2023:BHC-AS:30112

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.835 OF 2011

Ramnik Ravji Nathwani
Age 50 years, an adult Indian
inhabitant of Mumbai residing at
12/15C, Jagannath Shankar Seth Road,
Chira Bazar Road, Thakur Dwar,
Mumbai 400 002. ....Petitioner

vs.

1. The State of Maharashtra
   Through the Inspector General
   of Registration and Controller of Stamps,
   Pune, New Administration Building,
   Near Pune Station, Pune-1.

2. The Chief Controlling Revenue
   Authority, Maharashtra State, Pune.

3. Collector of Stamps, Andheri,
   Mumbai. ...Respondents

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Ms. Sapna Krishnappa, for the Petitioner.

Mr. A.P. Vanarse, AGP, for the State.

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CORAM : JITENDRA JAIN, J.

RESERVED ON : 7th OCTOBER, 2023

PRONOUNCED ON : 11th OCTOBER, 2023

JUDGMENT:

This petition is filed challenging the Order-In-Appeal dated 16th December 2010 passed under Section 53(1A) of the Bombay Stamp Act, 1958 ('Stamp Act') rejecting the claim of the Petitioner for refund of stamp duty of Rs.1,30,500/-.

2. **Narrative of Events**:

(i) On 20th June 2006, the Petitioner purchased stamps of Rs.1,30,500/- by way of franking through The Cosmos Co-operative Bank Ltd., Vile Parle, for the purpose of executing a Sale Deed in respect of a flat.

(ii) The transaction of purchase of flat resulted into civil dispute between the Petitioner and the seller Shri Chunilal Ashok. The Petitioner filed a suit in this Court, being Suit No.2754 of 2006. On 2nd April 2007, the said suit culminated into an order passed on Consent Terms arrived at between the Petitioner (plaintiff in the suit) and Shri Chunilal Ashok (defendant in the suit). The suit was, thereafter, withdrawn as per the Consent Order.

(iii) On 27th June 2007, the Petitioner made an application for refund of Rs.1,30,500/-, being the stamps purchased for executing the transaction for purchase of flat.

(iv) On 25th July 2007, the stamp authority rejected the application for refund on the ground that the application is made on 27th June 2007 which is beyond the period of six months from the date when the stamps were purchased on 20th June 2006, therefore, the application was rejected as time barred.

(v) Being aggrieved by the aforesaid order, the Petitioner filed a belated appeal in March 2008 with an application for condonation of delay.

(vi) On 16th December 2010, the appellate authority rejected the appeal on the following grounds:

(a) The Petitioner's application for grant of refund is not within time as per Section 48(1) of the Stamp Act.

(b) The appeal is not filed within time as per Section 58 (1A) of the said Act.

(c) The application is not covered under the amended provision of Section 48 with effect from 12th April 2010.

(vii) Being aggrieved by the aforesaid order, the Petitioner has filed the present petition challenging the order of rejection.

3. Heard learned Counsel for the Petitioner and the Respondents.

4. **Submissions of the Petitioner**: The Petitioner submitted that the appellate authority ought to have considered the application for condonation of delay and condoned the delay in filing the appeal. The Petitioner further submitted that amendment made in 2010 to Section 48(1), extending the time for making refund application, should have been applied to the facts of the present case and, therefore, in that case, refund application would have been in time. The Petitioner, therefore, contended that the application made is within the time specified under amended Section 48(1) . Therefore, the refund ought to have been granted.

5. *Per contra,* on the other hand, the Respondents relied upon the order of the appellate authority and justified the rejection of the refund application. The Respondents submitted that the amended provision extending the time limit to two years for making refund application could not be applied since on the date of the amendment, the application was already time barred under the unamended Section 48 of the Stamp Act. The Respondents, therefore, prayed for dismissal of the petition.

Analysis and reasoning:

6. At the outset, Section 53(1A) provides for filing an appeal within 60 days from the date of receipt of the order passed under Chapter III, Chapter IV, Chapter V and under clause (a) of the second proviso to Section 27. Admittedly, in the instant case, the appeal is not filed within a period of 60 days from the date of receipt of such order. The Petitioner has not shown any power conferred on the Chief Controlling Revenue Authority to condone the delay. Therefore, in the absence of any power to condone the delay, the appellate authority was justified in rejecting the appeal as time barred. However, the appellate authority also adjudicated the appeal on merits, although after having held the appeal as time barred, ought not to have adjudicated the appeal on merits.

7. Assuming that Section 5 of the Limitation Act would be applicable and for the reasons stated in the application for condonation of delay, the delay in filing the appeal is to be condoned, even in such a scenario, the Petitioner cannot succeed on the merits. The stamps were purchased on 20th June 2006. As per Section 48(1), the application ought to have been made within six months from the date of purchase which period expires in December 2006. The claim for refund has been made in July 2007 and the amendment to Section 48 which is sought to be pressed is of 2010. Therefore, on the date when the 2010 amendment was brought in, the application was already time barred

and, therefore, the amended provision cannot be made applicable for consideration of the refund application. The decision relied upon by the Petitioner in the case of **Krishna Sheena Shetty vs. Suresh Anant Sawant**[1] is not applicable to the facts of the present case since the said decision deals with Section 34 of the Stamp Act and not with Section 48 with which the present petition is concerned.

8. In view of above, the petition is dismissed with no order as to costs.

(JITENDRA JAIN, J.)

1 W.P.No.984 of 2007 decided on 8-4-2008 (Bombay).