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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7607 OF 2016

Mohan Chimanlal Gujarathi ...Petitioner
vs.
The State of Maharashtra ...Respondent

Mr.Sushil Nimbkar for the Petitioner
Mr.Manish Pabale, AGP for the respondent No.1

CORAM : A.S.OKA, &
SMT.ANUJA PRABHUDESSAI, JJ.
DATE : MARCH 16, 2017

ORAL JUDGMENT: (PER A.S.OKA,J.)

1 Perused the order dated 3rd February 2017. Notwithstanding the detailed order passed by this Court, the learned AGP has not received any instructions. As directed under the said order, we have taken up the petition for final hearing. Paragraph 6 of the order dated 3rd February 2017 clearly records that no further time will be granted to the State.

2 The facts of the case are brief and simple. On an agreement for sale dated 11th December 2013, the petitioner got franking done in the sum of Rs.27,90,000/- through Axix Bank Limited having a branch at Sai Capital, S.B.Marg, Pune. A photo copy of the first page of the document of which franking was done has been annexed as Exhibit-A to the petition. The case of the petitioner is that the transaction could not be materialised. Therefore,

an application was made on 2nd June 2014 by the petitioner (Exhibit-B to the petition) to the Joint District Registrar Class-I, and the Collector of Stamps, Pune City, Pune for refund of the sum of Rs.27,90,000/-. The application was made in the prescribed form. It is the case of the petitioner that the original document bearing the franking was also submitted.

3 The Joint District Registrar Class-I by a letter dated 26th August 2014 called upon the Axix Bank Limited to submit original hyperlink report/ Pitney Bowes report to his office. The letter specifically mentioned that the original document bearing franking was forwarded to the Axix Bank. By a letter dated 28th October 2014, the Axix Bank responded to the said letter. Material part of the said letter dated 28th October 2014 reads thus:

> "Confirmed that franking for the amount of Rs.27,90,000/- (Twenty Seven Lakhs Ninety Thousand Only) was done by Mr.Mohan Gujarathi, Director Prabodh Artha Sanchay Pvt Ltd on 11th December 2013 with SR No.76960/197617 from Axix Bank, Sai Capital, S.B.Marg, Pune.
>
> Due to technical reason Hyper Link Report was not generated on 11th December 2013.
> We are also enclosing necessary documents in this regard for your perusal and necessary action.

(underline supplied)

This letter is issued at your specific request without any liability on the part of the bank or any of it's officials."

4 Thus, there is a confirmation given by the Axix Bank that franking for the amount of Rs.27,90,000/- was done by the petitioner on 11th December 2013 and even serial no.76960/197617 of frankingis mentioned in the said letter. The said letter further records that due to technical reasons, Hyper Link Report was not generated. A copy of print out of e-mail forwarded by the Axix Bank to Pitney Bowes Company and the reply sent by way of e-mail by Pitney Bowes India was also forwarded to the office of the Joint District Registrar Class I, Pune. By a letter dated 5th May 2015, the Joint District Registrar Class-I sought guidance from the Deputy Inspector General of Registration. By a letter dated 24th November 2015, the petitioner called upon the Joint District Registrar Class-I to arrange for refund. In the said letter, the petitioner stated thus:

"This is in respect of refund of stamp duty amount of Rs.27,90,000/- which we had deposited through Axix Bank on December 11, 2013. The franking number is 76960/197617.

As the said stamp was not executed, we had submitted our claim for the refund of the said stamp duty amount. Please refer our application Ref.No.1268 dated June 2, 2014 towards the same.

Since then we have been constantly following up with your office for the earliest disbursement of refund. As a part of it, we have visited your office several times in last 6 months. However, it was informed to us that due to technical problems at your end, refund is not processed.

It is regretful that due to your technical problems, our refund is withheld for such a long time. The amount of our refund is considerably large and we have to suffer unnecessarily."

5 The learned counsel for the petitioner stated that even as of today, refund has not been issued. The learned AGP has not received any instructions. The learned AGP has placed on record a copy of print out of e-mail dated 6th February 2017 addressed by the office of the Government Pleader to the Principal Secretary, Revenue Department, the Deputy Inspector General of Registration and Controller of Stamps, Pune Division, Pune and the Joint District Registrar Class I cum Collector of Stamps, Pune City, Pune. He states that he has also discussed the matter with the Joint District Registrar Class I. However, there is no response. A copy of print out of e-mail is taken on record and marked `Y-1' for identification.

6 We have already narrated the case made out by the petitioner in brief. From the documents annexed to the petition, following facts emerge :

(a) The petitioner deposited a sum of Rs.27,90,000/- with Axix Bank Limited, Ground Floor, Sai Capital, S.B.Road, Pune. The Agreement for sale dated 11th December 2013 was submitted for franking to the said Bank. Accordingly, stamp duty of Rs.27,90,000/- was paid vide franking No. 76960/197617;

(b)The said original document was submitted on 2nd June 2014 along with the application made by the petitioner in a prescribed form for grant of refund. The said document along with the application was submitted in the office of the Joint District Registrar Class I and Collector of Stamps, Pune;

(c)By letter dated 26th October 2014 (Exhibit-C to the petition), the said original document was forwarded by the office of the Joint District Registrar Class I to the aforesaid branch of the Axix Bank calling upon the bank to submit hyperlink link report/Pitney Bowes report.;

(d) A letter of confirmation dated 28th October 2014 was issued by the authorised signatory of the Axix Bank confirming that franking for the amount of Rs.27,90,000/- was done. The said report records that hyper link report was not generated due to technical reason on 11th December 2013. The Axix Bank made an effort to get the report from Pitney Bowes India as is clear from the annexure to the letter dated 28th October 2014. The response of the said Company was that in process related to the refund, cancellation, etc the Stamp Office of the IGR should be contacted as the role of the company is limited to prove the authorised equipment and related services to the users;

(e)Notwithstanding the letter dated 24th November 2015, no decision has been taken on the application made by the petitioner for refund.

7 We cannot appreciate this inaction on the part of the office of the Joint District Registrar Class I. The original document bearing franking stamp was produced by the petitioner. The stand of the Axix Bank Limited is that amount of Rs.27,90,000/- was deposited by the petitioner for franking of the said document. Serial number or franking number 76960/197617 is also mentioned. If hyper link could not be generated due to technical reason and the if Pitney Bowes Company refused to co-operate, the office of the Joint District Registrar Class I could have taken inspection of the record of the Axix Bank and re-confirmed the deposit amount of Rs.27,90,000/- by the petitioner for the purpose of franking.

7 Notwithstanding the order dated 3rd February 2017 which was communicated by the office of the Government Pleader on 6th February 2017, no action has been taken by the officers of the State Government. Paragraphs 3 to 5 of the said order reads thus:

> "3 We direct the appropriate officer of the State Government to file a reply setting out the reasons why refund has been denied to the petitioner as per the Rules. If Hyper Link could not be generated as contended by the Axis Bank, the officers of the State could have surely verified the genuineness of the franking by perusing the record of the Axis Bank.
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> 4 We direct the appropriate officer of the respondent to consider whether the petitioner is entitled to refund. If he finds that the petitioner is entitled to refund in accordance with the Rules, necessary amount be paid to the petitioner.
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> 5 If the Court finds at the time of final hearing that the petitioner is entitled to refund and still refund amount is not released as per the Rules, the Court will consider of imposing compensatory costs on the respondent apart from directing the respondent to pay interest at appropriate rate."

8 Hence, this is a fit case where the State Government will have to be directed to pay interest to the petitioner if not from the date of the application for refund but at least from the date of filing of this petition at the rate of 7.5% per annum.

9 Accordingly, we dispose of the petition by passing the following order:

(i) We direct the petitioner to appear before the Joint District Registrar Class I and the Collector of Stamps, Pune City, Pune on 17th June 2017 at 11.00 a.m along with an authenticated copy of this order;
(ii) We direct the Joint District Registrar Class I and the Collector of Stamps, Pune City, Pune to make necessary verification by taking inspection of the original record of the Axix Bank Limited for the confirmation of the franking for the amount of Rs.27,90,000/- in terms of the letter dated 24th October 2014 (Exhibit B to the petition). This process shall be completed by the Officer within a period of one month from 17th June 2017;
(iii) If the record of the Axix Bank confirms deposit of the aforesaid amount for the purpose of franking by the petitioner, as the original document bearing franking is already submitted in the office of the Joint District Registrar Class I, Pune, the amount of Rs.27,90,000/- shall be refunded to the petitioner within a period of two months from 17th June 2017;

(iv) The amount of Rs.27,90,000/- shall be paid to the petitioner along with interest at the rate of 7.5% per annum from 6th May 2016 when this petition was lodged for filing;

(v) Rule is made absolute on above terms;

(vi) All concerned to act upon an authenticated copy of this order.

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