IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2762 OF 2025

Pantam Ganpati Harihara Prasad and another — Petitioners
versus
The Collector of Stamps, Mumbai and others — Respondents

Mr.Siddhesh Bhole with Mr.Yakshay Chheda and Ms.Riddhi Natekar i/by SSB Legal & Advisory for Petitioners.

Mr.R.S.Pawar, AGP, for Respondent-State.

CORAM : AMIT BORKAR, J.

DATE : 4th March 2025

PC :

1. The present writ petition assails the legality, validity, and propriety of the order dated 8th November 2017, passed by Respondent No.2, whereby the Petitioner's application seeking a refund of stamp duty amounting to Rs.23,81,010/- has been rejected. The rejection is premised upon the ground that the application for cancellation of the registered Agreement to Sale was not preferred within the prescribed period as stipulated under the provisions of the Maharashtra Stamp Act, 1958 (hereinafter referred to as "the Act").

2. The factual matrix leading to the present proceedings, as emerging from the pleadings, is succinctly stated thus: The Petitioner, having evinced interest in purchasing a residential unit in the proposed development undertaken by the developer, entered into an Agreement to Sale on 26th December 2012, pursuant to which an amount of Rs.21,81,010/- was duly paid as consideration for the said transaction. However, the developer, owing to unforeseen circumstances and his inability to adhere to the schedule of progress envisaged under the agreement, communicated to the Petitioner on 5th November 2014, offering three distinct options to mitigate the hardship caused to the Petitioner. These options comprised: (i) transferring the booking to another party, (ii) shifting to an alternative project, or (iii) continuing with the booking in the East Tower of the same project.

3. The Petitioner, having deliberated upon the options so presented, elected to rescind the contractual arrangement and, consequently, on 12th December 2014, a registered deed of cancellation was executed between the parties, thereby annulling the Agreement to Sale dated 26th December 2012. It was categorically recorded therein that the said cancellation was effectuated due to the developer's inability to fulfill his contractual obligations by delivering possession of the subject premises within the stipulated time frame. This mutual agreement to rescind the contract formed the basis of the Petitioner's subsequent claim for a refund of the stamp duty originally paid.

4. In furtherance of the cancellation so effected, the Petitioner, on 16th December 2017, preferred an application before Respondent No.1 seeking a refund of Rs.23,81,010/-.

However, vide communication dated 15th July 2015, Respondent No.1 required the Petitioner to furnish additional documents in substantiation of his claim. Eventually, Respondent No.2, vide impugned order dated 8th November 2017, declined to entertain the refund application on the sole ground that it was barred by limitation. It was opined that, in accordance with Section 48(2) of the Act, such an application ought to have been preferred within a period of two years from the date of execution of the Agreement to Sale, and in the absence of any statutory provision enabling the condonation of delay, the rejection was inevitable. Aggrieved thereby, the Petitioner has approached this Court seeking judicial intervention.

5. Learned counsel for the Petitioner, placing reliance upon the judgment of the Hon'ble Supreme Court in *Harshit Harish Jain & Anr. v. State of Maharashtra & Ors.* [(2025) SCC OnLine SC 166], contends that the facts of the present case are materially similar to those adjudicated upon by the Hon'ble Apex Court. It is urged that in the said decision, despite the refund application being ostensibly barred by limitation under Section 48(2) of the Act, the Hon'ble Supreme Court directed the refund of stamp duty, emphasizing that the cancellation of the agreement was occasioned due to bona fide reasons attributable to the developer's failure to honor his commitments. On the strength of this pronouncement, it is argued that the Petitioner, being similarly placed, is equally entitled to relief.

6. Per contra, the learned Assistant Public Prosecutor (APP) stoutly opposes the submissions advanced on behalf of the Petitioner. It is submitted that the reasons assigned by Respondent No.2 for rejecting the refund application are well-founded and firmly rooted in the statutory framework. The contention that the refund application, having been filed beyond the prescribed period of two years, stands barred by limitation is sought to be reinforced by placing reliance upon the explicit language employed in Section 48(2) of the Act. It is further contended that Respondent No.2, being a creature of statute, is devoid of any discretionary power to condone the delay in entertaining applications filed beyond the period of limitation, and therefore, the rejection of the Petitioner’s application cannot be faulted on any count.

7. Rival contentions now fall for consideration. Upon perusing the record, it emerges that the Petitioner and the Developer executed a registered Agreement to Sale on 26th February 2012, whereunder the Petitioner paid a sum of Rs.23,81,010/- towards stamp duty and registration charges. It is undisputed that on 5th November 2014, the Developer addressed a communication to the Petitioner, offering three options, namely (i) transfer of booking, (ii) shifting to another project, or (iii) refund of the amounts paid. Faced with the Developer’s apparent inability to adhere to the completion schedule, the Petitioner bona fide opted for refund. The factual substratum, as evidenced by the record, unerringly points to the cancellation being necessitated by the Developer’s delay in completing the project, a delay that reasonably prompted the Petitioner to surmise that timely possession, as envisaged under the Agreement, stood improbable.

8. In this contextual backdrop, the Petitioner contends that the situation at hand is squarely covered by the ratio laid down by the Hon'ble Supreme Court in Harshit Harish Jain (Supra). In that decision, while interpreting the provisions of the Maharashtra Stamp Act, 1958 (hereinafter "the Act"), the Hon'ble Apex Court countenanced a scenario where, owing to bona fide reasons, the agreement came to be cancelled due to the Developer's failure to deliver possession in accordance with the contract. Despite limitations stipulated under Section 48(2) of the Act, the Court underscored the need to grant relief where the equities so demand, particularly when there is no contributory default on the part of the purchaser. The present facts mirror the factual conspectus in that precedent, inasmuch as the Petitioner's decision to cancel the contract was occasioned by bona fide apprehensions of a protracted delay.

9. Indeed, while the Act prescribes certain time constraints for seeking a refund of stamp duty, it is equally imperative to acknowledge that the statute should not be interpreted in a manner that unjustly defeats legitimate claims. Judicial interpretation of such refund provisions has often affirmed that where the foundational reason for rescission is beyond the control of the purchaser, a liberal construction is warranted to alleviate undue hardship. In the instant case, the Developer's inability to fulfill contractual obligations forms the basis of the Petitioner's claim, rendering the Petitioner free from any default. When tested upon the touchstone of fairness, equity, and good conscience, it appears that the Petitioner's entitlement to a refund remains unimpeachable.

10. In light of the above discussion, I am of the considered view that the Petitioner is entitled to the relief of refund of the stamp duty. The Petitioner's situation stands on the same footing as the claimants in the case of *Harshit Harish Jain and Another (Supra),* wherein the Apex Court granted relief despite the bar of limitation, holding that a bona fide cancellation attributable to the Developer's default must not deprive the aggrieved purchaser of equitable redress. Consequently, and in keeping with the consistent judicial approach to such matters, the Petitioner deserves a similar relief.

ORDER

(i) The Writ Petition stands allowed and is accordingly disposed of.

(ii) Respondent No.2 is directed to refund the sum of Rs.23,81,010/- to the Petitioner, as per the application dated 16th February 2015, within six weeks from the date of production of this order.

(iii) There shall be no order as to costs.

(AMIT BORKAR, J.)

MST