rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO.7400 OF 2024

The Cosmos Co-op. Bank Ltd.	]	..	Petitioner
vs.			
The State of Maharashtra & Ors.	]	..	Respondents

Mr.Joel Carlos for the Petitioner.
Ms.V.S. Nimbalkar, AGP for the State.

CORAM : BHARATI DANGRE, J

DATE : 5th DECEMBER, 2024.

P.C.

1. The Petitioner, Cosmos Co-operative Bank Limited, has approached this Court with a very peculiar grievance, which was raised with the Deputy Inspector General of Registration, Konkan Division, as early as on 31/08/2013, but despite the year 2024 coming to an end, no solution is offered.

The Petitioner, Bank, was using franking as one of the mechanism to get the documents stamped and upon the document being so stamped, it was accepted to be legally valid as per the Maharashtra Stamp Act.

For the franking of the documents, the payer has to approach the authorized bank which was franking machine user and the stamp vendor authorized by Respondent No.2 being Chief Controlling Revenue Authority of the State of Maharashtra. The Petitioner upon receipt of the document, printed the impressions through the franking machine, which was chargeable with stamp duties, which made it a valid document and the payer had to submit application with requisite payment to the authorized bank to get the documents stamped.

This process was being followed by the Bank for a considerable length of time and it posed no problem.

2. On 13/08/2013, the Petitioner/Bank was desirous to deposit an amount of Rs.1,99,00,000/- as advance payment for obtaining credit codes to be uploaded in Franking Machine, and accordingly, it deposited the amount of Rs.1,99,00,000/- under the caption of “Purchase of Franking Code” by way of MTR Challan in Maharashtra Government Treasury, through the office of Joint District Registrar for Thane Urban region. The MTR challan was defaced on 14/08/2013 and a copy of the same form part of the Petition.

On the very same day, two credit codes of Rs.25,00,000/- each were uploaded in Franking Machine successfully. While uploading the third credit code of RS.25,00,000/-, when the Franking Machine prompted “INSERT FORM”, a rough paper came to be inserted by the operator into the machine, on which the RESET REPORT was printed. However, on the third occasion the stamp impression of Rs.25,00,000/- was thus imprinted on a rough paper, but the amount of balance in the Franking Machine was deducted by Rs.25,00,000/-.

Alongwith the Petition, the rough paper having stamp impression with its inscription of 14/08/2013, in the tune of Rs.25,00,000/- is placed on record.

3. Pursuing it to be a technical problem or glitch or some sort of unexplained error in respect of the operation of the Franking Machine,in

the third credit note which was uploaded on 14/08/2013, immediately the Petitioner rushed to the Deputy Inspector General of Registration, clearly setting out as to what had transpired and admitted that a rough paper was inserted on the third occasion, after the two codes were already inserted and impression of Rs.25,00,000/- was imprinted on a rough paper instead of the RESET REPORT.

On approaching Pitney Bowes, the certificate was issued by them certifying the genuineness of the machine and advising them that the Bank may seek the refund of the amount or the said amount will be adjusted.

4. A request was made by the Petitioner to the Deputy Inspector General of Registration, to adjust the franking impression of Rs.25,00,000/- in the wake of goof up that had occurred.

On 07/09/2013, citing a technical reason of Rule 6 (A) of Franking Machine Rules (Part III), the Petitioner received a reply that it is not responsibility of the State Government. Thereafter, the Petitioner filed an Appeal, and a Revision and ultimately on 27/07/2022 the Joint District Registrar and Collector of Stamps, Thane i.e. Respondent No.4 made a positive recommendation, clearly admitting that the franking of Rs.25,00,000/- was done inadvertently and, therefore, in terms of Rule 6(b), the amount of Rs.25,00,000/- shall be freshly coded and being conscious of the fact that the Applicant was a Bank and it was the money belonging to the Bank, it was directed that appropriate action in that regard shall be taken.

However, this direction was not implemented as on 31/07/2023, and the bank was once again intimated that it is not entitled either for its adjustment or for refund.

5. This chronology and events has constrained the Petitioner to approach this Court after more than a decade, after exhausting all the possible remedies available to it and despite the fact that Respondent No.4 had showed sensitivity in the issue and offered some solace to the Petitioner.

It is not the case of the Respondent/Authorities that the stamping through the Franking Machine to the tune of Rs.25,00,000/- was a mistake and in fact no document was stamped to the sum of Rs.25,00,000/-, but the impression was created on a rough paper.

This fact not being disputed by the Respondent Authorities, and merely by projecting excuse that the Government shall not be responsible for refund, cannot act as an excuse for saddling the Petitioner Bank with an amount of Rs.25,00,000/-.

Had the Franking Machine being in operation, the Petitioner would have been entitled for an adjustment and this is what is precisely sought when it approached the concerned Authority in the year 2013, but now the machines are not in operation and the Petitioner cannot be unnecessarily burdened with the amount of Rs.25,00,000/-, since in fact the amount was not used towards stamping of any document, but was a sheer wastage, as it was imprinted on a rough paper.

6. The learned counsel for the Petitioner has invited my attention to a similar situation which surfaced before this Court in WP No.7793/2015, when the matter was remanded back to Respondent No.1 to take a decision afresh.

What is important to note is the decision taken thereupon which is part of the Petition and this is an order passed by the Additional Inspector General of Registration and Controller of Stamps and Chief

Controlling Authority on 18/06/2018 on the grievance of the very same Bank. Perusal of the said order, reveal that when the issue was re-examined, the conclusion is drawn that the information provided was not incorrect and the Authority also determined the applicability of Rule 6(b) which was invoked in refusing to entertain the claim and it was directed that the amount could not be adjusted.

Determining the last issue as to whether the amount deserve to be refunded, recourse was taken to Franking Regulation Order No.D-5/ STP/CASENo.70/04/2332/04 Dated 01/10/2004 Part III Rule 11, Sub Clause 5 and by relying upon the said provision, the Bank (same bank before us) whose case was being reconsidered, was held entitled for refund.

Since there was no renewal of the Franking Machines since the year 2016, I fail to understand why this very conclusion recorded in the order mentioned above shall not apply to the Petitioner, in this case as it is never the stand of Respondent Authorities that the amount of Rs.25,00,000/- was in fact put to use by stamping.

7. For the aforesaid reason, the Petition deserve to be allowed by directing Respondent No.2 to refund the sum of Rs.25,00,000/- to the Petitioner by complying the same parameters which was applied in the communication order dated 18/06/2018, passed in respect of the very same Bank.

It is directed that the refund shall be made within a period of six weeks from the date of receipt of the order.

(BHARATI DANGRE, J.)