IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937

WP(C).No. 27720 of 2015 (L)

PETITIONER :

M.P.DEVASSY, AGED 67 YEARS,
SON OF LATE MR.PHILIPOSE, MEKKATU HOUSE,
SOUTH VAZHAKULAM (P.O.), ERNAKULAM-683 105.

BY ADVS.SRI.SHAJI CHIRAYATH
SMT.JIJI M. VARKEY
SMT.SAVITHA GANAPATHIYATAN
SRI.M.M.SHAJAHAN

RESPONDENT(S):
----

1. **STATE OF KERALA,**
   REPRESENTED BY CHIEF SECRETARY TO THE GOVERNMENT,
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM,
   PIN -695 001.

2. **REVENUE DIVISIONAL OFFICER,**
   REVENUE DIVISIONAL OFFICE, PALAKKAD DISTRICT,
   PIN-680 017

BY GOVERNMENT PLEADER SRI.BIJU MEENATTOOR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sts

WP(C).No. 27720 of 2015 (L)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1: COPY OF THE AGREEMENT FOR SALE DATED 17.10.2011.

EXHIBIT-P2(A): COPY OF THE STAMP PAPER NO.680921 OF RS.25000/- DATED 21.02.2012.

EXHIBIT-P2(B): COPY OF THE STAMP PAPER NO.680922 OF RS.25000/- DATED 21.02.2012.

EXHIBIT-P2(C): COPY OF THE STAMP PAPER NO.680923 OF RS.25000/- DATED 21.02.2012.

EXHIBIT-P2(D): COPY OF THE STAMP PAPER NO.680924 OF RS.25000/- DATED 21.02.2012.

EXHIBIT-P2(E): COPY OF THE STAMP PAPER NO.680925 OF RS.25000/- DATED 21.02.2012.

EXHIBIT-P2(F): COPY OF THE STAMP PAPER NO.680926 OF RS.25000/- DATED 21.02.2012.

EXHIBIT-P2(G): COPY OF THE STAMP PAPER NO.680927 OF RS.25000/- DATED 21.02.2012.

EXHIBIT-P2(H): COPY OF THE STAMP PAPER NO.680928 OF RS.25000/- DATED 21.02.2012.

EXHIBIT-P2(I): COPY OF THE STAMP PAPER NO.680929 OF RS.25000/- DATED 21.02.2012.

EXHIBIT-P2(J): COPY OF THE STAMP PAPER NO.680930 OF RS.25000/- DATED 21.02.2012.

EXHIBIT-P2(K): COPY OF THE STAMP PAPER NO.A 434653 OF RS.20000/- DATED 21.02.2012.

EXHIBIT-P2(L): COPY OF THE STAMP PAPER NO.H 076708 OF RS.1000/- DATED 21.02.2012.

EXHIBIT-P2(M): COPY OF THE STAMP PAPER NO.H 076709 OF RS.1000/- DATED 21.02.2012.

EXHIBIT-P2(N): COPY OF THE STAMP PAPER NO.H 076710 OF RS.1000/- DATED 21.02.2012.

EXHIBIT-P3: COPY OF THE ORIGINAL SUIT NO.354 OF 2012 ON THE FILES OF SUBORDINATE JUDGES COURT, PALAKKAD DATED 18.05.2012.

WPC.NO.27720/2015

EXHIBIT-P4:	**COPY OF THE INTERLOCUTORY APPLICATION NO.2730/12 IN EXHIBIT P3 ORIGINAL SUIT DATED 31.03.2012.**
EXHIBIT-P5:	**COPY OF THE ORDER IN EXHIBIT-P4 APPLICATION DATED 29.09.2012**
EXHIBIT-P6:	**COPY OF THE APPLICATION FOR CANCELLATION OF THE STAMP PAPERS BEFORE THE TAHASILDAR, CHITTUR TALUK DATED 19.03.2015.**
EXHIBIT-P7:	**COPY OF THE APPLICATION FOR CANCELLATION OF THE STAMP PAPERS BEFORE THE 2ND RESPONDENT RDO DATED 19.03.2015.**
EXHIBIT-P8:	**COPY OF THE ORDER PURSUANT TO THE EXHIBIT-P7 DATED 06.04.2015.**

RESPONDENT(S)' EXHIBITS: **NIL**

/TRUE COPY/

P.S.TO JUDGE

sts

A.MUHAMED MUSTAQUE, J.

W.P(C)No. 27720 of 2015

--

Dated this the 7th day of October, 2015

<u>J U D G M E N T</u>

Petitioner purchased stamp paper for execution of a conveyance deed. This was on 21.2.2012. Petitioner could not utilise the stamp paper. It remained unused. Thereupon, petitioner made an application on 19.3.2015 for refund of the stamp paper after returning the stamp paper. This was rejected, as per Ext.P8, stating that the application has been submitted after six months. Petitioner challenges this order.

2. Chapter V of the Kerala Stamp Act provides for allowances for stamps in certain cases. Section 47 provides for allowance for spoiled stamps. It enumerates the type of spoiled stamps. It is appropriate to refer to Section 47, which reads as follows:-

> "*47. Allowance for spoiled stamps.--Subject to such rules as may be made by the Government as to the evidence to be required, or the enquiry 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 undesignedly 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 to be absolutely void in law from the beginning;

(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, being 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 has been effected by some other instrument between the same parties and bearing a stamp of not less value;

(8) is inadvertently and undesignedly 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, 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 to be cancelled.

Explanation.-- The certificate of the Collector under Section 32, that the fully duty which which an instrument is chargeable has been paid, is an impressed stamp within the meaning of this section."

The person, who seeks refund, in terms of Section 47 has to file an application within the time indicated as per Section 48. Section 48 reads as follows:-

"48. Application for relief under Section 47 when to be made.-- The application for relief under Section 47 shall be made within the following periods, that is to say--

(1) in the cases mentioned in clause (c)(5), within two months of the date of the instrument;

(2) in the case of a stamped paper on which no instrument has been executed by any of the parties thereto, within six months after the stamp has been spoiled;

(3) in the case of a stamped paper in which an instrument has been executed by any other parties thereto, within six months after the date of the instrument or, if it is not dated, within six months after execution thereof by the person by whom it was first or alone executed:

Provided that--

(a) when the spoiled instrument has been for sufficient reasons sent out of the State, the application may be made within six months after it has been received back in the State;

(b) when, from unavoidable circumstances, any instrument for which another instrument has been substituted, cannot be given up to be cancelled within the aforesaid period, the application may be made within six months after the date of execution of the substituted instrument."

It is apparently relying on Section 48, petitioner's application has been rejected. Though the stamp remains unused, on a close reading of Section 47, this Court is of the view that it does not come within the class of stamps spoiled as referred to in Section 47. Therefore, the question is whether Section 48 would apply. Section 48 clearly stated that limitation of application is only with reference to the spoiled stamps referred to in Section 47. Therefore, this would come only in the category of Section 52 wherein it is referred that the Collector has to return the value of such stamps deducting six paise in respect of stamps which have not been spoiled. Section 52 reads as follows:-

> "*52. Allowance for stamps not required for use.-- When any person is possessed of a stamp or stamps which have not been spoiled or rendered unfit or useless for the purpose intended but for which he has no immediate use, the Collector shall repay to such person the value of such stamp or stamps in money, deducting six paise for each rupee or portion of a rupee, upon such person delivering up the same to be cancelled, and proving to the Collector's satisfaction--*
>
> *(a) that such stamp or stamps were purchased by such person with a bona fide intention to use them ; and*
>
> *(b) that he has paid the full price thereof; and*

> *(c) that they were so purchased within the period of six months next preceding the date of which they were so delivered:*
>
> *Provided that, where the person is a licensed vendor of stamps, the Collector may, if he thinks fit, make the repayment of the sum actually paid by the vendor without any such deduction as aforesaid."*

Section 52(c) stipulates that stamps were purchased within the period of six months next preceding the date of which they were so delivered. Therefore, the question is whether Section 52(c) would be relied to reject the claim of the petitioner. It is to be noted that Section 52(c) only stipulates satisfaction by the District Collector for the purpose of refund of the stamp paper. It cannot be taken as a period of limitation as contemplated under Section 48. Therefore, rigour of limitation could not be attributed or applied for Section 52(c). In appropriate case, it is open for the District Collector to grant refund, even if the delivery of such stamp paper is after six months of the purchase. In the absence of consequence provided for this particular provision, it can only be treated as directory, not as mandatory. Therefore, this Court is of the view that, the District Collector has sufficient power to entertain the request for refund of unused stamp paper.

3. The petitioner states that he has filed a suit for specific performance and the suit is pending. Petitioner submits that he has purchased the stamp paper anticipating execution of the document by the vendor and ultimately on account of non-performance, it necessitated him to file a civil suit for specific performance. Thus, he had purchased it anticipating that the vendor would perform his part of the contract. Therefore, it is submitted that undue delay in the court would adversely affect in claiming the benefit.

4. This Court is of the view that petitioner has made out the reason for delay and also relying upon the judgment of this Court in **Wilson Chakkappan** v. **Tahsildar** [2012(4) KLT SN 74 (C.No.57)], the delay is to be condoned. Accordingly this writ petition is allowed.

The second respondent is directed to accept the delivery of the unused stamp paper from the petitioner and take appropriate steps to refund the unused stamp paper, within six months from the date of delivery of the unused stamp paper by the petitioner, in the light of Section 52.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE,
Judge

MBS/