IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1088 OF 2012

S. P. Exhibitors, Through Partner,
Shri. Sikander Allabaksh Bhagwan ...Petitioner
Versus
Chief Controlling Revenue Authority,
Maharashtra State, Pune And Ors. ...Respondents

....

Mr.Bhushan Walimbe for the Petitioner.

Mr.S.D. Rayarikar, A.G.P. for the Respondent Nos.1 to 3 – State.

....

CORAM : AVINASH G. GHAROTE, J.
DATE : 25th JULY, 2024

P.C.:

1. The petition questions the order dated 16.04.2009 by the respondent No.2, by which the application for refund of stamp duty, made by the petitioner, in respect of stamp duty of Rs.4,80,000/- paid upon an agreement for sale dated 11.11.2002 came to be rejected (page 49) and so also the order of the Appellate Authority / respondent No.1 dated 20.08.2011 (page 136), rejecting the appeal.

2. It is contended that the petitioner had entered into an agreement of sale with Malalaxmi Exhibitors, to purchase immovable property CT.S. No.2259-B, part I called as Saraswati Chitramandir, situated on Tarabai Road, Kolhapur. Since the sale was not completed, the petitioner had filed a suit being SCS No.392 of 2003 for refund of the consideration along with money paid on account of stamp duty, which came to be decreed on 03.01.2006. First Appeal No.1476 of 2006, before this Court was disposed off by the learned Division Bench of this Court by order dated 17.07.2006 (page-29) directing that the agreement dated 11.11.2002 stood cancelled, and the present petitioner was entitled to refund of the stamp duty. The petitioner in the mean time, on 04.11.2004 had already applied for refund of the stamp duty in which, he was asked to submit the original agreement of sale and cancellation deed to process the refund of the application.

3. After the judgment in First Appeal No.1476 of 2006, again a claim of refund of stamp duty was made on 25.09.2006 (page 32), which came to be rejected by the respondent No.2 by the order dated 16.04.2009 on the ground that the claim was

beyond limitation (page 49). Appeal against which as indicated above stands rejected on 20.08.2011 (page 136).

4. It is the contention of the petitioner that the claim could not have been rejected on account of limitation in view of the proviso to Section 48 (1) of the Bombay Stamp Act, which provides that in case the agreement is cancelled by a registered cancellation deed within a period of 5 years from the date of the agreement, then the application for refund could be made within 6 months from the date of cancellation. He contends that in the instance case, the cancellation was directed by the High Court by its judgment dated 17.07.2006, on account of which the application made on 25.09.2006 would be within the time as contemplated by the proviso and therefore, the rejection of claim of refund on account of it being beyond time, cannot be sustained.

5. The learned AGP appearing for the respondent Nos.1 to 3 supports the impugned order, contending that what is contemplated by the proviso is registered cancellation deed and since there is no such document, the proviso would not be attracted.

6. What is contemplated by the proviso to Section 48 (1) of the B.S. Act, by mentioning a registered instrument of cancellation is to ensure cancellation of the document. That being the intended purpose of the proviso, the cancellation if directed by this Court, would equally be a cancellation for applying the proviso, which would indicate that the application made on 25.09.2006 for refund, was well within time of 6 months, as provided in the proviso. It is also necessary to note that the cancellation directed by the learned Division Bench of this Court in First Appeal No.1476 of 2006 by the judgment dated 17.07.2006 is within 5 years of the agreement dated 11.11.2002 and also satisfies the requirement in that regard, as contemplated by the proviso to Section 48(1) of Bombay Stamp Act.

7. That being the position, the application for refund cannot be said to be beyond the time as provided by the proviso to Section 48(1) of the Bombay Stamp Act, in view of which the impugned orders which do not take into consideration this provision cannot be sustained and are hereby quashed and set aside. It is held that the petitioner is entitled to refund of the stamp duty paid upon the agreement dated 11.11.2002 as per the

rules applicable in that regard, and 8% interest from 25.09.2006 till date of repayment. The petition is accordingly allowed in above terms. No costs. Needless to say that the process of the refund of stamp duty, shall be carried out and completed within a period of 4 weeks from the date on which this judgment is presented to respondent No.2 .

(AVINASH G. GHAROTE, J.)