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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 652 OF 2016

M/s. S. K. Realtors & Anr. … Petitioners

Vs.

The Inspector General of Stamps
& Controller of Stamps, Maharashtra
State, Pune & Ors. … Respondents

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Mr. R. D. Soni i/b Ram & Co. for the Petitioners.

Mr. Vishal Thadani, AGP for Respondent Nos. 1 to 4.

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CORAM : V. M. KANADE, &
Ms. NUTAN D. SARDESSAI, JJ.

DATE : NOVEMBER 17, 2016

PC.

1. Heard the learned counsel appearing on behalf of the Petitioners and the learned AGP appearing on behalf of Respondent Nos. 1 to 4. This Court by an order dated 21st September, 2016 was pleased to issue notice before admission, and the learned AGP has waived service of notice for Respondent Nos. 1 to 4, and the learned AGP sought time to file reply, and the matter was adjourned to 13th

October, 2016. On that date two weeks time was granted to the Respondents to file reply, and the matter was adjourned to 17th November, 2016. Even today the State has not filed any reply. We have, therefore, no option but to hear the matter on the basis of uncontroverted averments made in the petition.

2. Brief facts relevant for the purpose of deciding the petition are that an agreement was to be executed between Petitioner No. 1 and Petitioner No. 2 and for that purpose the agreement was franked on the franking machine and the stamp duty was paid. However, the said agreement was not executed since the transaction between the parties was cancelled.

3. Under the Maharashtra Stamp Act, in the event an agreement which is stamped is not executed or cancelled, an application can be made for seeking refund of the stamp duty, under Section 48 of the Maharashtra Stamp Act. It is relevant to refer the said provision, which reads as under:

> **"Section 48 - Application for relief under section 47 when to be made :**
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> 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 of 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 instrument.

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

4. It is not in dispute that the said Act has made a specific provision for seeking refund of stamp duty if the transaction is not executed / and or cancelled by the parties. A perusal of Section 48 of the said Act reveals that in the event a party seeks refund of stamp duty, he has to comply with certain conditions, viz. he has to file an application within six months from the date of the agreement. The cases in which an application for refund can be filed are mentioned various clauses of section 48. It is not in dispute that Petitioner No. 1 and Petitioner No. 2 did not execute the said agreement. The Petitioners have made a specific averment in paragraph 3 of the petition that the agreement was mutually cancelled by the parties. Since no reply is filed by the Respondents, this fact is not disputed. The Jt. Registrar-I and Stamp Collector has confirmed this fact in the inquiry which was held by him. It is also not in dispute that the application for refund was filed within six months from the date on which payment of stamp duty was made.

5. Since the amount of stamp duty was above Rs. 50 lakhs, Jt. Registrar-I and Stamp Collector (Respondent No. 3) has to make a recommendation to the Dy. Inspector General of Stamps & Dy.

Controller of Stamps (Respondent No. 2).

6. After the recommendation was made by the Jt. Registrar-I and Stamp Collector, the Dy. Inspector General of Stamps came to a conclusion that though the application for refund was filed within a period of limitation, it was not made online as per the circular issued by the office, and therefore, he rejected the said application.

7. Being aggrieved by the said order, the Petitioners have approached this Court by filing petition under Article 226 of the Constitution of India.

8. It is submitted by the learned counsel appearing on behalf of the Petitioners that firstly, the Petitioners had not made an online application, seeking refund. However, since the server crashed, the said application could not be made online, and therefore, they physically filed the application for refund before the Jt. District Registrar-I and Stamp Collector. Secondly, he submitted that Section 48 of the said Act does not state that only when application is made online, the order of refund can be granted. Thirdly, he submitted that the circular issued by the Department could not over-ride the statutory

provision, and therefore, to that extent the said Circular was ultra vires to the main provision. Lastly, it was submitted that a proper inquiry was made by the Jt. District Registrar-I and Stamp Collector and all the parameters of Section 48 of the said Act were complied by the Petitioners.

9. Though several opportunities were given to the Respondents, no reply has been filed by them. It is not in dispute that Jt. District Registrar-I and Stamp Collector has verified the said application and noticed that formalities were duly complied and the application was filed within limitation. In our view, Dy. Inspector General of Stamps, Pune has clearly erred in relying on the Circular for the purpose of rejecting the application for refund under Section 48 of the said Act. Once the Jt. District Registrar-I and Stamp Collector has verified the transaction and was satisfied that the transaction was not executed and cancelled prior to execution of the document, application of the Petitioners for refund ought to have been accepted by the Dy. Inspector General of Stamps, Pune.

10. The purpose behind incorporating section 48 of the Maharashtra Stamp Act is clearly to ensure that in cases where

transaction is not executed, or cancelled before execution, then the State is not entitled to claim revenue for execution of the said document, and the State, therefore, is under an obligation to refund the said amount. The State, therefore, in our view, cannot resort to profiteering on the basis of a document which is not executed. The Dy. Inspector General of Stamps, Pune was not justified on relying on the circular issued by the Department, which stated that application has to be made online. It is not in dispute that the Petitioners had no opportunity to make application online, since the server was not working, and therefore, he could not make application online. The Jt. District Registrar-I and Stamp Collector in his report has accepted this position.

11. Lastly, the impugned order has been passed without giving hearing to the Petitioners and the said *exparte* order was passed after more than 20 letters were written by the Petitioners to the Dy. Inspector General of Stamps, Pune. Viewed, therefore, from any angle, the impugned order is liable to be quashed and set aside and the recommendation made by the Jt. District Registrar-I and Stamp Collector, therefore, ought to have been accepted. Writ petition is,

therefore, allowed in terms of prayer clause (a). However, the refund shall be made by paying interest @ 6% per annum from the date of deposit. Writ petition is accordingly disposed of in the aforesaid terms.

Sd/-	Sd/-
[Ms. NUTAN D. SARDESSAI, J.]	[V. M. KANADE, J.]

Vinayak Halemath