FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11434 OF 2015

Tapan Ashok Talware .. Petitioner

vs.

State of Maharashtra and Ors. .. Respondents

Mr.Vivek V. Salunkhe for the petitioner

Ms.M.S.Bane, 'B' Panel Counsel for the respondent

CORAM : K. K. TATED, J.
DATE : AUGUST 20, 2016

P.C.:

1 Heard the learned counsel for the parties.

2 By consent of both the parties, matter is taken up for final hearing at the stage of admission.

3 By this Petition, under Article 227 of Constitution of India, the petitioner is challenging the order dated 13.3.2015 passed by Chief Controller (Revenue Authority) and Inspector General of Registration and Controller of Stamp, Maharashtra State, Pune on the application dated 6.5.2013.

4 It is the case of the petitioner that they purchased the stamp papers of Rs.15,00,400/- on 7.11.2012 from Stock Holding Corporation

of India Ltd., Nashik. The same were not used for some technical reason. Hence, the petitioner filed application under section 48(3) of the Bombay Stamp Act, 1958 on 6.5.2013 for refund of the stamp amount. Along with said application, the petitioner placed on record certificate issued by Stock Holding Corporation of India Ltd. from whom they purchased stamp of Rs.15,00,400/-. In that Certificate, it was specifically stated that the petitioner purchased the said stamp paper on 7.11.2012. Thereafter, the respondent no.1 by their letter dated 17.7.2014 called upon the respondent no.2 to remove office objections. To that effect, petitioner by their letter dated 12.11.2014 submitted explanation. Respondent no.1 by impugned order dated 13.3.2015 rejected petitioner's application for refund of stamp duty on the ground that petitioner failed to file application within limitation as per section 48(3) of the said Act. Hence, the present Writ Petition.

5 The learned counsel for the petitioner submits that respondent no.1 erred in coming to the conclusion that petitioner failed to file their application under section 48(3) of the said Act within 6 months from the date of purchase. He submits that petitioner filed their application on 6.5.2013 for refund of stamp duty of Rs.15,00,400/- which was purchased by them on 7.11.2012. In support of this contention, the petitioner placed on record certificate dated 11.5.2013 issued by Stock Holding Corporation of India, Nashik Branch. He submits that the respondent failed to consider the date of purchase as 11.5.2013 instead of 7.11.2012. He submits that actually 11.5.2013 is the date of certificate issued by Stock Holding Corporation of India Limited, Nashik Branch. He submits that if the application is filed within time i.e. 6 months then it is binding on the respondent to refund the unused stamp paper amount. He submits that even before passing impugned

order dated 26.5.2014 the respondent failed to call any explanation from the petitioner for the date of purchase of stamp paper for affidavit dated 9.7.2013. He submits that respondent no.1 rejected application on a ground that affidavit dated 8.7.2013 was filed by petitioner on a stamp paper of 9.7.2013. He submits that actually affidavit was prepared on 8.7.2013. But on that date, stamp paper was not available. Hence, he purchased stamp paper on 9.7.2013. Said affidavit was on their computer and same print out was taken out by them on stamp paper purchased on 9.7.2013. These facts were explained by the petitioner in the present petition.

6 The learned counsel for the petitioner submits that petitioner filed application in time as per section 48(3) of the said Act. Respondent no.1 rejected their application for refund of unused stamp of Rs.15,00,400/-. He submits that in the interest of Justice, this Hon'ble Court be pleased to set aside the impugned order dated 26.5.2014 and direct the respondent to refund the said amount as per law immediately.

7 On the other hand, the learned A.G.P. for the respondent vehemently opposed the present Writ Petition. She submits that the impugned order passed by respondent no.1 on 26.5.2014 was according to the documents on record. She submits that the petitioner has not placed on record any explanation how the affidavit dated 8.7.2013 was prepared on the stamp paper of 9.7.2013. Hence, there is no question of entertaining the present Writ Petition and same is required to be dismissed with costs.

8 I have heard both the sides at length. It is to be noted that in the

present proceeding, petitioner placed on record a certificate issued by Stock Holding Corporation of India Ltd. dated 11.5.2013 showing that petitioner purchased stamp paper of Rs.15,00,400/- on 7.11.2012. Thereafter, petitioner filed application on 6.5.2013 as per provision of section 48(3) of the said Act. That application was filed by the petitioner within six months.

9 Respondent no.1 without calling any explanation from petitioner about the affidavit dated 8.7.2013 rejected their application for refund of court fees. It is to be noted that petitioner specifically explained in the petition that said affidavit was prepared on 8.7.2013. That was on their computer. On that day stamp paper was not available. They purchased stamp paper on 9.7.2013 and same was printed out without changing date. It is to be noted that respondent no.1 without calling any explanation about the affidavit filed by the petitioner passed impugned order.

10 Considering the above mentioned facts that the petitioner filed application for refund of amount of stamp paper within six months as provided under section 48 (3) of the said Act, I am satisfied that applicant has made out a case for setting aside impugned order dated 26.5.2014 passed by respondent no.1 and entitled to refund as per rules. Hence, Writ Petition allowed as under:

a) Order dated 13.3.2015 passed by Chief Controller (Revenue Authority) and Inspector General of Registration and Controller of Stamp, Maharashtra State, Pune on the application dated 6.5.2013 Exhibit-'A' to the petition is set aside.

b) Petitioner is entitled to refund of stamp duty of Rs.15,00,400/- after statutory deduction if any.

c) It is made clear that refund be made within 12 weeks from today, failing which they have to pay interest @ 18% p.a. from the date of application dated 6.5.2013 till realisation.

d) No order as to costs.

JUDGE