

MR. RAJEEV NOHWAR

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v.

CHIEF CONTROLLING REVENUE AUTHORITY
MAHARASHTRA STATE, PUNE AND OTHERS

(Civil Appeal No. 5970 of 2021)

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SEPTEMBER 24, 2021

**[DR. DHANANJAYA Y CHANDRACHUD AND
B. V. NAGARATHNA, JJ.]**

Maharashtra Stamp Act, 1958 – ss. 47, 48, 49, 50, 52, 52A, 53(1A) – Stamp Duty – Refund of – The appellant booked a residential flat – He purchased e-SBTR stamp paper for amount of Rs.8,44,500/- – Dispute arose with the builder – Appellant filed consumer complaint before the National Consumer Disputes Redressal Commission (NCDRC) – Complaint was allowed – The developer refunded the entire consideration – Appellant claimed refund of stamp duty – The said claim was rejected by the Deputy Inspector of Registration on the ground that the application for refund was not made within six months as mandated by s.48(3) of 1958 Act – The High Court affirmed the view of the Revenue Authorities that the application for refund was barred by limitation – On appeal, held: Revenue Authorities rejected the application on the ground that the application was not filed within six months, treating the case to fall within the residuary provision in s.48 of the Act – What this view missed is, if the application for refund is not with reference to the provisions of s.47, the period of limitation in s.48 clearly has no application – Since the application of the appellant does not fall within the purview of s.47, the six month limitation period prescribed in s.48 would not be applicable – The application filed by the appellant does not fall within the ambit of ss.47, 52 and 52A – Appellant's application for refund was titled with reference to the provisions of s.47 – It is well settled that a reference of a wrong statutory provision, cannot oust the citizen of an entitlement to refund which otherwise follows in terms of a statutory provision – In the instant case, the stamp paper was purchased bona fide, and the conduct of the appellant was not unreasonable nor was there any intentional or wanton delay – As a

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- A *general rule of law, the right to refund is a statutory creation – A refund can be sought in terms envisaged by statute – The case of the appellant is not specifically barred by any substantive provision – In the case of an eventuality such as the instant case where the facts of the case are not covered by the statute, the Supreme Court u/Art.142 will have the power to condone delay – Since the delay in filling the application for refund in the instant case was due to the prolonged proceedings before the NCDRC, the application cannot be rejected on the ground of delay – As a consequence, the appellant is entitled to a refund of stamp duty which was paid at the time of purchase of the e-stamp paper, conditional on the appellant returning the e-stamp paper to the collector of stamps.*

Allowing the appeal, the Court

- HELD:** 1. Section 48 of the Maharashtra Stamp Act, 1958 begins with the statement that the application for relief under Section 47 shall be made within the periods which are indicated in clauses (1), (2) and (3). In other words, the periods of limitation which are prescribed in clauses (1), (2) and (3) are in respect of those cases which are governed by Section 47. The revenue authorities rejected the application filed by the appellant on the ground that the application was not filed within six months from the date of the purchase of the stamp paper, treating the case to fall within the residuary provision in Section 48 of the Act. This view has been accepted by the Single Judge of the Bombay High Court. What this view misses is that Section 48 in its entirety applies only to those cases where the application for relief is governed by Section 47. If the application for refund is not with reference to the provisions of Section 47, the period of limitation in Section 48 clearly has no application. Since the application of the appellant does not fall within the purview of any of the clauses in Section 47, the 6 month limitation period prescribed in Section 48 would not be applicable to the application for allowance filed by the appellant. [Paras 17 and 18][634-E-H; 635-A-B]

2. The application filed by the appellant did not fall within the ambit of Sections 47, 52 and 52A. It is true that the application for refund was titled with reference to the provisions of Section 47. But, it is well settled that a reference of a wrong statutory

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provision, cannot oust the citizen of an entitlement to refund which otherwise follows in terms of a statutory provision. [Para 28][640-B-C] A

3. In the present case, the stamp paper was purchased *bona fide* in view of the agreement to sell which was to be executed by the appellant with the developer. There was a dispute with the developer which led to the institution of the proceedings before the NCDRC. There was nothing untoward in the conduct of the appellant and certainly no unreasonable delay on the part of the appellant in awaiting the outcome of the proceedings. The NCDRC allowed the complaint giving the option to the appellant of either going ahead with the agreement along with an award of compensation or, in the alternative, to seek a refund with interest. The appellant having exercised the latter option applied within two months from the order of the NCDRC for the grant of refund. The conduct of the appellant, therefore, cannot be held to be unreasonable nor was there any intentional or wanton delay on the part of the appellant in applying for a refund of stamp duty. Such an application must be filed within a reasonable period. [Para 29][640-C-F] B C D

4. As a general rule of law, the right to refund is a statutory creation. A refund can be sought in terms envisaged by statute. As discussed above, the case of the appellant is not specifically barred by any substantive provision. It is an established principle that this Court while exercising its power under Article 142 of Constitution must not ignore and override statutory provisions but must rather take note of the express statutory provisions and exercise its discretion with caution. Therefore, if a statute prescribes a limitation period, this Court must be slow to interfere with the delay under Article 142. However, in the case of an eventuality such as the instant case where the facts of the case are not covered by the statute, this Court under Article 142 will have the power to do complete justice by condoning the delay. This Court is of the view that since the delay in filling the application for refund in the instant case was due to the prolonged proceedings before the NCDRC, the application cannot be rejected on the ground of delay. A litigant has no control over E F G

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- A **judicial delays. A rejection of the application for refund would violate equity, justice and fairness where the applicant is made to suffer the brunt of judicial delay. Therefore, this is a fit case for the exercise of the power under Article 142 of the Constitution.** [Para 31][641-C-F]
- B **5. As a consequence, it is directed that the appellant would be entitled to a refund of the stamp duty which was paid at the time of the purchase of the e-stamp paper, conditional on the appellant returning the e-stamp paper to the Collector of Stamps, Mumbai. The refund shall be processed within a period of one month of the delivery of the e-stamp paper to the Collector.**
- C **[Para 32][641-G; 642-A]**

Committee-GFIL vs Libra Buildtech Private Limited and Others (2015) 16 SCC 31: [2015] 11 SCR 420; AR Anthulay v. RS Nayak, (1988) 2 SCC 602: [1988] 1 Suppl. SCR 1; Union Carbide Corporation v. Union of India, (1991) 4 SCC 584: [1991] 1 Suppl. SCR 251;

- D ***Supreme Court Bar Association v. Union of India, (1998) 4 SCC 409: [1998] 2 SCR 795 – referred to.***

Case Law Reference

- E **[2015] 11 SCR 420** referred to **Para 10**
- [1988] 1 Suppl. SCR 1** referred to **Para 31**
- [1991] 1 Suppl. SCR 251** referred to **Para 31**
- [1998] 2 SCR 795** referred to **Para 31**
- F **CIVIL APPELLATE JURISDICTION:** Civil Appeal No.5970 of 2021.
From the Judgment and Order dated 22.11.2018 of the High Court of Judicature at Bombay in Writ Petition No. 10088 of 2018
- G **Varun Singh, Gaurav Nair, Ms. Pranati Bhatnagar, Advs. for the Appellant.**
Rahul Chitnis, Sachin Patil, Aaditya A. Pande, Geo Joseph, Advs. for the Respondents.
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The Judgment of the Court was delivered by

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DR. DHANANJAYA Y CHANDRACHUD, J.

1. Leave granted.

2. A citizen's claim for the refund of stamp duty has found a winding path to this court. The appellant booked a residential apartment. There arose a dispute with the builder. It led to a consumer complaint. The litigation consumed time. The appellant was permitted to opt for a refund of the price. The claim for refund of stamp duty has been rejected by the revenue arm of the state on the ground that more than six months have elapsed. The Bombay High Court, agreeing with the decision found the claim to be stale. A simple claim for refund leads us to the complexities of a revenue sourcing law.

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3. This appeal arises from a judgment dated 22 November 2018 of a Single Judge of the High Court of Judicature at Bombay. The Deputy Inspector General of Registration and Deputy Controller of Stamps, Pune rejected an application for refund of stamp duty filed by the appellant. The order of the authority was challenged in the exercise of the jurisdiction of the High Court under Article 226 of the Constitution. The petition has been dismissed.

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4. On 24 April 2014, the appellant booked a residential flat, being Unit No 2001 admeasuring 1660 sq ft in Tower No 24 of a construction project called Lodha Belmondo in Pune for a consideration of Rs 1,68,88,095. The appellant initially paid an amount of Rs 33,91,795 by July 2014 representing 19.9% of the agreed sale consideration, following which a confirmatory email was issued. This was followed by a letter of allotment dated 15 July 2014. On 14 August 2014, the appellant paid an amount of Rs 1,58,28,221 out of the agreed consideration. In order to facilitate the execution of a conveyance, the appellant purchased an e-SBTR stamp paper through a government challan bearing MTR GRN No MH0023603832014155 for a total amount of Rs 8,44,500 from the IDBI bank, Aundh, Pune for the execution of the agreement to sell.

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5. Disputes arose between the appellant and the developer which led to the appellant instituting a consumer complaint before the National Consumer Disputes Redressal Commission¹. During the pendency of the complaint, an interim order dated 25 September 2014 restrained the

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¹ "NCDRC"

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- A developer from creating third party interests in the flat. Eventually by an order dated 6 May 2016, the complaint was allowed. The appellant was given the option to either execute the agreement with the developer, in which event the developer would pay compensation in the amount of Rs 10 lakhs, or in the alternative, if the appellant was not willing to execute an agreement, the developer was directed to refund the entire consideration together with interest at the rate of 12% per annum from the date of receipt of each installment until the date of refund along with compensation of Rs.10,00,000. The appellant exercised the option of seeking a refund of consideration together with interest.
- C 6. The developer issued a cheque on 11 July 2016 for the refund of the consideration in terms of the order of the NCDRC. The appellant thereupon applied on 16 July 2016 for refund of the stamp duty of Rs 8,44,500 to the Collector of Stamps. By a communication dated 5 August 2016, the Collector of Stamps forwarded the file to the Deputy Inspector General of Registration with a recommendation that the refund should be denied on the ground that the appellant had not applied for refund within six months. By an order dated 27 September 2016, the Deputy Inspector General of Registration rejected the application for refund of stamp duty on the ground that the application for refund was not made within six months as mandated by Section 48(3) of the Maharashtra Stamp Act 1958. The appellant filed an appeal before the Chief Controlling Revenue Authority under Section 53(1A) of the Maharashtra Stamp Act 1958. The appeal was dismissed on 2 April 2018 on the same ground. The appellant moved the High Court of Judicature at Bombay in a writ petition under Article 226 of the Constitution challenging the orders dated 27 September 2016 and 2 April 2018 and for seeking an order directing the refund of the stamp duty paid.
- G 7. The High Court by its judgment dated 22 November 2018 dismissed the petition, affirming the view of the revenue authorities that the application for refund was barred by limitation, not having been preferred within a period of six months from the date of the purchase of the e-stamp. The High Court rejected the argument that the six month limitation period under Section 48(3) would not be applicable since the appellant's case falls under Section 52A of the Act. It was observed that Sections 47, 48, 52 and 52A of the Act will have to be interpreted harmoniously, and an application under Section 52A will also have to be made within six months from the date of purchase of the stamps. The

matter has accordingly travelled to this Court. Notice was issued on 18 A January 2019.

8. Mr Varun Singh, counsel appearing on behalf of the appellant submits that in order to appreciate the circumstances in which the application for refund was filed, it is necessary to bear in mind the following events:

- (i) The e-stamp paper was purchased on 16 August 2014;
- (ii) Following the dispute with the developer, the appellant moved the NCDRC which initially granted an interim stay on the creation of third party rights on 25 September 2014 and eventually allowed the complaint on 6 May 2016; and C
- (iii) The application for refund was moved on 16 July 2016.

9. In this backdrop, counsel for the appellant submitted that for the following five reasons, the application for refund was instituted within a reasonable period and cannot be held to be barred either on laches or limitation:

- (i) The dispute in relation to the agreement with the developer was pending adjudication before the NCDRC;
- (ii) The appellant had paid the stamp duty and purchased the e-stamp paper *bona fide* in order to facilitate the completion E of the transaction pertaining to the residential flat;
- (iii) In order to demonstrate the readiness and willingness of the appellant before the NCDRC, it was necessary for the appellant to continue to retain the e-stamp paper pending the disposal of the proceedings; F
- (iv) The e-stamp paper, as a matter of fact, would have been used if the adjudication by the NCDRC had resulted in a resolution of the dispute by removing some of the offending provisions insisted by the developer; and
- (v) Following the order of the NCDRC, the appellant exercised G the option to seek a refund in terms of a judicial order of the competent forum.

10. In this backdrop, counsel has relied on the provisions of Sections 47, 48 and 52A of the Maharashtra Stamp Act 1958. It has been submitted that the provisions of Section 48(3) which prescribe a period of six months H

- A from the date of purchase of stamp for filing an application for refund, would have no application where the case is not covered by the provisions of Section 47. In such a situation, it was urged that Section 52A would enure to the benefit of the appellant. In this context, counsel for the appellant relied on a judgment of a two-Judge Bench of this Court in ***Committee-GFIL vs Libra Buildtech Private Limited and Others.***²
- B 11. Opposing the submissions of the appellant, Mr Rahul Chitnis, Chief Standing Counsel for the State of Maharashtra has urged that:
- (i) The application filed by the appellant was specifically under the provisions of Section 47 of the Maharashtra Stamp Act 1958;
 - (ii) Once the appellant has conceded that the application was filed with reference to Section 47, the period of limitation prescribed in Section 48 would squarely stand attracted;
 - (iii) As a matter of fact, the application for refund of stamp duty would be relatable to the provisions of Section 47(a) of the Act; and
 - (iv) In these circumstances, the appellate authority was justified in coming to the conclusion that the application for refund was barred by limitation.
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- E The rival submissions fall for our analysis.
- F 12. Chapter 5 of the Maharashtra Stamp Act 1958 is titled “allowances for stamps in certain cases”. Section 47 which deals with “allowance for spoiled stamps” provides as follows:
- “47. ***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 inquiry 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:
- G (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;**

H ²(2015) 16 SCC 31

- (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; A
- (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; B
 - (1A) has been afterwards found by the Court, to be absolutely void from the beginning under section 31 of the Specific Relief Act, 1963; C
 - (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; D
 - (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; E
 - (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; F
 - (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; G
 - (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, except that falling under sub-clause (1A), no legal proceeding has been H

- A 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.

- B *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)

- C 13. Section 47 is subject to the rules which are made by the State government in regard to the evidence to be required or enquiry to be made. The provision stipulates that the Collector may make allowance, on an application seeking an allowance, for impressed stamps spoiled in the cases which are set out in clauses (a) to (c). The opening words of Section 47 also indicate that the application under Section 47 has to be made within the period which is prescribed by Section 48. The prefatory words of Section 47 advert to “impressed stamps spoiled in the cases” which are contained in clauses (a) to (c). Clause (a) deals with a situation where the stamp on any paper is inadvertently or undesignedly spoiled, obliterated or rendered unfit for the purpose intended either by an error in writing or by any other means before the instrument written on it is executed by any person. The object of clause (a) is to ensure that an allowance is made for impressed stamps which are *spoiled* inadvertently or unintentionally or where the stamp paper is rendered unfit for the purpose for which it was intended. That is why the expressions which have been used in clause (a) are spoiled, obliterated, or rendered unfit for the purpose.
- D F 14. Section 47 covers three classes of cases within it: (i) spoiled; (ii) obliterated; and (iii) unfit for the purpose by an error in writing or ‘any other means’. It is contended by the State that the case of the appellant would fall within the purview of the third category since it was rendered unfit for the purpose, i.e., the purpose of purchase of the property. This submission thus places reliance on the expression ‘*purpose*’ used in the provision. The submission does not accord with a plain reading of the provision. The expression “any other means” must be read in the context of the words which immediately precede it, namely, “error in writing”. The expression “by any other means” would indicate that the legislature intended to refer to defacement of a stamp paper in any manner analogous to an error in writing the instrument on the stamp paper. “Any
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other means” refers to any other modality by which the stamp paper is rendered unfit for the purpose for which it was purchased. Moreover, the prefatory words in Section 47 state that the collector must be satisfied that the stamp is ‘spoiled’. Clauses (a) to (c) lay down the cases that are covered within the ambit of the expression ‘spoiled stamps’. The emphasis of Section 47 is not on the *purpose* but on *unfit stamps*. Therefore, a case where the stamp has not been utilized at all because it is not needed subsequent to the purchase will not fall within the purview of Section 47. Only those cases where the stamp is unfit for the purpose by an error in writing or any other means would be covered by the provision. It is not the case of the appellant that the stamp paper has been spoiled or obliterated or rendered unfit for the purpose for which it was required. In the present case, it is common ground that the stamp paper is not spoiled but the purpose for which the stamp was purchased has become redundant in view of the judgment of the NCDRC. Therefore, there would be no occasion to apply the provisions of clause (a) of Section 47.

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15. Clause (c) of Section 47 begins with the expression “stamp used for an instrument executed by any party thereto” and is followed by eight sub clauses. In other words, clause (c) of Section 47 applies only where a stamp paper has been used for an instrument which has been executed by one of the parties to the instrument. That is why, for instance sub clause (2) refers to the instrument being subsequently found unfit either by reason of an error or mistake for the purpose for which it was originally intended. Sub clause (4) adverts to a situation where the instrument has not been executed by a material party and by his inability or refusal to sign it renders the instrument incomplete and insufficient for the purpose for which it was intended. Clause (c) of Section 47 has no application to the facts of the present case since it is common ground that the stamp was not used for an instrument already executed by any party thereto.

16. Now it is in this backdrop that it becomes necessary to advert to Section 48 of the Act. Section 48 provides as follows:

“48. Application for relief under section 47 when to be made. - 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:

- A Provided that where an Agreement to sell immovable property, on which stamp duty is paid under Article 25 of the Schedule I, is presented for registration under the provisions of the Registration Act, 1908 and if the seller refuses to deliver possession of the immovable property which is the subject matter of such agreement the application may be made within two years of the date of the instrument [or where such agreement is cancelled by a registered cancellation deed on the grounds of, dispute regarding the premises concerned, inadequate finance, financial dispute in terms of agreed consideration, or afterwards found to be illegal construction or suppression of any other material fact, the application may be made within two years from the date of such registered cancellation deed;]
- B (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 instrument.
- C (3) in any other case, within six months from the date of purchase of stamp.”
- D 17. Section 48 begins with the statement that the application for relief under Section 47 shall be made within the periods which are indicated in clauses (1), (2) and (3). In other words, the periods of limitation which are prescribed in clauses (1), (2) and (3) are in respect of those cases which are governed by Section 47. Clause (1) stipulates that for cases governed by clause (c)(5), the period within which the application has to be filed will be six months of the date of the instrument. Clause (2) specifies that in case where for unavoidable circumstances, any instrument for which another instrument has been substituted cannot be given up to be cancelled, in such an event, the application may be made within six months after the date of execution of the substituting instrument. Clause (3) which is a residuary provision provides for a limitation of six months from the date of the purchase of stamp.
- E 18. The revenue authorities rejected the application filed by the appellant on the ground that the application was not filed within six months from the date of the purchase of the stamp paper, treating the case to fall within the residuary provision in Section 48 of the Act. This view has been accepted by the Single Judge of the Bombay High Court. What this view misses is that Section 48 in its entirety applies only to those

cases where the application for relief is governed by Section 47. If the application for refund is not with reference to the provisions of Section 47, the period of limitation in Section 48 clearly has no application. Since the application of the appellant does not fall within the purview of any of the clauses in Section 47, the 6 month limitation period prescribed in Section 48 would not be applicable to the application for allowance filed by the appellant.

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19. Having observed that the application of the appellant for allowance is not covered by the Section 47, it is imperative to determine if it falls within the purview of any other provisions of the Act. Section 49 provides that allowance can be made without any limit of time for stamp papers that are used as printed forms of instruments by any banker or company, if the forms are not required by the banks or the companies. Thus, the application of the appellant is not covered by section 49. Section 50 states that allowance for misused stamps can be made. The provision brings within the purview of the term ‘misused stamps’, the stamps of greater value than required or stamps of description other than that prescribed by any rules or stamps that are useless since the instrument is written in contravention of the provisions or where a stamp has been used when the instrument is not charged with stamp duty. Section 50 only covers those cases where inadvertent mistakes are made in the stamp paper. Therefore, the case of the appellant is not covered by Section 50 since there is no mistake in the e-stamp, be it with regard to the value or description. Section 51 lays down the procedure for seeking allowance for cases that fall under Section 47, 49 and 50 and is thus of no application to the appellant’s claim.

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20. Now it is important to refer to Section 52 of the Act which F provides as follows:

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“52. Allowance for stamps not required for use: When any person is possessed of a stamp or stamps which have not been, spoiled or rendered unfit or useless for the purpose intended, but for which he has no immediate use, the Collector shall repay to such person the value of such stamp or stamps in money, deducting [therefrom] such amount as may be prescribed by rules made in this behalf by the State Government] upon such person delivering up the same to be cancelled, and proving to the Collector’s satisfaction,—

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- A (a) that such stamp or stamps were purchased by such person with a bona fide intention to use them ; and
(b) that he has paid the full price thereof ; and
(c) that they were so purchased within the period of 1[six months] next preceding the date on which they were so delivered :

Provided that, where the person is a licensed vendor of stamp, the Collector may, if he thinks fit, make the repayment of the sum actually paid by the vendor without any such deduction as aforesaid."

21. It could be argued that the use of the words, “for which he has no immediate use” in Section 52 would only covers cases where the purpose for the purchase of the stamp is still valid but the execution of the purpose if delayed and not ‘immediate’. Such an interpretation, however, is erroneous in view of the holistic reading of the provision.

The use of the phrase ‘immediate’ must be read in the context of the limitation period prescribed by the provision. Since a six month limitation period has been imposed in Section 52 for the cases that fall within its purview, the use of the phrase ‘no immediate use’ should be interpreted to mean either the permanent abandonment of the purpose or a delay (of more than six months from the purchase of the stamp) in the execution of the purpose.

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22. However, Section 52 would only apply to those cases where the applicant had *knowledge* that the stamp purchased was not required for use within six months from the date of purchase. The provision cannot be arbitrarily applied to cases where the purchaser of the stamp had no knowledge that the stamp would not be required for use within six months from the purchase of the stamp. In the instant case, the appellant had no knowledge of the fact that the stamp was not needed within six months from the purchase of it. He was in a bona fide contest over his rights with the builder. Therefore, the case of the appellant would not fall under Section 52 of the Act as well.

23. It has been contended by the counsel for the appellant that the case of the appellant falls within the purview of Section 52A of the Act. Now, it becomes necessary to advert to the provisions of Section 52A which provides as follows:

“52A. **Allowance for duty.**- (1) Notwithstanding anything contained in sections 47, 50, 51 and 52, when payment of duty is made by stamps or in cash as provided for under sub-section (3) of section 10 or section 10A or section 108, and when the amount of duty paid exceeds rupees one lakh, the concerned Collector shall not make allowance for the stamps, or the cash amount paid under the Challans, which are spoilt or misused or not required for use, but shall, after making necessary enquiries, forward the application with his remarks thereon to,-

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(a) the Additional Controller of stamps for the cases handled by the Collectors working in the Mumbai City District and Mumbai Suburban District; and

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(b) the concerned Deputy Inspector General of Registration and Deputy Controller of Stamps of the division for the cases handled by the Collectors other than those mentioned in clause (a).

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- A (2) The Additional Controller of Stamps or, the concerned Deputy Inspector General of Registration and Deputy Controller of Stamps of the division, as the case, may, be, on receiving such application consider the same and decide whether such allowance shall be given or not, and accordingly shall, grant the same, if the amount of allowance does not exceed rupees ten lakh, and if, it exceeds rupees ten lakh, shall submit such application, with his remarks thereon to the Chief Controlling Revenue Authority for decision.
- B (3) The Chief Controlling Revenue Authority on receiving such application shall decide on merit whether such allowance shall be given or not, and pass such order thereon as he thinks just and proper, which shall be final and shall not be questioned in any court or before any authority.”
- C 24. Section 52A is prefaced with a *non obstante* clause which operates notwithstanding anything contained in Sections 47, 50, 51 and 52. Section 52A stipulates that when the amount of stamp duty paid exceeds Rs 5 lakhs, the concerned Collector shall not make an allowance for the stamps or the cash amount paid under the challans but shall after making necessary enquiries forward the application with his remarks to the Additional Collector of Stamps (for cases handled by the Collectors working in the Mumbai City District and Mumbai Sub-Urban Districts) and the concerned Deputy Inspector General of Registration and Deputy Controlling of Stamps for cases in other regions.
- D 25. In view of Section 52A(2) of the Act, the Additional Collector of Stamps or the DIG as the case may be, on assessing the application has to decide whether allowance should be given or not and shall grant it if the amount of allowance does not exceed Rs 20 lakhs. If the amount exceeds Rs 20 lakhs, the application has to be submitted to the Chief Controlling Revenue Authority. The Chief Controlling Revenue Authority on receiving the application is required to decide on merits whether or not the allowance should be given. The provisions of Section 52A were substituted with effect from 1 May 2006 by Maharashtra Act 12 of 2006. By an Amendment, the amount of Rs 5 lakhs which has been specified in sub-Section (1) was enhanced from Rs 1 lakh by Maharashtra Act 20 of 2015 with effect from 24 April 2015. Likewise in sub-Section (2), the amount of Rs 20 lakhs stands enhanced from the earlier amount of Rs 10 lakhs by the same amending provision.
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26 .The provisions of Section 52A as noticed above have overriding force and effect, *inter alia*, on the provisions of Sections 47, 50, 51 and 52. It is pertinent to note that the *non obstante* clause does not apply to Sections 48 and 49 of the Act. While Section 48 is a limitation clause applicable to cases that are covered by Section 47, Section 49 applies to a Corporation where no limitation period has been prescribed. Section 52A can be applied to the appellant's case only if the provision is interpreted to override the limitation period laid down in the preceding provisions and if it is regarded as a residual substantive provision that would cover all cases that are not covered by any of the provisions. We will now consider the validity of such an interpretation.

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27. If Section 52A was enacted with the intent to override the limitation prescribed by Sections 50, 51 and 52 then Section 48 ought to have also been included specifically since Section 48 is the limitation provision applicable to Section 47. Section 48 is not incorporated in the non-obstante provision of section 52 A. This is hence intrinsic material to indicate that the purpose of the non-obstante clause in Section 52A was to override the jurisdiction of the adjudicating authority (i.e the Collector) under Sections 47, 50, 51 and 52 to decide the claims for allowances. Section 52A specifically divests the power of the Collector to decide the claims of allowance falling within those provisions and vests the power to other authorities if the payment of stamp duty exceeds Rupees five lakhs. In those cases, though the application is to be made to the Collector, he will have no adjudicatory capacity. The Collector must forward the application to the concerned authority as mentioned in Section 52A along with remarks and such authority would have the power to decide the claim. The interpretation that Section 52A only overrides the authority of the Collector in adjudicating the case is evident since the provision does not override Section 49 where the adjudicating officer is the Chief Controlling Revenue Authority. In such a case, Section 52A cannot be considered as a residual clause by applying it to classes of cases that do not fall within the purview of any other provisions. A contrary interpretation would create an artificial class based on economic capacity, as cases where the stamp duty paid exceeds Rupees five lakhs will alone be adjudicated without application of any limitation period as a residual case, while cases falling within the same class but where stamp duty paid is less than Rupees five lakhs cannot take recourse to the provision. It is an established principle of interpretation that an interpretation that furthers the constitutionality of a provision will have

- A to be undertaken. An interpretation which leads to an invidious discrimination must be eschewed. Thus, the intendment of Section 52A was neither to cover the applications that are not brought under any of the preceding substantive clauses nor to override the limitation clauses.
28. Evidently, and for the reasons that we have indicated above,
- B the application filed by the appellant did not fall within the ambit of Sections 47, 52 and 52A. It is true that the application for refund was titled with reference to the provisions of Section 47. But, it is well settled that a reference of a wrong statutory provision, cannot oust the citizen of an entitlement to refund which otherwise follows in terms of a statutory provision.
- C 29. In the present case, the stamp paper was purchased *bona fide* in view of the agreement to sell which was to be executed by the appellant with the developer. There was a dispute with the developer which led to the institution of the proceedings before the NCDRC. There was nothing untoward in the conduct of the appellant and certainly no unreasonable delay on the part of the appellant in awaiting the outcome of the proceedings. The NCDRC allowed the complaint giving the option to the appellant of either going ahead with the agreement along with an award of compensation or, in the alternative, to seek a refund with interest. The appellant having exercised the latter option applied within two months
- D from the order of the NCDRC for the grant of refund. The conduct of the appellant, therefore, cannot be held to be unreasonable nor was there any intentional or wanton delay on the part of the appellant in applying for a refund of stamp duty. Such an application must be filed within a reasonable period.
- E 30. In **Committee-GFIL** (*supra*), a two-judge Bench of this Court was dealing with the issue of limitation prescribed in the Indian Stamp Act 1899. In this case, an auction sale of immovable properties was held by a committee constituted by this Court. Successful bidders deposited with the committee, the entire sale consideration along with the stamp duty. However, the transaction failed due to reasons beyond the control
- F of the parties. The Court cancelled the transaction and directed the committee to refund the sale consideration with interest and permitted the purchasers to approach the State Government for refund of the stamp duty. The applications of the auction-purchasers seeking refund of stamp duty was rejected on the ground that the applications were time-barred.
- G H An application against the rejection of the refund applications was filed

before this Court. This Court allowed the application on three grounds: (i) the transaction which was Court-monitored, could not be fulfilled for reasons beyond the control of the auction-purchasers. No act of the Court should prejudice a person; (ii) in view of the principle of restitution embodied in Section 65 of the Contract Act, any advantage received by a person under a void contract or a contract that becomes void is bound to be restored; and (iii) in light of equity and justice, the six months limitation period prescribed in Section 50 of the Indian Stamp Act 1899 must be read to mean six months from the date of the order of this Court.

31. We are conscious of the fact that as a general rule of law, the right to refund is a statutory creation. A refund can be sought in terms envisaged by statute. As discussed above, the case of the appellant is not specifically barred by any substantive provision. It is an established principle that this Court while exercising its power under Article 142 of Constitution must not ignore and override statutory provisions but must rather take note of the express statutory provisions and exercise its discretion with caution.³ Therefore, if a statute prescribes a limitation period, this Court must be slow to interfere with the delay under Article 142. However, in the case of an eventuality such as the instant case where the facts of the case are not covered by the statute, this Court under Article 142 will have the power to do complete justice by condoning the delay. We are of the view that since the delay in filling the application for refund in the instant case was due to the prolonged proceedings before the NCDRC, the application cannot be rejected on the ground of delay. A litigant has no control over judicial delays. A rejection of the application for refund would violate equity, justice and fairness where the applicant is made to suffer the brunt of judicial delay. Therefore, this is a fit case for the exercise of the power under Article 142 of the Constitution.

32. For the above reasons, we allow the appeal and set aside the impugned judgment and order of the learned Single Judge of the Bombay High Court dated 22 November 2018. As a consequence, we direct that the appellant would be entitled to a refund of the stamp duty which was paid at the time of the purchase of the e-stamp paper, conditional on the

³ AR Anthulay v. RS Nayak, (1988) 2 SCC 602; Union Carbide Corporation v. Union of India, (1991) 4 SCC 584; Supreme Court Bar Association v. Union of India, (1998)

⁴ SCC 409.

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- A appellant returning the e-stamp paper to the Collector of Stamps, Mumbai. The refund shall be processed within a period of one month of the delivery of the e-stamp paper to the Collector. The appellant would be entitled to interest at the rate of 6% per annum from 16 July 2016 until the date of refund. In the circumstances of the case, there shall be no order as to costs.
- B 33. Pending applications, if any, stand disposed of.

Ankit Gyan

Appeal allowed.