

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8365 OF 2024

1. Suresh Ramchandra Sancheti & Anr.
2. Mrs. Sunita Suresh SanchetiPetitioners

Versus

1. The State of Maharashtra,
Through the Department of Revenue,
2. The Controller of Stamps,
3. The Additional Controller of Stamps,
4. The Chief Controlling Revenue Authority,
and Revenue Authority and Inspector
General of Registration.Respondents

Mr. S. R. Nargolkar *a/w Mr. Arjun Kadam & Ms. Neeta Patil,*
Adv. for Petitioners.

Mr. Y. D. Patil, *AGP for Respondent-State.*

CORAM : SOMASEKHAR SUNDARESAN, J.

RESERVED ON : DECEMBER 8, 2025

PRONOUNCED ON : DECEMBER 12, 2025

JUDGEMENT:

Context and Factual Background:

1. Whether the extraordinary writ jurisdiction can be invoked to seek a direction of a refund of stamp duty paid with the intention of being impressed on an instrument that was never executed, is the question that has arisen in this Writ Petition.

2. The facts of the case fall in a very narrow compass. The Petitioner No. 1, Suresh Ratanchand Sancheti (“**Suresh**”) is the designated guardian of his wife, Petitioner No. 2, Sunita Suresh Sancheti (“**Sunita**”). Suresh was appointed as the legal guardian of Sunita in 2019 pursuant to a guardianship petition filed in connection with Sunita having suffered a 100% locomotor and mental disability arising out of an aneurysmal stroke suffered in 2017.

3. Suresh finalised an agreement for sale with his neighbour for purchase of a flat in the same building, sometime in July 2019. Towards this end, an amount of Rs. 10.80 lakh was paid into the treasury for the purchase of stamp on July 6, 2019 and he was issued a challan and certificate confirming receipt of the amount paid on a consideration amount of Rs. 1.80 crores. The same challan also confirms receipt of registration fee of Rs. 30,000. The stamp duty amount appears to have been credited into the State’s account with the Reserve Bank of India on July 8, 2019. The execution draft of the instrument was finalised but was not executed. The payment of stamp duty on the instrument intended to be executed was made electronically through Punjab National Bank.

4. Learned Advocate for Suresh would contend that the intention to acquire the property was reversed in 2020 during the

Covid-19 Pandemic and the family decided that the transaction would not be pursued and he would instead use the money on taking care of Sunita.

5. Suresh filed an application for a refund on September 15, 2020, invoking Section 47(b) of the Maharashtra Stamp Act, 1958 (“***Stamp Act***”), stating that the document was written but not signed by any party. He would point out that the payment of stamp duty electronically was a simple purchase of stamp and this was never effectively impressed on any draft of any instrument and the stamps purchased have been rendered useless. Suresh had stated that he was unable to pay the consideration post-Covid and the transaction was cancelled. The provisions invoked to seek allowance on the stamp duty paid, were Section 47(b) read with Section 48(3) of the Stamp Act.

6. The Stamp Authorities rejected the application for refund, primarily on the premise that the application for refund had been made one year, two months and ten days after the purchase of the stamp duty and not within six months of execution of the instrument as required under Section 48(3) of the Stamp Act. The initial rejection was by an order dated September 9, 2021 passed by the Additional Controller of Stamps, and an appeal impugning such order was rejected by an order dated October 4, 2022 passed by the Inspector General of Registration.

7. Both these orders are impugned in this Petition.

Analysis and Findings:

8. Having heard the Learned Advocate for the Petitioners and the Learned AGP for the State, and having examined the record with their assistance, in my view, it is necessary to first place the factual matrix within the relevant applicable legal matrix under the Stamp Act.

Scheme of the Stamp Act:

9. A brief overview of the scheme of the Stamp Act would be vital. Section 3 of the Stamp Act provides that the “*instruments*” listed in Schedule I of the Act would be chargeable with stamp duty indicated in that schedule. As regards timing of payment, Section 3 provides that where such an instrument that has not been executed in the State of Maharashtra before the commencement of the Act and is executed in the State, stamp duty would be payable. If such an instrument is executed outside the State but relates to any property situated in the State or anything to be done in the State and is brought into or received in the State, stamp duty would be payable.

10. As regards time for stamping the instrument, Section 17 of the Stamp Act deals with the time as to when the stamp must be affixed on the instrument – that is discussed a bit later below.

11. However, at the threshold, it is vital to examine the meaning of the term “*instrument*”. Section 2(l) of the Stamp Act defines an instrument as including “*every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded*”. The definition excludes a number of instruments from its ambit, such as various types of negotiable instruments, transfer of securities and the like – it is easy to notice that the excluded instruments are those falling within the domain of the Union of India and Parliament being on the Union List in the Seventh Schedule of the Constitution of India. Such instruments are positively left out of the ambit of instruments falling within the ambit of the State of Maharashtra and the State Legislature in respect of matters that are not on the Union List.

12. Therefore, for the charging provision of stamp duty to be attracted, an instrument has to come into being. The instrument is necessarily any kind of document by which any right or liability is created or even merely recorded, and indeed any document by which such right or liability is transferred, curtailed, expanded or extinguished. If a document does not conform to the definition, it would not be “instrument”, and if it is not an instrument at all, the charging provision of the Stamp Act would not apply to it.

13. It is important to note that a document that purports to do any of the things referred to above, would also be an instrument. However, the timing for payment of stamp duty is its execution.

14. In other words, merely because an executed document may be interpreted to not convey, record, affect or create a right or liability, it would not fall outside the scope of being an instrument amenable to stamp duty. However, what is vital is that the document must evidence or purport to evidence what is set out in the definition in Section 2(l) of the Stamp Act, and the charging provision would be attracted when the instrument is executed within the State or is brought into the State after execution outside the State.

15. Under Section 5 of the Stamp Act, an instrument relating to several distinct matters would be chargeable with the aggregate amount of the stamp duty applicable on each instrument relating to each such matter. However, under Section 6 of the Stamp Act, an instrument that falls within two or more descriptions set out in Schedule I would be chargeable with the highest of the duties stipulated under Schedule I.

16. Section 10 of the Stamp Act deals with how stamp duty is to be paid and provides that all duties payable on an instrument must be paid and such payment must be indicated on the instrument by means of stamps. Section 10(3) provides for such payment to be made by the

means set out therein, and this includes payment by franking, cash, demand draft, pay order or by electronic payment.

17. Under Section 17 of the Stamp Act, “*all instruments chargeable with stamp duty and executed in the State shall be stamped before or at the time of execution or immediately thereafter on the next working day following the day of execution*”. This provision underlines the importance of the role of execution in the process of stamping. It is only instruments executed outside the State and brought into the State that may be stamped within three months on receipt of the instrument in the State. For such instruments, Section 19 of the Stamp Act provides for a credit for any stamp duty already paid outside the State.

18. What is clear is that Stamp Duty is not a transaction tax but a duty payable on an instrument, which necessarily has to conform to the definition set out in the Act. The implication of payment of Stamp Duty on a chargeable instrument is that the instrument would be admissible in evidence in any proceedings. The payment of Stamp Duty lends authenticity to the existence of the instrument in proceedings. The detailed framework in this regard set out in the Stamp Act is not being discussed here to avoid prolixity.

Section 47 analysed:

19. It is against this backdrop and context that one must examine Section 47 of the Stamp Act. This provision enables the Collector to make allowance for impressed stamps spoiled in the cases set out in that provision. Towards this end, Section 48 stipulates the period within which an application may be made seeking allowance for stamps that are impressed on an instrument and spoiled.

20. Section 47 of the Stamp Act reads thus:

47. 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 48, and 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) the stamp used for an instrument executed by any party thereto which—

(1) has been afterwards found by the party to be absolutely void in law from the beginning ;

(1A) has been afterwards found by the Court, to be absolutely void from the beginning under section 31 of the Specific Relief Act, 1963;

(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 by some other instrument between the same parties and bearing a stamp of not less value ;

(7) is deficient in value and the transaction intended to be thereby effected had 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 the case of an executed instrument, except that falling under sub-clause (1A)], 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 or has been already given up to the Court 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 is an impressed stamp within the meaning of this section.

[Emphasis Supplied]

21. A plain reading of the foregoing would indicate that the substantive right to an allowance for stamp duty has been set out in multiple scenarios. The aforesaid provisions further underline the

relevance of execution for an instrument and the relevance of admissibility into evidence. The Explanation to Section 47 makes it clear that a certificate of the Collector that full duty with which an instrument is chargeable has been paid constitutes an “impressed stamp” for purposes of Section 47 of the Stamp Act.

22. Section 47(b) deals with impressed stamp being spoiled in the case of the stamp on a document which is written out wholly or in part, but which is not signed or executed by any party thereto. Applying this provision to the facts of the case what is apparent is that Suresh made an electronic payment of the stamp duty and was issued a certificate that the duty computed by him as being payable has been paid. What we have on hand is a certificate that the stamp duty as computed by Suresh has been paid, and not an adjudicated confirmation that full stamp duty has been paid. The challan and receipt issued to Suresh is not a certification that the Stamp Authorities have adjudicated and confirmed that the full duty payable has been paid. The Stamp Act being a fiscal statute, it should be strictly construed and a necessary ingredient is that “*full duty with which the instrument is chargeable*” is certified as having been paid for the certificate to constitute an impressed stamp.

23. However, what has transpired in the instant case is that the document has not even been executed. The term “executed” is defined in Section 2(i) with reference to instruments as “signed”. Therefore, what is clear is that in the instant case, in the absence of “execution”, no “instrument” has come into existence in the eyes of the law. Since the execution draft of the agreement for sale was never signed and therefore not executed, no instrument came into being for it to be chargeable with Stamp Duty.

24. This is where the distinctive use of the word “*document*” in Section 47(b) contradistinguished from the use of the word “*paper*” in Section 47(a) and use of the word “*instrument*” used in Section 47(c) gains significance. Cases covered by Section 47(c) would necessarily have to be “instruments” within the meaning of the term in the Stamp Act.

25. The term “paper” is also a defined term under Section 2(q) to mean a *vellum*¹, parchment or other material on which an ‘instrument’ may be written. Section 47(b) of the Stamp Act consciously adopts the word “document”. Therefore, an unexecuted document, intended to be a future instrument (and in respect of which stamp duty has been paid electronically with every intention to execute the “document” to bring an “instrument” into existence) would constitute an “impressed stamp”.

¹ A fine parchment made originally from the skin of a calf.

The Petitioners' application for allowance invoked Section 47(b) of the Stamp Act. The term "spoiled" would need to be understood as having been rendered useless because the document was not executed.

Section 48 analysed:

26. Having examined the scope of Section 47 of the Stamp Act, it would be pertinent to examine Section 48 of the Stamp Act, which reads thus:

48. *The application for relief under section 47 shall be made within the following period, that is to say,—*

(1) *in the cases mentioned in clause (c)(5), within six months of the date of the instruments :*

Provided that, where an agreement to sale of immovable property on which stamp duty is paid under Article 25 of the SCHEDULE I, is registered under the provisions of the Registration Act, 1908 and thereafter such agreement is cancelled by a registered cancellation deed for whatsoever reasons before taking the possession of the property which is the subject matter of such agreement, within a period of five years from the date of execution of the agreement to sale, then the application for relief may be made within a period of six months from the date of registration of cancellation deed.

(2) *in the case when for unavoidable circumstances any instrument for which another instrument has been substituted cannot be given up to be cancelled, the application may be made within six months after the date of execution of the substituted instruments;*

(3) *in any other case, within six months from the date of purchase of stamps.*

[Emphasis Supplied]

27. Section 48(1) and Section 48(2) deal with “instruments” i.e. documents that have actually been executed. Section 48(3) deals with all other cases.

28. It will be seen that, in the instant case, Section 48(3) would be attracted and the time limit for making the application is six months from the date of purchase of stamps. The timing for seeking relief under Section 48 is set out in this provision as linked to the time at which the stamps were purchased. The timing of actually affixing the stamp on the document is not linked to the deadline for the application. Therefore, it is clear that for a refund to be claimed invoking Section 47(b) read with Section 48 of the Stamp Act, the deadline of six months from the purchase can be said to be stipulated.

29. Applying the deadline stipulated in Section 48, evidently, Suresh has applied beyond the period of six months from the purchase of the stamps. The stamp duty was paid on July 6, 2019 while the application was made on September 15, 2020. At the time the stamp was purchased by making the e-payment through Punjab National Bank, Suresh had every intention to execute the agreement for sale but as events transpired and with the onset of the Covid Pandemic, the proposed transaction was abandoned. It is then that Suresh made an

application for refund, which was itself a decision made well after six months from the purchase of the stamps.

Reasons for Intervention:

30. It is in this backdrop and in the light of precedents obtaining from the approach approved of by the Supreme Court and earlier decisions of other benches of this Court that, in my opinion, a case for exercise of the extraordinary writ jurisdiction has been made out. The substantive right to allowance for Stamp Duty is in Section 47 of the Stamp Act while the procedural deadline for the application for allowance to be made is stipulated in Section 48 of the Stamp Act. Even a plain reading of the two provisions would show that Section 48 is not the provision dealing with the substantive right to a refund. It is a procedural provision that is in aid of the substantive right to a refund stipulated in Section 47 of the Stamp Act, read in the context of the charging provisions on Stamp Duty including Section 3, Section 5, Section 10 and Section 17 of the Stamp Act dealt with above.

31. A wider reading of the scheme of the Stamp Act would also indicate that the law is not that once a stamp has been purchased, making an allowance for it is impossible, save and except for compliance with deadlines under Section 48 of the Stamp Act. For example, Section 49 enables making an allowance for stamped papers

used in printed forms for instruments by banks and bodies corporate if such forms are no longer required by such person. While this provision stipulates no time limit at all, Section 50 provides for allowances to be made in relation to any instrument inadvertently stamped with a greater value than necessary or wrongly stamped despite not being charged with duty to be allowed for, but with a six-month deadline for an application to be made.

32. Section 52 provides that where the stamps have not been spoiled, or rendered unfit or rendered useless for the intended purpose, but no immediate use is envisaged, the Collector is required to repay the value of the stamp upon being satisfied that the purchase of the stamp was with a bona fide intention to use them. Here too, a deadline of six months has been fixed for making such an application.

33. What is clear is that value of the stamps once purchased are not necessarily lost to a party that purchased the stamp. However, in specific circumstances and with specific requirements, the Collector's discretion to make allowances has been regulated. Indeed, as seen above, there are some examples of the law not stipulating any deadline and yet there are also circumstances in which deadlines have been stipulated. The deadlines stipulated in this regard are meant to

regulate the exercise of discretion by the Stamp Authorities in processing applications for allowances.

34. In the facts of this case, stamp duty was paid by Suresh on the document that was meant to become an instrument but never did become one, because it was not executed. Assuming, in the absence of a certificate from the Stamp Duty authorities that full payment has been made on July 6, 2019, that the duty paid is indeed an impressed stamp, such stamp has been rendered useless and can be considered to be spoiled. Therefore, the deadline of six months from the purchase of stamps would be attracted for the Stamp Duty authorities to exercise their discretion in the matter. Therefore, the Stamp Authorities were not wrong in their refusal to exercise their discretion owing to the deadline for application to them for exercise of their discretion being missed.

35. However, the question that arises is whether the extraordinary jurisdiction of the writ court would be available for making an intervention in the peculiar and specific facts and circumstances of the case. Evidently, Suresh has a seriously ailing wife to take care of, and the considerable amount of stamp duty paid by him (Rs. 10.80 lakhs) has been rendered totally useless when the transaction has been abandoned. As stated above, stamp duty is not a

transaction tax but a duty to be paid and affixed by way of a stamp on the instrument to enable such instrument to be admissible in evidence. When the instrument has not even come into being and the document on which the stamp is notionally impressed is useless, the question that arises is whether the extraordinary jurisdiction of the writ court could be used to make an intervention.

36. One cannot lose sight of the fact that to begin with, the very charge of stamp duty under the Stamp Act is on instruments listed in Schedule I to the Stamp Act in the amount of duty stipulated in that schedule. It is the procedural provisions on how to pay stamp duty on an intended instrument and how to handle applications for allowances (refunds) for duty paid on a document that is not eventually executed that have led to Suresh being denied an allowance.

37. Against this backdrop, certain judgements of the Supreme Court and certain decisions by this Court provide guidance – most of which are in fact rendered in situations where the instruments were actually executed and the transactions evidence in such instruments were thereafter reversed. Seen in that light, a case where a document is stamped but was never converted into an executed instrument because the intention to execute the instrument is abandoned, stands on a better footing as compared with situations where stamp duty has been

directed to be refunded despite execution, where a chargeable instrument comes into being, after which other circumstances lead to abandonment of the transaction documented in the executed instrument.

Case Law Analysed:

38. In *Committee-GFIL*², the Supreme Court was considering a case where a committee set up to monitor the assets of a plantation company under liquidation finalised a sale with successful bidders in respect of certain properties. Sale deeds were executed and even registered but the Committee did not hand over the properties. The Court directed that the amounts paid towards partial discharge of the purchase consideration be refunded. This led to an application for refund of stamp duty paid on the sale deeds being filed with the Government of Punjab, which was rejected on the basis of the similar provisions in that state's law, stipulating a deadline for making such an application. At the risk of copious extraction, the following analysis by the Supreme Court is noteworthy:

21. *The question which arises for consideration in this case is whether the applicants are entitled to claim refund of stamp duty amount of Rs 6.22 crores.*

² *Committee-GFIL vs. Libra Buildtech Private Limited and Others* – (2015) 16 SCC 31

22. From the facts set out supra which are part of judicial record of the cases decided by this Court and the Delhi High Court, it is clear that despite the applicants depositing the entire sale consideration (Rs 101.80 crores) and Rs 6.22 crores for stamp duty to purchase the properties in question, and having performed their part of contract, in letter and spirit, the GFIL Committee i.e. seller failed to place the applicants in possession of the properties. This event resulted in frustrating the purpose as was originally intended between the parties.

24. In our considered opinion, keeping in view the undisputed facts mentioned above, the applicants are also entitled to claim the refund of entire stamp duty amount of Rs 6.22 crores from the State Exchequer, which they spent for execution of sale deeds in their favour in relation to the properties in question. This we say for the following reasons.

25. In the first place, admittedly the transaction originally intended between the parties i.e. sale of properties in question by GFIL Committee to the applicants was not accomplished and failed due to reasons beyond the control of the parties. Secondly, this Court after taking into consideration all facts and circumstances also came to the conclusion that it was not possible for the parties to conclude the transactions originally intended and while cancelling the same directed the seller (GFIL Committee) to refund the entire sale consideration to the applicants.....

26. In our considered opinion, while deciding a case of this nature, we have to also bear in mind one maxim of equity, which is well settled, namely, actus curiae neminem gravabit meaning—an act of the court shall prejudice no man. In Broom's Legal Maxims, 10th Edn., 1939 at p. 73 this maxim is explained saying that it is founded

upon justice and good sense and afforded a safe and certain guide for the administration of law. This maxim is also explained in the same words in Jenk. Cent. 118. This principle is fundamental to any system of justice and applies to our jurisprudence. [See Busching Schmitz (P) Ltd. v. P.T. Menghani [Busching Schmitz (P) Ltd. v. P.T. Menghani, (1977) 2 SCC 835] and Raj Kumar Dey v. Tarapada Dey [Raj Kumar Dey v. Tarapada Dey, (1987) 4 SCC 398]].

28. In our considered opinion, the aforesaid maxim would apply with full vigour in the facts of this case and if that is the position then the applicants, in our opinion, are entitled to claim the refund of the entire amount of stamp duty from the State Government which they spent in purchasing the stamp papers for execution of sale deed in relation to the properties in question. Indeed in the light of six reasons set out supra which, in our considered opinion, in clear terms attract the principle contained in the aforesaid maxim, the State has no right to defend the order of the SDM for retaining the amount of stamp duty paid by the applicants with them. The applicants' bona fide genuine claim of refund cannot be denied on such technical grounds.

29. This case reminds us of the observations made by M.C. Chagla, C.J. in Firm Kaluram Sitaram v. Dominion of India [Firm Kaluram Sitaram v. Dominion of India, 1953 SCC OnLine Bom 39 : AIR 1954 Bom 50] . The learned Chief Justice in his distinctive style of writing observed as under in para 19: (Firm Kaluram case [Firm Kaluram Sitaram v. Dominion of India, 1953 SCC OnLine Bom 39 : AIR 1954 Bom 50] , SCC OnLine Bom)

“19. ... we have often had occasion to say that when the State deals with a citizen it should not ordinarily rely on technicalities, and if the State is satisfied that the case of the citizen is a just one, even though legal defences may be open

to it, it must act, as has been said by eminent Judges, as an honest person.”

We are in respectful agreement with the aforementioned observations, as in our considered opinion these observations apply fully to the case in hand against the State because except the plea of limitation, the State has no case to defend their action.

30. *Even apart from what we have held above, when we examine the case of the applicants in the light of Sections 49 and 50 of the Act, we find that the case of the applicants can be brought under Section 49(d)(2) read with Section 50(3) of the Act to enable the State to entertain the application made by the applicants seeking refund of stamp duty amount. The interpretation, which advances the cause of justice and is based on the principle of equity, should be preferred. We hereby do so.*

32. *In our considered opinion, even if we find that applications for claiming refund of stamp duty amount were rightly dismissed by the SDM on the ground of limitation prescribed under Section 50 of the Act yet keeping in view the settled principle of law that the expiry of period of limitation prescribed under any law may bar the remedy but not the right, the applicants are still held entitled to claim the refund of stamp duty amount on the basis of the grounds mentioned above. In other words, notwithstanding dismissal of the applications on the ground of limitation, we are of the view that the applicants are entitled to claim the refund of stamp duty amount from the State in the light of the grounds mentioned above.*

[Emphasis Supplied]

39. In ***Rajeev Nohwar***³, the Supreme Court consciously invoked Article 142 of the Constitution of India in a case where an executed instrument was reversed pursuant to a ruling by the National Consumer Disputes Redressal Commission on the premise that rejection of the refund would violate principles of equity, justice and fairness. The Supreme Court took the view that the pendency of proceedings that led to the reversal of the transaction could not lead to a denial of the refund of stamp duty despite the stamped instrument being cancelled.

40. In the light of the decision in ***Committee-GFIL*** and ***Rajeev Nohwar***, a Learned Single Judge of this Court, in ***Satish Buba Shetty***⁴ dealt with another case of a refund sought pursuant to disputes between a flat purchaser and a developer being reversed by way of a settlement in proceedings before the Real Estate Regulatory Authority. The application for stamp duty was evidently well after the six-month deadline, and the Learned Single Judge held that the Stamp Authorities could not be faulted for their inability to exercise their discretion in view of the six-month deadline having been missed. However, but in exercise of the extraordinary writ jurisdiction, the Court allowed the refund of stamp duty in the following words:

³ *Rajeev Nowhar vs. Chief Controlling Revenue Authority, Maharashtra State, Pune & Ors.* – 2021 13 SCC 754

⁴ *Satish Buba Shetty vs. Inspector General of Registration and Collector of Stamps & Ors* – 2024 (3) Mh.L.J. 293

24. *The authorities under the Stamp Act, 1958 may be justified in rejecting the application in strict adherence to the letter of the law. The statutory provision does not vest any discretion in the authorities. It is trite, refund of the amount paid under any enactment is a matter of a statutory right. Reading down the proviso to sub-section (1) of section 48 of the Stamp Act, 1958 as directory may have serious repercussions on the revenue. But, the High Court in exercise of the extraordinary writ jurisdiction cannot be denuded of the power to delve into the question as to whether the non-compliance of the stipulation as to time was brought about by factors which were beyond the control of the affected party and to insist performance would have amounted to compelling such party to do impossible and, thus, relieve such party of the hardship in deserving cases, where injustice is writ large.*

[Emphasis Supplied]

41. In ***Committee-GFIL***, Article 142 had not been invoked. In ***Rajeev Nowhar***, Article 142 was invoked. The principles articulated in both these decisions were invoked in ***Satish Buba Shetty*** in exercise of the writ jurisdiction under Article 226 of the Constitution of India. In ***Satish Buba Shetty***, the Learned Single Judge indeed took the view that the delays in litigation were outside the control of the party seeking the refund, but it is also true that it was a case where there was a conscious settlement arrived at between the parties to reverse the transaction, although in the course of litigation.

42. In ***S.K. Realtors***⁵, a Learned Division Bench of this Court dealt with a situation akin to the matter in hand – after franking a draft of what would be an instrument, the parties changed their mind and did not execute the instrument because the underlying transaction was cancelled. The Learned Division Bench held thus:

10. The purpose behind incorporating section 48 of the Maharashtra Stamp Act is clearly to ensure that in cases where transaction is not executed, or cancelled before execution, then the State is not entitled to claim revenue for execution of the said document, and the State, therefore, is under an obligation to refund the said amount. The State, therefore, in our view, cannot resort to profiteering on the basis of a document which is not executed.

[Emphasis Supplied]

43. More recently, in ***Harshit Harish Jain***⁶, a three-judge bench of the Supreme Court was considering a case of whether a retroactive effect of the amendment curtailing the right to a refund by truncating the deadline for the application. In its analysis, relying on another judgement of the Supreme Court in ***Bano Saiyed Parwaz***⁷, even assuming the amended and truncated deadline were to be applied, the Supreme Court ruled as follows:

⁵ *S.K. Realtors vs. The Inspector General of Stamps & Controller of Stamps, Maharashtra State, Pune Ors. – 2016 SCC OnLine Bom 14536*

⁶ *Harshit Harish Jain and Anr. Vs. State of Maharashtra and Ors. – (2025) 3 SCC 365*

⁷ *Bano Saiyed Parwaz v. State of Maharashtra – (2025) 2 SCC 201*

19. Even if one were to hold that the appellants' claim is examined under the amended six-month period, we are of the considered opinion that a mere technical delay should not, by itself, extinguish an otherwise valid claim. The scheme of stamp duty refund provisions is designed to ensure fairness when the underlying transaction is rescinded for bona fide reasons. The appellants were compelled to cancel the purchase due to the developer's inability to deliver timely possession, and were in no way remiss or at fault.

20. Denying a legitimate refund solely on technical grounds of limitation, especially when the timing of registration fell close to the legislative amendment, fails to strike the equitable balance ordinarily expected in fiscal or quasi-judicial determinations. A measure of discretion or consideration for good faith conduct is not alien to statutory processes that safeguard citizens from unjust enrichment by the State.

21. It has been laid down by this Court in Bano Saiyed Parwaz v. State of Maharashtra that the limitation provision in stamp law (to seek refund of stamp duty) should not be enforced so as to oust the remedy when the applicant is otherwise not blameworthy. The relevant paras of the same have been reproduced hereunder : (SCC pp. 206-207, paras 14-16)

“14. In Committee-GFIL v. Libra Buildtech (P) Ltd., wherein the issue of refund of stamp duty under the same Act was in question, this Court has observed and held inter alia as under : (SCC pp. 44-45, paras 29 & 32)

‘29. This case reminds us of the observations made by M.C. Chagla, C.J. in Kaluram Sitaram (Firm) v. Union of India [Kaluram Sitaram (Firm) v. Union of India, 1953 SCC OnLine Bom 39 :

AIR 1954 Bom 50] . The learned Chief Justice in his distinctive style of writing observed as under in para 19 : *[Kaluram (Firm) case [Kaluram Sitaram (Firm) v. Union of India, 1953 SCC OnLine Bom 39 : AIR 1954 Bom 50] , SCC OnLine Bom]*

“19. ... we have often had occasion to say that when the State deals with a citizen it should not ordinarily rely on technicalities, and if the State is satisfied that the case of the citizen is a just one, even though legal defences may be open to it, it must act, as has been said by eminent Judges, as an honest person.”

We are in respectful agreement with the aforementioned observations, as in our considered opinion these observations apply fully to the case in hand against the State because except the plea of limitation, the State has no case to defend their action.

32. In our considered opinion, even if we find that applications for claiming refund of stamp duty amount were rightly dismissed by the SDM on the ground of limitation prescribed under Section 50 of the Act yet keeping in view the settled principle of law that the expiry of period of limitation prescribed under any law may bar the remedy but not the right, the applicants are still held entitled to claim the refund of stamp duty amount on the basis of the grounds mentioned above. In other words, notwithstanding dismissal of the applications on the ground of limitation, we are of the view that the applicants are entitled to claim the refund of stamp

duty amount from the State in the light of the grounds mentioned above.'

[Emphasis Supplied]

44. There are subsequent decisions of multiple Learned Single Judges on the subject, following the principles enunciated in these three cases. To avoid prolixity, I am not extracting from them in this judgement.

Application to Facts:

45. I have given my anxious consideration to the situation at hand and applied the precedents analysed above. Indeed, in ***Committee- GFIL, Rajeev Nowhar and Satish Buba Shetty***, there was litigation that led to a reversal of the transactions evidenced by the instruments on which stamp duty had been paid. In one view of these aforesaid cases, the payment of stamp duty had already led to those instruments being capable of constituting evidence in those very proceedings. Yet, based on the outcome of those proceedings, when the underlying transactions were reversed, although stamp duty is not a transaction tax but a duty payable on instruments to enable their admission into evidence in order to prove the transactions, the judgements looked to the facts and circumstances of the respective cases to direct refund of stamp duty when the transactions were

reversed. In *Satish Buba Shetty*, as stated above, the reversal was pursuant to a settlement arrived at consciously, although in the course of litigation.

46. In sharp contrast to the aforesaid cases, in the instant case, the draft of the agreement for sale was not even executed; no instrument even came into existence; and therefore, there has been no reliance on the document as evidence in any forum. Without execution leading to an instrument coming into being, whether Stamp Duty is ever chargeable is a core question that rears its head. Indeed, in those cases, the delay in the conduct of judicial proceedings was factored in, but in those cases, the documents had actually been executed and the instruments not only came into existence but were also part of the evidence in the legal proceedings involved. In the instant case, the transaction was abandoned during the Covid Pandemic and the money was felt better conserved owing to Sangita's health condition.

47. Moreover, the approach of the Courts in the aforesaid cases has been just, equitable and fair, precisely in exercise of the writ jurisdiction, even while the reasoning was applied to instruments on which stamp duty had been paid. Transactions contracted and evidenced by such instruments had been reversed but in the

extraordinary facts of the respective cases, the Courts invoked the extraordinary powers of the writ jurisdiction and directed the refund.

48. The net result of the multiple iterations and declaration of the law can be said to be that the writ court would have the power to exercise its extraordinary jurisdiction to deal with the adjectival provisions of the deadline for an application in Section 48 of the Stamp Act, even while the Stamp Authorities would need to adhere to the stipulated deadlines. Looking to the nature of the facts and circumstances of the case, the deadlines in Section 48 of the Stamp Act would not be directory in nature for purposes of exercise of discretion by the Stamp Authorities, but would be so in the exercise of the extraordinary writ jurisdiction.

49. The substantive right to refund must be discerned from the application of the substantive provisions of the Stamp Act to the facts of the case, while the procedural deadlines in the provisions dealt with above would bind the Stamp Authorities but not the writ courts.

50. In the instant case, Sunita has a 100% disability and the material on record shows that Suresh is the court-approved guardian taking care of her. The stamp duty being retained by the State would constitute unjust enrichment and would result in an unfair and unjust outcome for Suresh and Sunita, where without a chargeable instrument

even having come into being (unlike in the aforesaid cases dealt with by the Supreme Court), an ailing couple would be out of pocket and denied an allowance of stamp duty on what was not even a still-born instrument but was an unborn instrument that had been aborted.

51. The sole hitch is that six months had elapsed from the date of purchase of the stamps. Adopting the very same approach articulated in the three decisions analysed above, and applying it to the peculiar facts of the instant case, in my opinion, a case has been made out for exercise of the extraordinary jurisdiction in favour of the Petitioners.

Directions and Order:

52. For the aforesaid reasons, and based on the analysis set out above, the captioned Writ Petition is ***allowed***.

53. The orders impugned i.e. the order dated September 9, 2021 and October 4, 2022 are hereby quashed and set aside.

54. The claim for allowance of stamp duty impressed on the document that would have become an instrument i.e. the agreement for sale is allowed.

55. The Petitioners shall be paid the refund of stamp duty paid electronically on July 6, 2019 within a period of six weeks from the

upload of this judgment on the website of this Court in accordance with the rules for refund. The Respondents shall process any claim for interest in accordance with applicable law.

56. Rule is made absolute in the aforesaid terms. No costs.

57. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN J.]