IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 903 OF 2015

Mercury Travels Limited
A company incorporated under the Companies Act, 1956 and having its registered office at 4, Mango Lane, Kolkata - 700001, West Bengal. … PETITIONER

V E R S U S

1. State of Maharashtra

2. Chief Controlling Revenue Authority and Inspector General of Registration and Controller of Stamps, Maharashtra State, Pune.

3. Additional Controller of Stamps, Mumbai.

4. Collector of Stamps, Mumbai. … RESPONDENTS

Mr. Arif Doctor a/w Mr. Urvaksh Anklesaria a/w Mr. Ajaraj D. Bagwe I/by Mulla & Mulla and Craigie Blunt and Caroe for Petitioner.
Mr. Milind More, AGP for Respondent Nos.1, 3 and 4 – State.

CORAM : R. M. SAVANT AND NITIN W. SAMBRE, JJ.

DATE : 29th OCTOBER 2018.

ORAL JUDGMENT

. Rule, having regard to the nature of the directions to be issued made returnable forthwith and heard.

2. The above Writ Petition seeks a refund of an amount of Rs. 12,87,000/- from the Respondents. It is not necessary to burden this order with unnecessary details. Suffice it would be to state that Petitioner executed a registered Deed of Transfer with one Tanay Leasing & Finance Pvt. Ltd. on 19th March 2013. Vide said Deed of Transfer, a Transferor i.e. Tanay Leasing and Finance Pvt. Ltd. has transferred/sold to the Petitioner five fully paid up shares of one Sheila Mahal Co-operative Housing Society Ltd. along with all rights, title and interest of Flat admeasuring 560 sq. ft. in the Society for the total consideration of Rs. 1,90,00,000/-.

3. It seems that while computing the stamp duty payable on the said consideration the same was determined after taking into consideration the depreciation at the rate of 20% instead of 40% which is applicable in respect of the buildings which are more than 50 years old. The Petitioner had accordingly paid stamp duty of Rs.12,87,000/- while executing the said document. There is no dispute about the fact that the total consideration i.e. Rs.1,90,00,000/- was paid by the Petitioner to the Transferor i.e. Tanay Leasing & Finance Pvt. Ltd.

4. Immediately after a few days the Petitioner realized that it had made a mistake in determination of the market value of the said flat and it had made an excess payment of Rs.3,22,300/- on the Deed of Transfer

which was executed on 19th March 2013. According to the Petitioner, the correct market value of the flat was Rs.1,92,93,303/- and the correct stamp duty payable was Rs. 9,64,700/- on the said Deed of Transfer on the market value being Rs.1,92,93,303/-.

5. In view thereof, the Petitioner registered a Deed of Cancellation with the transferor i.e. Tanay Leasing & Finance Pvt. Ltd. on 25th March 2013. It was recorded in the said Deed of Cancellation that the fresh Deed of Transfer would be executed between the parties on the same terms as the first Deed of Transfer Dated 19th March 2013. Accordingly a fresh Deed of Transfer was executed on 25th March 2013 after the Deed of Cancellation was executed between the Petitioner and said Tanay Leasing & Finance Pvt. Ltd. It is required to be noted that the said second Deed of Transfer is identical to the first Deed of Transfer dated 19th March 2013. The Petitioner had paid the stamp duty of Rs.9,65,000/- on the market value of Rs.1,92,93,303/- on the said Deed of Transfer and accordingly registered the said Deed on 28th March 2013. It is required to be noted that the Sub Registrar had also accepted the stamp duty of Rs.9,65,000/- without demur and had accordingly registered the same without raising any objection to the stamp duty which was calculated.

6. In view of the fact that the Petitioner had executed the Deed of

Cancellation and executed the second Deed of Transfer dated 25th March 2013, the Petitioner sought refund of the stamp duty paid in respect of first Deed of Transfer dated 19th March 2013 which was Rs.12,87,000/-. The said application was considered by the Respondent No.2 and by the impugned order dated 11th December 2014 the said application of the Petitioner has been rejected on the ground that the same does not fall within the purview of proviso to Section 48(1) of the Maharashtra Stamp Act, 1958. The Respondent No.2 prior to arriving at the said conclusion has recorded that the first Deed of Transfer having fructified in the sense that the amount having been paid by the Petitioner and the possession having been handed over to the Petitioner by the transferor, the stamp duty paid on the first Deed of Transfer cannot be returned to the Petitioner. As indicated above, it is the said order dated 11th December 2014 which is taken exception to by way of the above Writ Petition.

7. We have heard the learned Counsel for the parties on the aspect of the refund of the stamp duty which had been paid by the Petitioner which during the course of the hearing of the above Writ Petition had been restricted by the Petitioner to the excess payment in respect of the first Deed of Transfer and the entire stamp duty paid in respect of the second Deed of Transfer i.e. an amount of Rs.9,65,000/-.

8. It was the submission of the learned Counsel for the Petitioner that the Respondents cannot be allowed to retain the excess amount in respect of the first document in view of the acceptance of the computation of stamp duty while executing the second Deed of Transfer and insofar as the second document is concerned, the entire stamp duty has to be refunded as the first Deed of Transfer has already been held to be valid by the Respondent No.2 herein.

9. *Per contra*, the learned Addl.G.P. Mr. More would contend that a perusal of the application would indicate that the Petitioner had sought refund of the entire stamp duty paid in respect of the first Deed of Transfer i.e. an amount of Rs.12,87,000/- and there was no application insofar as the refund of the stamp duty paid for the second Deed of Transfer is concerned. The learned Additional Government Pleader Mr. More would contend that in absence of any application made by the Petitioner in respect of the excess payment and the refund of the entire stamp duty in respect of the second Deed of Transfer, the authorities could not have dealt with the said case of the Petitioner.

10. Having heard the learned Counsel Mr. Arif Doctor and the learned Additional Government Pleader Mr. More, we have given our anxious consideration to the rival contentions.

11. As indicated above, the refund of the stamp duty has been refused to the Petitioner on the ground that the first Deed of Transfer having fructified in view of the fact that the possession has been handed over to the Petitioner by the transferor, the case is not covered by the proviso to Section 48 (1) of the Mumbai Stamps Act. It is required to be noted that the Petitioner had executed the second Deed of Transfer with the transferor wherein the stamp duty computed in respect of the same property was Rs.9,64,700/- which computation was accepted without any objection by the Sub Registrar and the stamp duty was accordingly paid by the Petitioner. However, significantly the Respondent No.2 has not given consideration to the said fact, though the said fact might have been brought to his notice at the time of hearing of the Petitioner's application for refund and the Respondent No.2 has proceeded only on the basis that the refund could not be granted in view of the fact that the Application for refund did not fall within the mischief of Section 48(1) read with proviso thereto.

12. Insofar as the second Deed of Transfer is concerned, admittedly no application has been made by the Petitioner and the same is sought to be justified by the Petitioner on the ground that no purpose would be served as the Petitioner is obviously out of limitation, having

regard to the limitation which is prescribed under the Stamp Act. It is required to be noted that the first application for refund of the amount of Rs.12,87,000/- was filed on 28th August 2013 after the document was executed on 19th March 2013 and was therefore within limitation which is prescribed under Section 48 of the Act.

13. In our view, therefore, the refund being denied to the Petitioner on the ground of limitation would not arise insofar as the first Deed of Transfer is concerned. Insofar as the second Deed of Transfer is concerned, as indicated above, it is a document between the same parties and in respect of the same property, obviously two documents cannot be executed in respect of the same property. The petitioner would undoubtedly be entitled to apply for refund in respect of the stamp duty which is paid on the second Deed of Transfer i.e. the sum of Rs.9,65,000/-, but the Petitioner having admittedly not filed any application for refund, the authorities could not have considered the same.

14. In the aforesaid facts and circumstances of the case, we deem it appropriate to allow the above Writ Petition and issue the following directions.

(a) Impugned order dated 11th December 2014 rejecting the application filed by the Petitioner for refund of the amount of Rs.12,87,000/- is set aside.

(b) The Petitioner would be entitled to file a supplementary application for refund of the amount of Rs.3,22,300/- paid in respect of the first Deed of Transfer which application would be treated as a continuation of the earlier application filed by the Petitioner but now restricted to an amount of Rs.3,22,300/- in respect of the first Deed of Transfer.

(c) The Petitioner would be entitled to file an application for refund of the entire stamp duty of Rs.9,64,700/- paid in respect of the second Deed of Transfer by mentioning in the said Application the circumstances in which the said application has been filed belatedly.

(d) The aforesaid applications to be filed within two weeks from date.

(e) On receipt of the said applications, the Respondent No.2 would consider the same and pass appropriate orders in accordance with law, having regard to the observations which we have made herein above in the instant order.

15. The Writ Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs.

(NITIN W. SAMBRE, J.) **(R. M. SAVANT, J.)**