IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10557 OF 2016

HDFC Bank Limited a Banking ...Petitioner
vs.
State of Maharashtra & Ors. …Respondents

Mr. Dinyar Madon, Senior counsel a.w Ms. Smriti Biradar i/b P & C Legal Advocates for the Petitioner.
Mr.Ashutosh Kumbhakoni, Senior Counsel a/w Mr. Akshay Shinde i/b Ms. Vaishali Nimbalkar, AGP for the Respondents.

CORAM : *M. S. KARNIK, J.*
(RESERVED ON: 18/01/2017)
(PRONOUNCED ON: 25/01/2017)

P.C.:

. The challenge in this petition is to the order dated 16/5/2016 passed by the Chief Controlling Revenue Authority, Maharashtra State, Pune (hereinafter referred to as “the Appellate Authority”, for short) u/s 53 of the Maharashtra Stamp Act (hereinafter referred to as “the said Act”, for short). By the impugned order the Appellate Authority has remanded the matter back to the Collector of Stamp, Enforcement-II, Mumbai to decide the case afresh within a period of 3 months, after giving an opportunity of being heard on the points raised, subject to depositing 75 % of the deficit stamp duty and penalty as per order dated 17/12/2013 within 2 weeks.

2. The Petitioner is aggrieved by that part of the impugned order by which they have been directed to deposit 75% of the deficit stamp duty and penalty as per order dated 17/12/2013.

3. Brief facts in a nutshell are:

The Petitioner purchased the special adhesive stamp worth

Rs.100 on 20/11/2007 for execution of the document. The Petitioner executed the document titled as agreement on 30/11/2007 with intention to purchase part and parcel of the commercial property described in the schedule at page 27 to 29 of the document. The Petitioner filed an application under the Amnesty scheme of 2008 in the office of the Collector of Stamps, Enforcement (II), Mumbai and thereby sought stamp duty exemption to the tune of 75%. The Respondent No.2/Collector of Stamps by order dated 7/12/2013 passed in Case No. SDE/NEW/177/011 called upon the Petitioner to pay the deficit stamp duty of Rs.3,45,55,465/- and Rs.89,84,425/- against the penalty. Being aggrieved by the order dated 7/12/2013 passed by the Respondent No.2/Collector of Stamps, the Petitioner filed the Appeal under the provisions of section 53(1A) of the said Act before the Appellate Authority.

4. Learned Senior counsel for the Petitioner in his challenge to the impugned order invited my attention to paragraph 5 and 8 of the impugned order wherein the Appellate Authority has found that the lower Authority has not called for the various details which have been noted in the impugned order and that the case has not been adjudged in view of the contents, if any, applicable to the present case.

5. The submission of the learned senior counsel for the Petitioner is that having held that the lower authority has not considered various details as set out in the order, the Appellate Authority while remanding the matter was not justified in directing the Petitioner to deposit 75 % of the deficit stamp duty and penalty as per the order dated 7/12/2013.

6. Learned Senior counsel for the Petitioner contended that the payment of the stamp duty and penalty is not a condition precedent for entertaining the Appeal. According to the learned Senior counsel, when the Appellate Authority was satisfied that the matter needs to be remanded back to the lower authority for a fresh hearing, the Appellate Authority was then not justified in passing a conditional order of remand. According to the learned Senior counsel, the application filed for Amnesty was heard by the Collector on its own merits and there was no condition imposed during the pendency of the application.

7. Per contra, learned Senior counsel for the Respondent supported the impugned order passed by the Appellate Authority. The learned senior counsel invited my attention to the reasons given by the Appellate Authority and contended that in the facts of the present case and for the reasons recorded the Appellate Authority was justified in passing the impugned order. Learned Senior counsel invited my attention to the Amnesty Scheme under which an application was made by the Petitioner before the Collector of Stamps. According to the learned Senior counsel, the Amnesty scheme provides only for reduction of penalty chargeable under the various provisions of the Bombay Stamp Act, 1958. According to the learned Senior counsel the lower Authority has failed to call for certain details, which were necessary to adjudge the case before him. In view thereof the Appellate Authority was justified in passing a conditional order of remand.

8. Having considered the submissions advanced on behalf of the learned senior counsel of the respective parties, I am of the opinion that the impugned order is not justifiable in so far as it imposes

condition of deposit of 75% of deficit stamp duty as per the order dated 7/12/2013. In an Appeal filed by the Petitioner, once the Appellate Authority was satisfied that certain aspects of the matter were not considered by the Lower Authority which necessitated the remand, the Appellate Authority ought not to have imposed the condition of deposit. In my view, once the Appellate Authority has remanded the matter back to the lower Authority it virtually amounts to setting aside the order passed by the Lower Authority. The Petitioner is justified in contending that once the order of the lower authority is set aside the question of directing deposit in terms of the order dated 7/12/2013 cannot arise at all. Though the Appellate Authority has not stated in specific terms that the order dated 7/12/2013 is set aside, the impugned order passed by the Appellate Authority remanding the matter back to the Collector of Stamps virtually amounts to setting aside the order dated 7/12/2013. The impugned order passed by the Appellate Authority therefore calls for interference.

9. Hence, the following order.

i) The impugned order dated 7/12/2013 passed by the Respondent No.2/Appellate Authority to the extent it directs the Petitioner to deposit 75% of the deficit stamp duty and penalty as per order dated 7/12/2013 within 2 weeks is quashed and set aside;

ii) The Petitioner is directed to appear before the Respondent No.2 on 30/1/2017 at 11.00 a.m. and the Respondent No.2 may fix the further schedule of hearing on that date;

iii) The Respondent No.2 may decide the matter on its own merits as expeditiously as possible and in any event within a period of 8 weeks from 30/1/2017 after giving an opportunity of hearing to the Petitioner;

iv) I may not be understood to have expressed any opinion on the merits of the matter and all the contentions on merits raised in the Petition are kept open;

v) It is clarified that the Respondent No.2 is free to deal with the Application on its own merits and in accordance with law;

vi) Writ Petition is disposed of in the above terms.

(M. S. KARNIK, J.)