The delay of one day in filing the appeals before respondent no.2 is condoned.

(ii) The appeals preferred by the petitioner under Section 32B of the Stamp Act to challenge the order dated 15th December 2015 passed by respondent no. 3 under Section 31 of the Stamp Act, be registered for a hearing on the merits.

(iii) Respondent no.2 shall decide the appeals on its own merits in accordance with the law.

(iv) The Petitions are allowed in the aforesaid terms.

16. Considering that the petitioner's appeal was filed in 2016, respondent no.2 shall decide the appeal as expeditiously as possible.

(GAURI GODSE, J.)