IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1822 OF 2016

Aditya Birla Finance Limited ...Petitioner

Versus

The Collector of Stamps, Mumbai ...Respondent

...

Mr. Pradip Babharu with Ms Sanaea Laskari i/b. M/s. Wadia Ghandy and Co. for the Petitioner.
Mr. Abhay Patki, AGP for Respondent.

CORAM : A.S. OKA &
SMT. ANUJA PRABHUDESSAI, JJ.

DATED : 5th DECEMBER, 2016.

P. C. :

Heard the learned counsel appearing for the Petitioner. By this petition filed under Article 226 of the Constitution of India, the challenge is to the orders dated 26th June, 2014 (Exhibit A-1 and Exhibit A-2 to the petition).

2. According to the case of the Petitioner, which is a Finance Company, on the request made by a Company, Coastal Project Ltd. (for short 'Coastal') a Credit Arrangement Letter dated 26th September, 2011 was issued by the Petitioner recording its approval to grant certain facilities of working capital to Coastal. A Facility Agreement

dated 27th September, 2011 was executed by and between the Petitioner and the Coastal which contained a clause for giving a Term Loan to Coastal. According to the case of the Petitioner, the said agreement (for short "Facility Agreement")was executed at Hyderabad. Reliance is placed on various clauses of the Facility Agreement. A document of Guarantee was also executed at Hyderabad by a Director of Coastal by which he guaranteed the re-payment of the amount payable by Coastal. Reliance is also placed on proceedings of the Arbitration Petition filed by the Petitioner under Section 9 of the Arbitration and Conciliation Act, 1996. A case is made out by the Petitioner that for the purpose of Arbitration Petition, the aforesaid two documents executed at Hyderabad were brought into the State of Maharashtra. On bringing the said documents in September, 2013 in the State of Maharashtra, in terms of Section 18 of the Maharashtra Stamp Act, 1858 (for short "the said Act") the documents were lodged for adjudication. Thereafter the impugned orders / interim orders were issued by the Collector of Stamps. Under both the orders, the Petitioner was called upon to pay the deficit stamp duty as well as penalty on the two documents. According to the case of the Petitioner, the said order / notices were served to the Petitioner on 4th August, 2014. The Petitioner responded by a letter dated 14th August, 2014, a copy of which is annexed at Exh-E to the Petition. The Petitioner objected to the levy of the total penalty amount of Rs.15,68,000/-. A contention was raised that while calculating the stamp duty payable on the instruments, the same has been calculated on the date of the execution thereof rather than the date on which the documents were brought into the State. According to the case of the Petitioner, the amounts of deficit stamp duty and penalty payable under both the impugned orders were deposited on 26th March, 2015. The copies of challans showing the deposit of the amounts are annexed at Exhibits F-1 to F-4. Thereafter, the Petitioner addressed letters to Coastal on 19th May, 2015 and 29th April, 2016 calling upon the Coastal to pay the amounts which were paid by the Petitioner in terms of the impugned orders. Thereafter, a legal notice dated 10th May, 2016 was issued by the Attorneys of the Petitioner calling upon the Coastal to pay the amounts. It was replied by the Advocates and Solicitor of Coastal on 31st May, 2016.

3. The learned counsel for the Petitioner invited our attention to the response by the Petitioner to the impugned orders in the form of the letter dated 14th August, 2014. He pointed out that apart from raising an objection to the levy, personal hearing was demanded by the

Petitioner. However, no opportunity of being heard was granted to the Petitioner. Inviting our attention to the impugned orders, he pointed out that in terms of clause 3 thereof, objections were raised in writing within the period of 15 days from the date on which orders were served. He submitted that merely because it is not recorded by the Petitioner that the amounts demanded were paid under protest, it cannot be said that the Petitioner has waived its objection to the levy of amounts. In any case, he has submitted that the challenge to the levy on Petitioner does survive.

4. We have carefully considered the submissions. In clause 13 of the synopsis it is sought to be contended that on 26th March, 2015 the amounts demanded under the impugned orders were paid by the Petitioner under protest. Admittedly, no such protest was made by the Petitioner either at the time of deposit of the amounts on 26th March, 2015 or any time thereafter. In fact, the amounts demanded were paid by the Petitioner unconditionally.

5. By the letters dated 19th May, 2015 and 29th April, 2016 the Petitioner called upon Coastal to pay the amounts already paid by the Petitioner towards deficit stamp duty and penalty in terms of the impugned orders. Reliance was placed on the letter dated 19th May,

2015 and the Clause 14 of the Facility Agreement, which provides that all expenses incurred by the Petitioner shall be to the account of the borrower i.e. Coastal. In both the letters, it is not even case made out that the amounts paid to the State Government were paid under protest. On the basis of a clause in the agreement, by claiming that the amounts paid were expenses, the Petitioner called upon Coastal to pay the said amounts.

6. We have carefully perused the notice of demand dated 10th May, 2016 issued by Attorneys of the Petitioner in which reliance was placed on clause 14 of the Facility Agreement and Clause 10 of the Consent Minutes of award dated 1st April, 2014. It is specifically averred in the notice that as per the said clauses, Coastal was liable to repay the amounts paid as aforesaid by the Petitioner. Even in the said notice, it is not stated that amounts were paid under protest and without prejudice. By his letter dated 31st May, 2016 the Advocate and Solicitor of Coastal informed the Petitioner inability of Coastal to pay the said amount. It is only thereafter that the present petition has been lodged on 20th June, 2016.

7. Thus, even going by the averments made in the petition and

the annexures to the petition, the amounts demanded under the impugned orders were paid by the Petitioner on 26th March, 2015 without any protest and without any condition. Not only that amounts were not paid under protest, but in the years 2015-2016, demands were made by the Petitioner to Coastal calling upon the Coastal to make reimbursement. The demand was made by the letters dated 19th May, 2015 and 10th May, 2016 as well as legal notice dated 31st May, 2016. Thus, after making unconditional payment of the amounts on 26th March, 2015, the Petitioner never proceeded against the State Government. No protest was lodged with the State Government. The Petitioner made an attempt to proceed against the borrower by demanding the said amounts. It is only when the borrower refused to pay the said amounts, the present petition has been filed on 28th June, 2016. The writ jurisdiction under Article 226 of the Constitution of India is always discretionary. Considering the aforesaid conduct of the Petitioner of paying the amounts unconditionally without making any protest, it is not a fit case to exercise the jurisdiction under Article 226 of the Constitution of India.

8. Accordingly, the petition is rejected. We make it clear that we have made no adjudication about the legality of the demand made

to Coastal and all contentions in that behalf are kept open.

(ANUJA PRABHUDESSAI, J.) **(A.S. OKA, J.)**