

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 3913 of 2015

Barika Ashraf wife of Quamruddin Ashraf, resident of Mohalla 2. Emarat
Vill- Chitkohra, P.O. Anisabad- P.S. - Gardanibagh, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. The Commissioner, Patna Division, Patna.
3. The Joint Commissioner, Patna Division, Patna.
4. The District Magistrate Patna cum Registrar, Patna circle.
5. The District Sub Registrar, Patna Sadar, Patna.
6. The Treasury Officer, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Shailesh Kumar Singh, Advocate
For the Respondent/s	:	Mr. Sarvesh Kr. Singh, AAG 13
	:	Ms. Sunita Kumar, AC to AAG 13

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date : 03-07-2023

1. The present writ petition has been filed for quashing the letters dated 13.10.2012 and 19.06.2014, by which the claim of the petitioner with regard to refund of the excess stamp duty, deposited by her to the tune of Rs. 2,35,500/-, has been refused by the office of the Commissioner, Patna Division, Patna.

2. The brief facts of the case are that the petitioner had deposited a sum of Rs. 2,35,500/- on 19.05.2008 in the State Bank of India, Patna Main Branch, for executing Deed of



Exchange, by means of a Bank Challan in favor of the District Sub Registrar, Sadar, Patna. However, on account of bonafide reasons, the Deed of Exchange could not be executed, hence, the petitioner had filed applications on 18.09.2012 and 25.09.2012, before the Commissioner, Patna Division, Patna, for refund of the aforesaid amount, however, the same has been refused.

3. The learned counsel for the petitioner submits that the petitioner is a *Pardanashin* lady, does not understand the legal implications, hence could not file the application for refund, within time. Nonetheless, the learned counsel for the petitioner has relied on a judgment rendered by the Hon'ble Apex Court in the case of ***Rajeev Nohwar v. Chief Controlling Revenue Authority, Maharashtra State, Pune and others***, reported in ***(2021) 13 SCC 754***, to buttress the case of the petitioner, paragraphs no. 18 to 20, 23, 24, 29, 30, 32 and 33, whereof are reproduced herein below:-

“18. The Revenue Authorities rejected the application filed by the appellant on the ground that the application was not filed within six months from the date of the purchase of the stamp paper, treating the case to fall within the residuary provision in Section 48 of the Act. This view has been accepted by the



Single Judge of the Bombay High Court. What this view misses is that Section 48 in its entirety applies only to those cases where the application for relief is governed by Section 47. If the application for refund is not with reference to the provisions of Section 47, the period of limitation in Section 48 clearly has no application. Since the application of the appellant does not fall within the purview of any of the clauses in Section 47, the 6 month limitation period prescribed in Section 48 would not be applicable to the application for allowance filed by the appellant.

19. Having observed that the application of the appellant for allowance is not covered by Section 47, it is imperative to determine if it falls within the purview of any other provisions of the Act. Section 49 provides that allowance can be made without any limit of time for stamp papers that are used as printed forms of instruments by any banker or company, if the forms are not required by the banks or the companies. Thus, the application of the appellant is not covered by Section 49. Section 50 states that allowance for misused stamps can be made. The provision brings within the purview of the term “misused stamps”, the stamps of greater value than required or stamps of description other than that prescribed by any rules or stamps that are useless since the instrument is written in contravention of the provisions or where a stamp has been used when the instrument is not charged with stamp duty. Section 50 only covers those cases



where inadvertent mistakes are made in the stamp paper. Therefore, the case of the appellant is not covered by Section 50 since there is no mistake in the e-stamp, be it with regard to the value or description. Section 51 lays down the procedure for seeking allowance for cases that fall under Sections 47, 49 & 50 & is thus of no application to the appellant's claim.

20. Now it is important to refer to Section 52 of the Act which provides as follows:

“52. Allowance for stamps not required for use.

—When any person is possessed of a stamp or stamps 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 therefrom such amount as may be prescribed by rules made in this behalf by the State Government 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 stamp, the Collector may, if he thinks fit, make the repayment of the sum actually paid by the vendor without any such deduction as aforesaid.”

(emphasis supplied)

23. However, Section 52 would only apply to those



cases where the applicant had knowledge that the stamp purchased was not be required for use within six months from the date of purchase. The provision cannot be arbitrarily applied to cases where the purchaser of the stamp had no knowledge that the stamp would not be required for use within six months from the purchase of the stamp. In the instant case, the appellant had no knowledge of the fact that the stamp was not needed within six months from the purchase of it. He was in a bona fide contest over his rights with the builder. Therefore, the case of the appellant would not fall under Section 52 of the Act as well.

24. It has been contended by the counsel for the appellant that the case of the appellant falls within the purview of Section 52-A of the Act. Now, it becomes necessary to advert to the provisions of Section 52-A which provides as follows:

“52-A. Allowance for duty.—*(1) Notwithstanding anything contained in Sections 47, 50, 51 and 52, when payment of duty is made by stamps or in cash as provided for under sub-section (3) of Section 10 or Section 10-A or Section 10-B, and when the amount of duty paid exceeds rupees one lakh, the concerned Collector shall not make allowance for the stamps, or the cash amount paid under the Challans, which are spoilt or misused or not required for use, but shall, after making necessary enquiries, forward the application with his remarks thereon to,—*

(a) the Additional Controller of Stamps for the cases handled by the Collectors working in Mumbai City District and Mumbai Suburban District; and



(b) the concerned Deputy Inspector General of Registration and Deputy Controller of Stamps of the division for the cases handled by the Collectors other than those mentioned in clause (a).

(2) The Additional Controller of Stamps or, the concerned Deputy Inspector General of Registration and Deputy Controller of Stamps of the division, as the case may be, on receiving such application consider the same and decide whether such allowance shall be given or not, and accordingly shall, grant the same, if the amount of allowance does not exceed rupees ten lakh, and if, it exceeds rupees ten lakh, shall submit such application, with his remarks thereon to the Chief Controlling Revenue Authority for decision.

(3) The Chief Controlling Revenue Authority on receiving such application shall decide on merit whether such allowance shall be given or not, and pass such order thereon as he thinks just and proper, which shall be final and shall not be questioned in any court or before any authority.”

29. Evidently, and for the reasons that we have indicated above, the application filed by the appellant did not fall within the ambit of Sections 47, 52 and 52-A. It is true that the application for refund was titled with reference to the provisions of Section 47. But, it is well settled that a reference of a wrong statutory provision, cannot oust the citizen of an entitlement to refund which otherwise follows in terms of a statutory provision.

30. In the present case, the stamp paper was purchased bona fide in view of the agreement to sell which was to be executed by the appellant with the developer. There was a dispute with the developer



which led to the institution of the proceedings before NCDRC. There was nothing untoward in the conduct of the appellant and certainly no unreasonable delay on the part of the appellant in awaiting the outcome of the proceedings. NCDRC allowed the complaint giving the option to the appellant of either going ahead with the agreement along with an award of compensation or, in the alternative, to seek a refund with interest. The appellant having exercised the latter option applied within two months from the order of NCDRC for the grant of refund. The conduct of the appellant, therefore, cannot be held to be unreasonable nor was there any intentional or wanton delay on the part of the appellant in applying for a refund of stamp duty. Such an application must be filed within a reasonable period.

32. We are conscious of the fact that as a general rule of law, the right to refund is a statutory creation. A refund can be sought in terms envisaged by statute. As discussed above, the case of the appellant is not specifically barred by any substantive provision. It is an established principle that this Court while exercising its power under Article 142 of the Constitution must not ignore and override statutory provisions but must rather take note of the express statutory provisions and exercise its discretion with caution. [A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602; Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584; Supreme Court Bar Assn. v. Union of



India, (1998) 4 SCC 409.] Therefore, if a statute prescribes a limitation period, this Court must be slow to interfere with the delay under Article 142. However, in the case of an eventuality such as the instant case where the facts of the case are not covered by the statute, this Court under Article 142 will have the power to do complete justice by condoning the delay. We are of the view that since the delay in filing the application for refund in the instant case was due to the prolonged proceedings before NCDRC, the application cannot be rejected on the ground of delay. A litigant has no control over judicial delays. A rejection of the application for refund would violate equity, justice and fairness where the applicant is made to suffer the brunt of judicial delay. Therefore, this is a fit case for the exercise of the power under Article 142 of the Constitution.

33. For the above reasons, we allow the appeal and set aside the impugned judgment and order of the learned Single Judge of the Bombay High Court dated 22-11-2018 [Rajeev Nohwar v. Revenue, 2018 SCC OnLine Bom 17288]. As a consequence, we direct that the appellant would be entitled to a refund of the stamp duty which was paid at the time of the purchase of the e-stamp paper, conditional on the appellant returning the e-stamp paper to the Collector of Stamps, Mumbai. The refund shall be processed within a period of one month of the delivery of the e-stamp paper to the Collector. The appellant would be



entitled to interest @ 6% p.a. from 16-7-2016 until the date of refund. In the circumstances of the case, there shall be no order as to costs.”

4. *Per contra*, the learned counsel for the respondent State has referred to **Sections 49 and 50 of the Indian Stamp Act, 1899**, which reads as follows:-

“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, & 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 undersignedly 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 papers 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 afterward written thereon.

(2) The stamp or 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 a promissory note, may have been 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 being effected by some other instrument between the same parties & 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 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 in an impressed stamp within the meaning of this Section.

50. Application for relief under Section 49 when to be made – *(1) No claim for relief under Section 49(d) (5) of the Act shall be admissible unless the application for the relief is made within two months of the date of execution.*

(2) No instrument shall be executed on any stamp paper which has remained unutilized for a period exceeding one year from the date of its purchase.



(3) No refund shall be admissible after the expiry of a period of one year from the date of purchase of a stamped paper.

(4) All refunds under this Section shall be made by the order of the Collector:

Provided that if the stamp paper has been purchased before the provisions of this Section come into force, no refund can be allowed or no instrument on such stamp paper can be executed after the expiry of one year from the date of its purchase as provided in Sub-section (2) and Sub-Section (3) or after six months from the date of this Section coming into force, whichever is later.”

5. The learned counsel for the respondent State has also referred to the provisions contained in the ***Bihar Stamp (Refund of Amount of Non-Judicial Stamp Duty Deposited by Bank Challan) Rules, 2008***, more particularly, Rule 2 thereof, which is reproduced herein below:-

“2. Procedure of Application for Refund.- *(1) The application for refund of stamp duty deposited in the Bank, which has not been or could not be utilized by the depositor or the parties, shall be filed in three copies in Form-A prescribed in this Rule before the Collector of the district in whose jurisdiction, the bank is located and where such amount has been*



deposited.

(2) The legible and self attested three photocopies of the depositor's copy of the Bank Challan shall be enclosed along with the application by the depositor.

(3) The application for refund shall be filed before the Collector under sub-rule (1) and (2) within six months from the date of deposit of the amount of stamp duty by Bank Challan.

(4) After expiry of six months the application shall be filed before the Divisional Commissioner of the area but within one year from the date of deposit of amount in the Bank.

(5) After one year from the date of deposit of the amount the application for refund shall not be accepted in any case:

Provided that in the cases of amount deposited before the notification of this Rule, the application for refund may be made before the Collector within six months from the date of publication of this Notification in Official Gazette. After expiry of six months from the date of publication of these rules no application shall be accepted for refund of stamp duty deposited prior to the publication of this rule."

6. The learned counsel for the respondent State has thus submitted that **Section 50 of the Indian Stamp Act, 1899**



provides for filing of an application for relief within two months and ***Section 2(3) of the aforesaid Rules, 2008*** provides for filing of an application for refund of the stamp duty deposited in the Bank, which could not be utilized by the depositor or the parties, within a period of six months from the date of deposit of the amount of stamp duty by Bank Challan, however, in the present case, though the stamp duty was deposited by the petitioner by way of Bank Challan on 19.05.2008, however, admittedly, the application for refund has been made only on 18/25.09.2012 i.e. after lapse of more than 04 years, hence, the stamp duty cannot be refunded to the petitioner.

7. I have heard the learned counsel for the parties and gone through the materials on record, from which it is apparent that the maximum period within which the applicant can file an application for refund of the stamp duty deposited through Bank Challan is six months from the date of deposit of such amount, however, in the present case, the application has been filed after lapse of more than four years, thus, no relief can be granted to the petitioner.

8. Now, adverting to the judgment rendered by the Hon'ble Apex Court in the case of ***Rajeev Nohwar (supra)***, this Court finds that the facts and circumstances of the present case are quite



distinguishable from the said case, firstly in view of the fact that in the said case, the provisions of *Maharashtra Stamp Act, 1958* have been considered, secondly, the delay in the said case, in filing the application for refund of stamp duty, was due to the prolonged proceedings before the National Consumer Disputes Redressal Commission, New Delhi, hence, considering the fact that the litigants have no control over judicial delay, the Hon’ble Apex Court has held that rejection of an application in such a case would violate equity, justice and fairness, especially where the applicant has been made to suffer the brunt of judicial delay and lastly, the Hon’ble Apex Court has exercised its power under Article 142 of the Constitution of India.

9. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, I do not find any merit in the present writ petition, hence, the same stands dismissed being bereft of any merit.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	NA
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Transmission Date	NA

