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

WRIT PETITION NO.713 OF 2014

Haresh Meghji Nisar … Petitioner
Versus
The State of Maharashtra
through Government Pleader,
High Court and Others … Respondents

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Mr. Pradip R. Kadam for the Petitioner.
Mr. Kedar Dighe, AGP for the Respondents-State.

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CORAM : S.C. GUPTE, J.

DATE : 5 APRIL 2019

P. C. :

. This writ petition is filed on behalf of a partnership firm seeking to challenge an order passed by the Collector of Stamps in an application for refund of stamp duty paid on a document, which was subsequently cancelled and the appellate order of the Chief Controller, Revenue Authority, Maharashtra State, Pune, confirming that order.

2 The application for refund of stamp duty was on the basis that the document (deed of conveyance) concerning the property of one Eric Nicholas D'mello and fifteen others was executed on behalf of one of the vendors, who was a person of unsound mind, by his manager appointed by the Court, without the requisite permission from the District Court. As a result, after noticing the lapse, which invalidated the document, a deed of cancellation was executed by the parties. After cancellation of the

transaction, the parties applied to the Collector of Stamps to make allowance for impressed stamps spoiled in the original deed of conveyance under Section 47 of the Bombay Stamp Act, 1958 (hereinafter named as 'Stamp Act'). The application was rejected by the Collector practically without stating any reason. When the matter was carried by the purchaser-firm in an appeal before the Chief Controller, under Section 53A(1) of the Stamp Act, the Chief Controller rejected the appeal on the ground that there were other vendors, who were party to the deed of conveyance and who had duly executed the deed; these vendors owned more than 97 per cent of the property and, thus, the purpose behind the deed of conveyance had been fulfilled. The second reason stated by the Chief Controller was that it could not be accepted that information about prior permission of the Court for disposal of the share of theperson of unsound mind was not known to the parties.

3 None of the two reasons is valid. It is not in dispute that the manager, who represented the vendor of unsound mind, was not competent to transfer the property by sale, except with the permission of the District Court. It is also not in dispute that such permission was not taken before executing the deed of conveyance. Any document of transfer of immovable property executed on behalf of a person of unsound mind by his manager without obtaining permission of theDistrict Court, is void. Clause (c) (1) of Section 47 of the Stamp Act requires the Collector of Stamps to make allowance for impressed stamps spoiled in an instrument executed by the parties, which has been subsequently found by the parties to be absolutely void in law from the beginning. In the present case, the document is void in law and is so from the very inception. There is nothing

to suggest that the mistake was not realized by the parties subsequently, that is to say, after the document was executed. After realising the invalidity of document, the parties have gone ahead and executed a deed of cancellation. Even this fact is not in dispute. If that is so, the stamp used for the instrument of deed of conveyance clearly satisfies the mandate of Clause (c) (1) of Section 47 of Stamp Act.

4 The impugned order of the Chief Controller proceeds on the footing that the document, though not capable of transferring the whole of the property, was substantially valid, since it was duly signed by the parties having more than 97 per cent share in the property. The document was executed for the purpose of transferring the entire property being the subject matter of the conveyance. For that purpose, the document, in any event, was incomplete and insufficient. In fact, Clause (c) (4) of Section 47 provides for making allowance in case of an instrument which, for want of execution thereof by some material party and his inability or refusal to sign the same, is incomplete and insufficient for the purpose for which it is intended.

5 In the premises, the impugned orders of the Collector of Stamps and the Chief Controller cannot be sustained; the orders are vitiated by serious error of law. Accordingly, **Rule** is made absolute and the petition is allowed by quashing and setting aside the impugned orders dated 24 February 2010 and 12 September 2013. The Collector of Stamps is directed to make allowance for impressed stamps spoiled in the document dated 21 July

2008 and refund the stamp duty paid thereon, within a period of four weeks from today.

(S.C. GUPTE, J.)