IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-20229-2021 (O&M)
Date of Decision:18.03.2026

Shakuntla Sharma

......Petitioner

Versus

State of Haryana and others

......Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Ms. Ritu Sharma, Advocate for the petitioner.

Mr. Udit Garg, Addl. A.G. Haryana.

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JASGURPREET SINGH PURI J.(Oral)

1. The present petition has been filed under Articles 226/227 of the Constitution of India for issuance of an appropriate writ, order or direction, including a writ in the nature of *mandamus* or *certiorari* or in any other nature, seeking quashing of the order dated 09.09.2021 (Annexure P-4), whereby the respondents have declined to refund the stamp duty to the petitioner.

2. Learned counsel appearing on behalf of the petitioner submitted that the husband of the petitioner, namely Sh. B.R. Sharma, had purchased stamp paper through a challan on 21.06.2018 by making payment of an amount of Rs. 9,10,000/- towards the treasury through RTGS/NEFT from ICICI Bank account No. 00871001444 of the petitioner. The petitioner, who is the widow of the aforesaid Sh. B.R. Sharma, was the beneficiary. The aforesaid amount was paid for the purchase of stamp paper

for the purpose of execution of a sale deed, which was to be executed in the name of the present petitioner. However, unfortunately, after about two months, the husband of the petitioner died on 11.08.2018, and the aforesaid stamp paper could not be used for execution of any sale deed. Thereafter, since the stamp paper was not used at all and no stamp paper was delivered to the petitioner, and only payment had been made through RTGS, the petitioner filed an application before the respondent on 28.05.2021 for refund of the aforesaid amount. However, the same was rejected by way of the impugned order dated 09.09.2021 (Annexure P-4), stating therein that it was not a fit case for refund, being time-barred under Section 50 of the Indian Stamp Act, 1899 (hereinafter referred to as 'the Act'). It was further stated in the said order that the refund was refused and original stamp papers were returned to the applicant. Learned counsel, however, submitted that although it has been so recorded in the impugned order, no such stamp papers were ever delivered to the petitioner, and the said observation is factually incorrect.

3. Learned counsel further submitted that the impugned order passed by the Collector, Gurugram is absolutely non-speaking and perverse, as no detailed reasons have been assigned therein. Apart from the above, it is contended that the request of the petitioner for refund of the amount was not covered under Section 50 of the Act, as the said provision would apply only when the case falls within the categories provided under Section 49 of the Act. However, the present case is not a case of spoiled stamps, as neither any stamp paper was delivered to the petitioner nor was

any stamp spoiled, nor was there any “impressed stamp” as per the definition contained under Section 2(13) of the Act. Therefore, the claim of the petitioner could not have been held to be time-barred under Section 50 of the Act.

4. She further submitted that in cases where no stamp paper has been delivered to the petitioner and only payment has been made through RTGS, and merely a computer-generated entry of stamp has been created, there is no specific provision prescribing any period of limitation. She also submitted that, considering the special circumstances of the present case, wherein the husband of the petitioner died within two months of the payment made through RTGS and amount so deposited remained unutilized, non-refund of the amount to the petitioner would amount to undue enrichment of the State exchequer. Learned counsel further submitted that such technicalities should not come in the way of refund of the amount to the petitioner.

5. On the other hand, learned State counsel submitted that, as per the reply filed by the respondent, on the basis of the amount deposited in the State treasury through RTGS, stamp paper of Rs.9,10,000/- was generated by the petitioner on 22.06.2018 with respect to challan/GRN No. 0036651355 for the purpose of registration of a sale deed. He further submitted that the application for refund was filed after about two years and was therefore, not permissible under the law, as under Section 50 of the Act, the petitioner could have applied only within a period of six months. Accordingly, the present petition is liable to be dismissed.

6. He further submitted that it is not clear whether the petitioner has used the aforesaid stamp paper for execution of the sale deed or not.

7. I have heard learned counsels for the parties.

8. One of the arguments raised by learned State counsel was that it is not clear whether the stamp paper which was generated was used for any sale or not. However, para No. 11 of the present petition would show that a specific averment has been made that the petitioner neither used the stamp paper nor the same was issued to her nor any stamp paper was ever given to the petitioner. Therefore, the observation in the impugned order (Annexure P-4), wherein it has been stated that the original stamp papers were returned, is incorrect, as the same were never issued in the first place. When the respondents filed their reply, the aforesaid averments were not specifically denied, and it has merely been stated that the stamp was generated by the petitioner on 22.06.2018 for the purpose of a sale deed. Para No. 11 of the writ petition as well as para No. 11 of the reply filed by the respondent-State are reproduced as under:-

Para No.11 of the writ petition

"11. That the petitioner has neither use the stamp paper nor the same was issued to her, the challan was given and no stamp paper was ever given to the petitioner. The order that original stamp papers are returned to the petitioner is wrong, no original stamp has been returned to the petitioner because the stamp paper was not issued at all to the petitioner therefore, there is no delay in filing the application for refund

of the amount."

Para No.11 of the reply

"11. That the contents of para no.11 of the petition are wrong and denied. It is submitted that Stamp paper of Rs.9,10,000/- was generated by the petitioner on 22.06.2018 with respect to the challan GRN no.0036651355 for the purpose of registration of sale deed."

9. A conjoint reading of the averments made in the writ petition and the reply would show that there is no specific denial of the petitioner's assertion that the stamp paper was neither used nor ever issued to her. Therefore, the respondent-State cannot now take the plea that it is not clear whether the stamp paper was used or not.

10. With regard to the impugned order, which has been passed solely on the ground that the claim is barred by limitation under Section 50 of the Act, a perusal of the same would show that, on the face of it, the said order is a non-speaking order. No reasons or relevant dates have been assigned by the Collector, Gurugram, and in barely half a page, the request of the petitioner has been rejected merely by stating that it is a time-barred claim.

11. The aforesaid impugned order (Annexure P-4) is reproduced as under:-

Shakuntla Sharma w/o Lt. Sh. Bhagirath Sharma R/O C-4-D 58-B Janakpuri New Delhi-110058 has filed an *application in this office for refund on 28/5/2021 along with Non-Judicial/Judicial Stamp papers of Rs.9,10,000/- purchased on 22/06/2018 while the instrument was not executed.*

The above stamp papers were forwarded to the stamp Auditor for Audit. He checked and found <u>not fit for refund.</u> This claim is time barred as stipulated under Section 50 of the Indian stamp Act 1899. Hence, the refund is refused and original stamp papers are returned to the applicant."

12. Be that as it may, whether the case of the petitioner was barred under Section 50 of the Act or not, the relevant provisions of the Stamp Act are required to be considered. Sections 49 and 50 of the Act are reproduced as under:-

Section 49. Allowance for spoiled stamps:- *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 50, 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 undesignedly 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) *in the case of bills of exchange (payable otherwise than on demand) or promissory notes:—*

(1) *the stamp on any such bill of exchange signed by or on behalf of the drawer which has not been accepted or made use of in any manner whatsoever or delivered out of his hands for any purpose other than by way of tender for acceptance:*

Provided that the paper on which any such stamp is impressed, does not bear any signature intended as or for the acceptance of any bill of exchange to be afterwards written thereon;

(2) *the stamp on any promissory note signed by or on behalf of the maker, which has not been made use of in any manner whatsoever or delivered out of his hands;*

(3) *the stamp used or intended to be used for any such bill of exchange or promissory note signed by, or on behalf of the drawer thereof, but which from any omission or error has been spoiled or rendered useless, although the same, being a bill of exchange, may have been presented for acceptance or accepted or endorsed, or, being a promissory note, may have been delivered to the payee:*

Provided that another completed and duly stamped bill of *exchange or promissory note is produced identical in every particular, except in the correction of such omission or error as aforesaid, with the spoiled bill or note;*

(d) *the stamp used for an instrument executed by any party thereto which:—*

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

(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 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 being 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 has been effected by some other instrument between the same parties and bearing a stamp of not less value;*

(8) *is inadvertently and undesignedly 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, 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.

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.*

Section 50. Application for relief under Section 49 when to be made:-*The application for relief under Section 49 shall be made within the following periods, that is to say:—*

(1) *in the cases mentioned in clause (d)(5), within two months of the date of the instrument;*

(2) *in the case of a stamped paper on which no instrument has* *been executed by any of the parties thereto, within six months after the stamp has been spoiled;*

(3) *in the case of a stamped paper in which an instrument has been executed by any of the parties thereto, within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed;*

Provided that:—

(a) *when the spoiled instrument has been for sufficient reasons sent out of India, the application may be made within six months after it has been received back in India;*

(b) *when, from unavoidable circumstances, any instrument for which another instrument has been substituted cannot be given up to be cancelled within the aforesaid period, the application may be made within six months after the date of execution of the substituted instrument.*

13. A perusal of Section 49 of the Act would show that, on an application being made within the period prescribed under Section 50, the Collector may, if satisfied as to the facts, make allowance for impressed stamps spoiled with regard to the various categories mentioned therein. The aforesaid expression "impressed stamps" is defined under Section 2(13) of the Act to include labels affixed and impressed by the proper officer, and stamps embossed or engraved on stamped paper. Section 2(13) of the Act is

also reproduced as under:-

> "***Section 2(13) "Impressed stamp" includes***
>
> *(a) labels affixed and impressed by the proper officer, and*
>
> *(b) stamps embossed or engraved on stamped paper."*

14. While filing the reply, the respondents have also attached the document Annexure R-1, which appears to be a computer-generated certificate showing the certificate number, the stamp duty paid, and also specifying the seller and the buyer. However, the stamp paper was neither delivered to the petitioner, nor have the said averments been denied by the respondents in the reply. In this way, the aforesaid document (Annexure R-1), which has been attached with the reply, would not be covered under the definition of "impressed stamp" as provided under Section 2(13) of the Act. Once it is not covered under the aforesaid definition, then on the face of it, Section 49 of the Act will not be applicable, as it applies only to "impressed stamps spoiled". Since Section 49 of the Act does not apply to the present petition, then as a consequence, Section 50 of the Act will also not be applicable, as Section 50 of the Act is in the nature of a continuation of Section 49 of the Act and refers to Section 49 only. Therefore, this Court is of the considered view that no period of limitation would apply in cases such as the present one, which do not pertain to 'impressed stamps spoiled.

15. The claim of the petitioner, who is a widow and whose husband died within about two months from the date of payment of the aforesaid amount of stamp duty, has been rejected on the ground that her claim is barred under Section 50 of the Act, whereas neither Section 49 nor

Section 50 of the Act is applicable to the facts and circumstances of the present case, as discussed above.

16. The Hon'ble Supreme Court in ***The Committee-GFIL v. Libra Buildtech Private Ltd. & Ors., 2015(16) SCC 31*** while dealing with the issue of refund and also pertaining to Sections 49 and 50 of the Act, observed that the interpretation which advance the cause of justice and is based on the principle of equity should be preferred. In another judgment of the Hon'ble Supreme Court in ***Bano Saiyed Parwaz v. Chief Controlling Revenue Authority and Inspector General of Registration and Controller of Stamps & Ors. 2025 (2) SCC 201,*** it was observed that the expression "stamps spoiled" is not expressly defined either in the Act or in the Rules, though Section 47 describes the instances of such spoiled stamps.

17. In ***Bano Saiyed Parwaz v. Chief Controlling Revenue Authority and Inspector General of Registration and Controller of Stamps & Ors***. ***(supra)*** the Hon'ble Supreme Court, while referring to its earlier judgment in ***The Committee-GFIL v. Libra Buildtech Private Ltd. & Ors. (supra),*** observed in paragraph 15 that the legal position stands settled that in ***Libra Buildtech (Supra)*** when the State deals with a citizen it should not ordinarily rely on technicalities, even though such defences may be open to it.

18. In view of the aforesaid facts and circumstances, this Court deems it fit and proper to exercise its jurisdiction under Article 226 of the Constitution of India to allow the present petition. Although, as noticed

above, there is no bar or technicality coming in the way of the petitioner, even otherwise, in view of the judgment of the Hon'ble Supreme Court, such technicalities would not come in the way of refund, considering the peculiar facts and circumstances of the present case, where the petitioner is a widow and her husband died within about two months from the date of payment of the amount to the State towards purchase of stamp paper.

19. Accordingly, the present petition is allowed. The respondent-State is directed to refund the aforesaid amount of Rs. 9,10,000/- to the petitioner along with interest @ 6% per annum from the date of application, i.e. 28.05.2021, till the date of actual payment, within a period of three months from today.

20. There shall be no order as to costs.

(JASGURPREET SINGH PURI)
JUDGE

18.03.2026
shweta

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No