IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No.1016 of 2013
Date of Decision:-12.01.2017

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M/s P.C. Jain Textile Pvt. Ltd.

….. Petitioner

Vs.

State of Haryana and others

….. Respondents

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CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

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Present: - Mr.Vikram Singh, Advocate, for the petitioner.

Mr.P.P. Chahar, DAG, Haryana.

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RAKESH KUMAR JAIN, J.

The petitioner has challenged the order of the Collector dated 11.5.2012 by which an application filed by the petitioner, for refund of the amount of the Non-Judicial Stamp papers, which were not used for the execution of the sale deed, has been declined on the ground that the application filed by the petitioner is time barred, in terms of Section 50 of the Indian Stamp Act, 1899 [for short 'the Act'].

In brief, the petitioner purchased Non-Judicial Stamp papers worth ₹4,86,500/- on 11.04.2011 from Gurgaon. Since the deal could not materialized, as the vendor delayed the matter on one pretext or the other and finally refused to sell the land, therefore, the petitioner filed an application on 20.12.2011 to the Collector, Gurgaon for refund of the amount of the Non-Judicial Stamp papers purchased by it for the purpose of execution of the sale deed. The said application was rejected by the

Collector, Gurgaon on 11.5.2012 on the ground that the prayer made by the petitioner is barred by limitation.

Learned counsel for the petitioner has submitted that the impugned order does not disclose the reason for rejecting the application, that nothing has been written on the stamp papers and relied upon a decision of the Supreme Court rendered in the case of ***"The Committee-GFIL** Vs. **Libra Buildtech Private Ltd. and others"*** *2016(1) RCR (Civil) 424* and a judgment of this Court rendered in the case of ***"Sudhir Jindal and others** Vs. **State of Haryana and others"*** *2010 AIR (Punjab) 187.*

On the other hand learned counsel for the State/respondent has submitted that the stamp papers were purchased by the petitioner on 11.4.2011 and the application for refund was filed on 20.12.2011, after the expiry of six months and is thus, clearly barred by limitation in view of Section 50(2) of the Act and hence, the Collector has rightly rejected the application being barred by limitation.

I have heard both the learned counsel for the parties and perused the record.

The question that arises for adjudication is *"as to whether the petitioner/purchaser can seek refund of the amount spent for purchasing the Non Judicial Stamp papers, duly spoiled, on which nothing has been written, by making an application after a period of six months or is it barred by limitation under Section 50(2) of the Act"?*

In order to appreciate the controversy, it would be relevant to refer to certain provisions of the Act contained in Chapter V, which is dedicated to the *"Allowances for Stamps in Certain Cases".* Sections 49, 50 & 53 of the Act read as under: -

"Section 49. Allowance for spoiled stamps -

Subject to such rules as may be made by the State Government as to the evidence to be required, or the enquiry to be made, the Collector, may, on application made within the period prescribed in section 50, and if he is satisfied as to the facts, make allowance for impressed stamps spoiled in the cases hereinafter mentioned, namely :-

(a) the stamp on any paper inadvertently and undersigned spoiled, obliterated or by error in writing or any other means rendered unfit for the purpose intended before any instrument written thereon is executed by any person;

(b) the stamp on any document which is written out wholly or in part, but which is not signed or executed by any party thereto;

(c) in the case of bills of exchange payable otherwise than on demand or promissory notes-

(1) the stamp on any such bill of exchange signed by or on behalf of the drawer which has not been accepted or made use of in any manner whatever or delivered out of his hands for any purpose other than by way of tender for acceptance : provided that the paper on which any such stamp is impressed does not bear any signature intended as or for the acceptance of any bill of exchange to be afterwards written thereon;

(2) the stamp on any promissory note signed by, or on behalf of, the maker which has not been made use of in any manner whatever or delivered out of his hands;

(3) the stamp used or intended to be used for any such bill of exchange or promissory

note signed by, or on behalf of, the drawer thereof, but which from any omission or error has been spoiled or rendered useless, although the same, being a bill of exchange may have been presented for acceptance or accepted or endorsed, or, being delivered to the payee : provided that another completed and duly stamped bill of exchange, or promissory note is produced identical in every particular, except in the correction of such omission or error as aforesaid, with the spoiled bill, or note.

(d) the stamp used for an instrument executed by any party thereto which-

(1) has been afterwards found to be absolutely void in law from the beginning;

(2) has been afterwards found unfit by reason of any error or mistake therein, for the purpose originally intended;

(3) by reason of the death of any person by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, cannot be completed so as to effect the intended transaction in the form proposed;

(4) for want of the execution thereof by some material party, and his inability or refusal to sign the same, is in fact incomplete and insufficient for the purpose for which it was intended;

(5) by reason of the refusal of any person to act under the same, or to advance any money intended to be thereby secured, or by the refusal or non-acceptance of any

office thereby granted, totally fails of the intended purpose;

(6) becomes useless in consequence of the transaction intended to be thereby effected or being effected by some other instrument between the same parties and bearing a stamp of not less value;

(7) is deficient in value and the transaction intended to be thereby effected has been effected by some other instrument between the same parties and bearing a stamp of not less value;

(8) is inadvertently and undersignedly spoiled and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped:

Provided that, in the case of an executed instrument, no legal proceeding has been commenced in which the instrument could or would have been given or offered in evidence and that the instrument is given up to be cancelled.

***Explanation**.-The certificate of the Collector under section 32 that the full duty with which an instrument is chargeable has been paid is an impressed stamp within the meaning of this section."*

***"50. Application for relief under section 49 when to be made -** The application for relief under section 49 shall be made within the following periods, that is to say,-*

(1) in the cases mentioned in clause (d) (5), within two months of the date of the instrument;

(2) in the case of stamped paper on which no

instrument has been executed by any of the parties thereto, within six months after stamp has been spoiled;

(3) in the case of a stamped paper in which an instrument has been executed by any of the parties thereto, within six month after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed;

Provided that,-

(a) when the spoiled instrument has been for sufficient reasons sent out of [1][India], the application may be made within six months after it has been received back in [1][India];

(b) when, from unavoidable circumstances, any instrument for which another instrument has been substituted cannot be given up to be cancelled within the aforesaid period, the application may be made within six months after the date of execution of the substituted instrument."

"53. ***Allowance for spoiled or misused stamps how to be made -*** *In any case in which allowance is made for spoiled or misused stamps, the Collector may give in lieu thereof-*

(a) other stamps of the same description and value; or

(b) if required, and he thinks fit, stamps of any other description to the same amount in value; or,

(c) at his discretion, the same value in money, deducting [1][ten naye paise] for each rupee or fraction of a rupee".

Section 49 of the Act provides for the *'allowance for spoiled stamps'* in which it is stated that the Collector may, on an application made within the period prescribed in Section 50 of the Act, make allowance for impressed stamps, after having been satisfied. Section 50 of the Act deals with the limitation for the applications to be made for seeking relief under Section 49 of the Act and Section 53 of the Act deals with the procedure to be followed to make the allowance for spoiled or misused stamps which includes the discretion of the Collector to refund the stamp value in money, deducting [ten naye paise] for each rupee or fraction of a rupee.

In the present case the stamp papers were purchased by the petitioner for the purpose of execution of the sale deed. No instrument/sale deed was executed on the said stamp papers because the deal between the purchaser/petitioner and its vendor failed. Ultimately, the petitioner made an application to the Collector for refund of the amount of the Non-Judicial Stamp Papers but the said application was admittedly made after the expiry of six months from the date of purchase of the stamp papers after it had been spoiled. The petitioner has not quoted any special circumstance in its petition for not moving the application well within the period of limitation except for alleging that the vendor was delaying the matter on one pretext or the other and ultimately refused to sell his land. The reason assigned by the petitioner is not sufficient to till the balance of justice and equity in its favour because in the given facts and circumstance, the petitioner has to be blamed for its laziness in approaching the competent authority within time. The limitation provided for moving the application under Section 50(2) of the Act has a sanctity behind it which cannot be brushed aside making the provision redundant and nugatory. Insofar as the decision in the case of ***The Committee-GFIL (Supra)*** is concerned, the facts were altogether different because the decision has been taken by the Supreme Court in that case relying upon the maxim that "an act of the Court shall prejudice no man", which is not the situation in the present case. Similarly in the case of ***Sudhir Jindal and others (Supra)*** this Court had decided as to whether the limitation would apply in terms of Section 50(C) of the Act of a period of six months or two months, which again is not the issue in hand. Thus, both the judgments relied upon by the petitioner are not applicable to the facts and circumstances of the case and hence, the question framed in the earlier part of this order is answered in affirmative holding that the Non-Judicial Stamp papers, duly spoiled, not used for execution of an instrument can be returned for refund only within the period of limitation prescribed in Section 50(2) of the Act and in case such an application is not filed within the prescribed period, it is liable to be rejected on the ground of being barred by limitation. Hence, there is no error on the part of the respondents in rejecting the application of the petitioner and as such the present writ petition is found to be without any merit and dismissed though without any order as co costs.

(RAKESH KUMAR JAIN)
JUDGE

12.01.2017
Vivek

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*