



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

WRIT PETITION NO. 4084 OF 2023

Ammar s/o Sadique Hussain Sabir,
aged about 30 years, Occ. Business,
R/o Safar Ali Chowk, Yavatmal,
Taluka & District Yavatmal.

...PETITIONER

Versus

- 1] Deputy Inspector General of Registration
and Deputy Controller of Stamps,
Amravati Division, Amravati.
- 2] District Registrar (Class-I) and
Collector of Stamps, Yavatmal,
Collector Office, Yavatmal.

...RESPONDENTS

Shri S.O. Ahmed, Counsel for the petitioner.
Ms Sneha Dhote, A.G.P for the respondents.

CORAM : ANIL L. PANSARE, J.
DATE : JUNE 25, 2024

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. Heard finally
by consent of the learned Counsel for the parties at the stage of
admission itself.

- 2] On previous date, the following order was passed :

“On 10-6-2024, following order was passed.

“One of the contentions is that the Collector of Stamp, who heard the proceedings under Section 32A of the Maharashtra Stamp Act, had retired. The subsequent officer who was appointed at his place has not issued notice or given opportunity of hearing to the parties in terms of sub-section (4) of Section 32A but has passed order on the basis of material available before him.

Learned Assistant Government Pleader shall take instructions on this point.

Stand over to 18-6-2024.”

The parties shall go through the judgment of Division Bench of this Court in the case of Rukhana Associates, Mumbai Vs. E-Square Leisure Pvt. Ltd., Mumbai [2010(5) Mh.L.J. 202] and to make their submissions.

Stand over to 25-6-2024.”

3] The Division Bench of this Court in the case of *Rukhana Associates, Mumbai Vs. E-Square Leisure Pvt. Ltd., Mumbai [2010(5) Mh.L.J. 202]*, in an identical situation, has in paragraph 6, referred to Order XVIII Rule 2(3-A) and held in paragraphs 6 and 7 as under :

“6. XXXX This provision has come into force after the amendment of 2002. Going by the plain language of this provision, there is nothing to suggest that the process of oral arguments is completely dispensed with. On the other hand, filing of written arguments is not mandatory and is subject to such order to be passed by the Court. In other words, the provision is an enabling provision authorizing the Court to issue direction to the parties to file written arguments in support of their

case. That, however, is in addition to the oral arguments already advanced or to be advanced in the said case. If such written arguments in support of the case is filed by the parties, the same would form part of the record of the case. Even so, it would not dispense with the requirement of oral arguments to be advanced before the Judge who is expected to pronounce the Judgment. The word “may” in the opening part of this provision does not mean that oral arguments are optional. We cannot be oblivious to the other provisions referred to hitherto which makes it mandatory to hear the oral arguments before pronouncement of the Judgment by the Judge concerned. At the same time, the expression “shall” occurring therein is intended to make “filing of the written arguments before the conclusion of the oral arguments” mandatory, and subject to the permission of the Court. Suffice it to observe that the oral arguments are indispensable.

7. Taking any view of the matter, we find substance in the grievance made by the learned Counsel for the appellant that the judgment under appeal suffers from the manifest non-compliance of the mandatory procedure by the new Judge before pronouncing the judgment. On this count alone the judgment under appeal deserves to be set aside and the parties relegated before the trial Court for rehearing of the oral arguments. The trial Court will have to offer opportunity to both the parties to advance their oral arguments and only thereafter pronounce the judgment on the basis of the said oral arguments and the material on record including the written submissions already filed by both the parties which form part of the record.”

Thus, whenever a Presiding Officer, who has heard the matter, is transferred and the assignment is taken-over by another Officer, he is duty bound to hear the matter afresh. It

will be not proper on his part to proceed further on the basis of written notes of arguments.

4] In the present case, the predecessor of respondent no.2 had heard the matter. Written notes of arguments were placed before him. Thereafter, the matter was closed for judgment. Thereafter, respondent no.2 has taken over the charge. He, therefore, was duty bound to hear the matter afresh in the light of the judgment quoted above, which admittedly has been not done in the present case.

5] The petitioner made an attempt before respondent no.2 to reiterate the position of law by filing review petition. Respondent no.2, however, was not impressed with the petitioner's submissions and accordingly dismissed the review application vide order dated 13/8/2022. Thus, despite another attempt, respondent no.2 failed to consider the settled position of law.

6] This vital aspect of respondent no.2, failing to give opportunity of hearing to the parties, has been not considered

by respondent no.1, may be because the judgment in the case of *Rukhana Associates, Mumbai (supra)* was not placed before him. In any case, the position of law being well settled, respondent no.1 ought to have allowed the appeal. The order, therefore, suffers from non-consideration of important provision.

7] Thus, order dated 10/3/2022 passed by respondent no.2 in Complaint No.548/2022, order dated 31/5/2022 passed by respondent no.1 in Appeal No. 02-2022-23/668/2022 and order dated 13/8/2022 passed by respondent no.2 in Complaint No. 1330/2022, are quashed and set aside.

8] Complaint No. 548/2022 is remanded back to respondent no.2 for fresh consideration in the light of what has been said in the body of the order and also in the light of the judgment in the case of *Rukhana Associates, Mumbai (supra)*. The complaint is accordingly restored on the file of respondent no.2.

9] The parties shall appear before respondent no.2 on
16/7/2024 at 11:00 am.

10] Rule is made absolute in the aforesaid terms.

JUDGE

Sumit