

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1005 OF 2017**

Indiabulls Housing Finance Ltd.

..Petitioner

v/s.

Union of India & Ors.

..Respondents

Mr. Rajesh Kanojia a/w. Deepika Motagi i/b. Res Juris for the
Petitioner

Mr. V.P. Malvankar AGP for the Respondent No.1.

Mr. B.M.Chatterji Sr. Advocate a/w. Parag Vyas, Maya Mujumdar and
Ranjit Basu for the Union of India.

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

DATED : 2ND FEBRUARY, 2017

P.C.

1. Heard the learned Counsel appearing for the petitioner. The case made out in this petition under Article 226 of the Constitution of India is that the Petitioner had filed several complaints under Section 138 of the Negotiable Instruments Act, 1881, at Gurgaon and at New Delhi. According to the case of the petitioner, nominal court fees were paid on each complaint as per the local law.

2. It is pointed out that as per the decision of the Apex Court in *Dashrath Rupsingh Rathod, v/s. State of Maharashtra and Another*¹, some of the said complaints were transferred to the Courts in the State of Maharashtra. It is pointed out that as per the provisions of the Maharashtra Court Fees Act, 1959, (for short “the said Act”) the Petitioner was required to pay Court fees on the said complaints. The amount of the Court fees paid ranges from Rs. 200/- to Rs.10000/-. It is submitted that in view of the ordinance issued thereafter amending the Negotiable Instruments Act, 1881, the complaints were returned to the Petitioner for filing the same in the appropriate Court. The Complaints were filed in the Courts in which such Court fee is not payable. It is pointed out that after return of the complaint/s, on application made by the petitioner, some Courts granted refund to the extent of 15% or 25%. Some of the Courts refused to grant any refund.

3. The learned Counsel appearing for the Petitioner does not dispute that as of today there is no statutory provision under the said

¹ 2014(9) SCC 129

Act under which the Court fees paid on the complaints under Section 138 of the Negotiable Instruments Act, 1881 can be refunded fully or in part on return of the complaint for presentation before the proper Court. He invited out attention to Section 15 of the said Act. He submitted that in case of an appeal or a plaint under the Code of Civil Procedure, 1908, when it is rejected or is returned, there is a provision for full refund of Court fee. He submitted that in similar contingency, in a case of a complaint under the Code of Criminal Procedure, 1973, there is no provision made under the said Act. He relied upon the Judgment and Order dated 1st October, 2014 by a Division Bench of this Court at Aurangabad in the case of *Sanjeevkumar Harakchand Kankaria vs. Union of India in Writ Petition No.4919-2014*. He submitted that in similar case, the Division Bench recommended to the Government to consider a case, and make a provision for refund.

4. We have given careful consideration to the submissions. It cannot be disputed that unless there is a specific statutory provision which empowers the Court to order refund the court fees in full or in

part, the Court is powerless to pass such an order of refund. Under the said Act, there are specific provisions for grant of refund dealing with specific contingencies such as Sections 15 to 17. Sub section (2) of Section 43 confers power on the State Government to pass an order providing refund of Court fees on the complaints under Section 138 of the Negotiable Instruments Act, 1881 under such circumstances, and subject to such conditions as may be specified in the order. As of today, the State Government has exercised the power in relation to the complaints under Section 138 by the Order dated 2nd May, 2011. The said order relates to cases where there is a compounding of offences at different stages. The said order will not apply to the cases of the Petitioner wherein the complaints were ordered to be returned for presentation before the proper Court.

5. In this petition under Article 226 of Constitution of India, a writ of mandamus is sought directing the State Government to amend the said order dated 2nd May, 2011 issued under sub-Section 2 of section 43 of the said Act. No reasons are required to be assigned to hold that a writ of mandamus to that effect cannot be issued as it is

ultimately the discretion of the State Government under sub Section (2) of Section 43. Prayer (b) which is the only other substantive prayer is a consequential prayer to the prayer clauses (a).

6. Therefore, we are unable to grant any relief in the petition, as the Petitioner has no right under the said Act to claim refund. Accordingly the petition is rejected.

7. However, the rejection of the petition does not prevent the Petitioner from making an application to the State Government requesting the State Government to exercise the powers under sub Section 2 of Section 43 of the said Act for issuing an order providing for refund of Court fees paid on complaints under Section 138 of the Negotiable Instruments Act, 1881, in the event of the return of complaint for presentation to the proper Court. We are sure that, if such application is made, the State Government will take into consideration the case of such petitioners who are adversely affected as the complaints were returned to them for the reasons beyond their control.

8. If such a representation is made by the Petitioner, the same shall be disposed of by the State Government within a period of three months from the date of making the representation. If the State Government accepts the prayer, the Petitioners can always make fresh applications to the concerned Courts for grant of refund.

(ANUJA PRABHUDESSAI, J.)

(A.S.OKA, J.)