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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 8564/2011**

MANOJ KESRI

..... Petitioner

Through Mr Harshul Choudhary and Mr Manoj
Tyagi, Advocates.

versus

GOVT OF NCT OF DELHI & ANR

..... Respondents

Through Mr Bhupender Kumar Tyagi, Advocate.
Mr Sumit K. Batra, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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14.11.2017

1. The petitioner has filed the present petition, *inter alia*, impugning the order dated 04.06.2011 (hereafter 'the impugned order') passed by respondent no.2 (Collector of Stamps), whereby the petitioner's application for refund of ₹20 lakhs on account of unused non-judicial stamp papers was rejected.
2. The petitioner's case is that he was defrauded by one Sh Pushp Kumar who had promised a loan of ₹10 crores to him. In order to document the said transaction, the petitioner had purchased stamp paper of ₹20 lakhs, *albeit*, in the name of Sh Pushp Kumar. The petitioner claims that the money to purchase the said stamp paper was withdrawn in cash from a company – M/s Sudershan Dhoop Private Limited – in which the petitioner was a Director. He claims that the said amount of cash was then given to the treasury to

purchase the stamp paper and after receipt of the same, it was handed over to Sh Pushp Kumar/his broker. However, the transaction was neither documented nor consummated.

3. In the aforesaid facts, the petitioner had applied for refund of ₹20 lakhs pertaining to the non-judicial stamp papers claimed to be purchased by him. The said application was considered by respondent no.2 and rejected vide the impugned order principally on two grounds. First, that the petitioner was neither in possession of the stamp paper nor had delivered the stamp paper to the concerned authority; and second, that the stamp papers were not in the name of the petitioner. According to respondent no.2, the facts of the present case did not fall within the parameters of Section 54 of the Indian Stamp Act, 1899.

4. Section 54 of the Indian Stamp Act, 1899 reads as under:

“Allowance for stamps not required for use.- When any person is possessed of a stamp or stamp which have not been spoiled or rendered unfit or useless for the purpose intended, but for which he has no immediate use, the Collector shall repay to such person the value of such stamp or stamps in money, deducting [ten naye paise] for each rupee or portion of a rupee, upon such person delivering up the same to be cancelled, and proving to the Collector’s satisfaction-

- (a) That such stamp or stamps were purchased by such person with a *bona fide* intention to use them; and
- (b) That he has paid the full price thereof; and
- (c) That they were so purchased within the period of six months next preceding the date on which they were so delivered:

Provided that, where the person is a licensed vendor of

stamps, the Collector may, if he thinks fit, make the repayment of the sum actually paid by the vendor without any such deduction as aforesaid.”

5. It is apparent from the above, that the necessary conditions for refund of stamp duty are not met. Thus, this Court finds no infirmity with the impugned order.

6. It is also relevant to note that Sh Pushp Kumar had also applied for refund of stamp duty of ₹Rs.20 lakhs and had submitted the original stamp papers to respondent no.2. The affidavit filed on behalf of respondent no.2 indicates that he had rejected the application filed by Sh Pushp Kumar in view of the complaint made by the petitioner. Furthermore, respondent no.2 had also retained the original stamp papers. This court had informed that Sh Pushp Kumar had filed a writ petition, impugning the decision of respondent no.2 rejecting Sh Pushp Kumar’s application for refund of stamp duty, which too was dismissed, *albeit*, in default.

7. Clearly, respondent no.2 is not competent to decide the dispute between the petitioner and Sh Pushp Kumar.

8. This Court also finds it difficult to accept that respondent no.2 would continue to retain the stamp papers without refunding the amount to its rightful owner. In the aforesaid circumstances, the present petition is disposed of by permitting the petitioner to institute appropriate proceedings against Sh Pushp Kumar for recovery of the amount. In the event, the petitioner obtains a decree in appropriate terms; the petitioner may also have a recourse for recovering the amount directly from respondent no.2. It is seen that the present petition is pending before this Court since 2011. It

would be open for the petitioner to file an appropriate application seeking exclusion of the time spent by the petitioner in prosecuting the present petition before this Court. Needless to mention that if such application is moved, the same would be decided in accordance with law.

9. The petition is disposed of.

VIBHU BAKHRU, J

NOVEMBER 14, 2017

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