BDP-SPS

Bharat
D. Pandit
Digitally signed by
Bharat D. Pandit
Date: 2019.08.31
12:18:13 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 820 OF 2019

Shri Hanumant Vitthal Khopade ..... Petitioner.

V/s

The Stamp Collector
Pune City, Pune and Anr. ..... Respondents.

Mr. Sachin B. Thorat for the Petitioner.
Mr. R.P. Kadam, AGP for Respondent Nos. 1 and 2.

CORAM: NITIN W. SAMBRE, J.

DATE: AUGUST 27, 2019

P.C.:-

1] Petition can be conveniently disposed of finally by consent of parties at the stage of admission.

2] A deed of cancellation came to be entered into at the behest of the Petitioner on 02/09/2016 in relation to a deed of conveyance dated 27/08/2015 because of economical problem. Clause (d) of the deed of cancellation reads thus:

> "(d) Due to Economical Problem the said purchasers are unable to complete the said transaction and thus the Purchasers herein approached the Vendor herein and have requested it to cancel his transaction of said accommodation and Vendor also accepted the same. Hence, the present Deed of Cancellation."

3] In the aforesaid background, having regard to the provisions of Section 47(c) sub-section (5) of the Maharashtra Stamp Act (For short "the Act"), Petitioner moved an application under Section 48 sub-section (1) of the Act for refund of stamp duty. The said application came to be rejected vide order impugned dated 21/12/2016 by District Joint Registrar and Collector of Stamps, Pune City, Pune, which order was confirmed in appeal under Section 53(1A) of the Act by the Chief Controller of Stamps. As such, this Petition.

4] The authority, while dealing with the claim of the Petitioner under section 48(1) of the Act has recorded that the conveyance in question is between the Petitioner and Society in regard to lease of

the land and also transfer of the constructed portion and as such, does not satisfy requirement under sub-section (1) of Section 48 of the Act, whereas the appellate authority has refused to show indulgence on the ground that claim put-forth by the Petitioner is barred by limitation, as preferred beyond the period of six months from the date of execution of the cancellation deed.

5] The learned Counsel for the Petitioner as such, invites attention of this Court to the provisions of Section 47(c)(5) and also to the proviso to Section 48(1) of the Act. Both these provisions read thus :

> "**47. 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 inquiry to be made, the Collector may on application, mad within the period prescribed in Section 48, and if he is satisfied as to the facts, make allowance for impressed stamps spoiled in the cases hereinafter mentioned, namely:-
>
> (a).....
>
> (b).....
>
> (c) the stamp used for an instrument executed

by any party thereto which-

(1).....

(2).....

(3).....

(4).....

(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;....."

48. Application for relief under Section 47 when to be made.- The application for relief under section 47 shall be made within the following period, that is to say,-

(1) in the cases mentioned in clause (c) (5), within [six months] of the date of the instruments:

[Provided that where an agreement to sale of immovable property on which stamp duty is paid under Article 25 of the SCHEDULE I, is registered under the provisions of the Registration Act, 1908 and thereafter such agreement is cancelled by a registered cancellation deed for whatsoever reasons before taking the possession of the property which is the subject matter of such

> agreement, within a period of five years from the date of execution of the agreement to sale, then the application for relief may be made within a period of six months from the date of registration of cancellation deed]....."

6] If the clauses of cancellation deed executed and registered on 02/09/2016 are appreciated, the said cancellation is due to economical problem of the purchaser-Petitioner. The proviso to sub-section (1) of Section 48 in categorical terms provides for processing of the refund application, provided the refund is sought within a period of six months from the date of registration of the cancellation deed.

7] In the present case, cancellation deed was registered on 02/09/2016, whereas application for refund came to be moved on 22/09/2016 i.e. within a period of six months, as provided under the proviso to sub-section (1) of Section 48 of the Act.

8] Apart from above, the proviso provided for refund of stamp duty

in case of cancellation of the agreement of sale of immovable property on which stamp duty was paid under Article 25 of Schedule-I attached to the said Act.

9] In the aforesaid background, claim of the Petitioner, in my opinion, is well within limitation prescribed under the proviso to sub-section (1) of Section 48 and also Section 47(c)(5) of the Act. That being so, both the orders impugned dated 21/12/2016 passed by Joint District Registrar and Collector of Stamps, Pune and of the Appellate Authority i.e. Chief Controlling Revenue Officer passed on 06/09/2018 are hereby quashed and set aside. The authority is directed to process the prayer of the Petitioner for refund in accordance with law and tender refund of the amount of stamp duty to the Petitioner within a period of three months from today.

10] Petition stands allowed in the aforesaid terms.

(NITIN W. SAMBRE, J.)