Harshit Harish Jain vs The State Of Maharashtra on 24 January, 2025

Author: Vikram Nath

Bench: Sanjay Karol, Vikram Nath

2025 INSC 104

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2025
(Arising out of SLP (C) No.21778 of 2024)

HARSHIT HARISH JAIN & ANR. …APPELLANTS

VERSUS

THE STATE OF MAHARASHTRA
& ORS. …RESPONDENTS

JUDGMENT

VIKRAM NATH, J.

1. Leave granted.

2. The present appeal assails the final judgment and order dated 18.04.2024, rendered by the High Court of Judicature at Bombay in Writ Petition (C) No. 2018 of 2024, whereby the writ petition preferred by the Appellants stood dismissed. The gravamen of the dispute concerns the rejection of the Appellants' claim for refund of stamp duty under the provisions of the Maharashtra Stamp Act, 1958 (hereinafter "the Act").

3. The brief facts leading to the present appeal are as follows:

> 3.1. The Appellants entered into an Agreement to Sell dated 30.08.2014 with a real estate developer, M/s. Krona Realties Pvt. Ltd.

(hereinafter, "the Developer"), for the purchase of a residential flat (Flat No. 5102) in the "Lodha Venezia" project at Mumbai. The total consideration agreed was 5.46 crores, against which an advance payment of 1.08 crores was made to the Developer.

3.2. Pursuant to the execution of the Agreement to Sell, the Appellants paid stamp duty of 27,34,500, as mandated under the Act. The said Agreement was registered on 18.09.2014, upon payment of an additional registration charge of 30,000.

3.3. Sometime thereafter, on 05.11.2014, the Developer informed the Appellants of unavoidable delays tied to issues involving adjacent slums, thereby making it impossible to hand over possession of the flat by 31.03.2017, the date earlier envisaged. The Developer offered three options to the Appellants: (i) transfer the booking to another project, (ii) opt for cancellation with a refund along with interest at 12% per annum, or

(iii) continue with the present booking but with a revised possession timeline.

3.4. Constrained by the uncertainty over timely possession, the Appellants chose to cancel the booking. Consequently, a Deed of Cancellation was executed on 17.03.2015. However, the said Cancellation Deed came to be registered only on 28.04.2015 before the Sub-Registrar of Assurances, Mumbai City. Subsequently, on 23.05.2016, a Deed of Rectification was also executed, clarifying the refund details and other particulars of the cancellation.

3.5. Meanwhile, by an amendment dated 24.04.2015 to Section 48(1) of the Act, the time limit for seeking a refund of stamp duty on a registered cancellation deed was curtailed from two years to six months (counted from the date of registration of such deed). On 06.08.2016, the Appellants filed an application for refund of the stamp duty amounting to 27,34,500, contending that they were governed by the earlier (pre- amendment) statutory regime, since their Cancellation Deed was executed before 24.04.2015.

3.6. The refund application was initially allowed by the Chief Controlling Revenue Authority, Maharashtra State, Pune (CCRA), vide its Order dated 08.01.2018. Soon thereafter, however, the same authority, by a subsequent Order dated 03.03.2018, recalled its earlier decision and rejected the refund request as time- barred, citing the amended limitation period.

3.7. Aggrieved by the 03.03.2018 order recalling the earlier sanction of refund, the Appellants first attempted to challenge it before the Chief Controlling Revenue Authority (CCRA) by way of an appeal under Section 53 of the Act. The CCRA dismissed the appeal on 16.04.2019, prompting the Appellants to file Writ Petition No. 8276 of 2019 before the High Court of Judicature at Bombay. In its judgment dated 04.10.2022, the High Court set aside the orders dated 03.03.2018 and 16.04.2019, noting that the Appellants had not been accorded proper opportunity of hearing. The matter was remanded to the CCRA for fresh consideration, particularly on the question of whether the original (unamended) or the amended provision under Section 48(1) of the Act would apply to the cancellation. Pursuant to that remand, the CCRA passed a fresh order on 16.12.2022, again rejecting the refund claim on the ground that the amended six-month limitation governed the Appellants' case.

3.8. Aggrieved by the CCRA's stance, the Appellants filed Writ Petition (C) No. 2018 of 2024 before the High Court of Judicature at Bombay, urging, inter alia, that (i) the right to seek refund accrued on the date of execution (17.03.2015), thus invoking the unamended two-year window, and (ii) the CCRA had no statutory power of review to recall its initial order granting refund.

3.9. By the impugned judgment dated 18.04.2024, the High Court dismissed the writ petition, holding, in essence, that the date of registration (28.04.2015) triggered the Appellants' claim, which fell under the amended provision stipulating a six-month limitation. The High Court further opined that, in the specific facts, the CCRA's recall could not be struck down solely on the ground of no express power of review.

4. Aggrieved with the dismissal of their writ petition, the Appellants have now approached this Court by way of the present appeal.

5. Having heard the learned counsel for the Appellants and the Respondents, the primary issue for consideration before us is whether the amended six-month limitation, introduced by the 24.04.2015 amendment to Section 48(1) of the Act governs the Appellants' claim for stamp duty refund, particularly when the Cancellation Deed was executed prior to the amendment but registered thereafter.

6. Section 48(1) of the Act reads as follows:

> "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:
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> Provided that where an Agreement to sale 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.]" Through the amendment on 24.04.2015, the two-year period was curtailed to six months from the date of registration of the cancellation deed, thus altering the time frame under which a party could claim a refund.

7. The Appellants assert that, although the Cancellation Deed was registered on 28.04.2015, it was executed on 17.03.2015 — prior to the amendment dated 24.04.2015, which curtailed the time limit for seeking a refund from two years to six months. They rely upon Section 47 of the Registration Act, 1908, emphasizing that "a registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made." In other words, the operative date for their right to seek refund would be 17.03.2015, placing them under the un-amended regime.

8. In our view, this contention carries substantial weight. The High Court laid undue emphasis on the registration date without fully appreciating that the Appellants' accrued right to claim a refund arose the moment the Cancellation Deed was validly executed. The legislative scheme governing the earlier proviso to Section 48(1) of the Act, contemplated a broader two-year window. Constricting that window retroactively, merely because registration happened post-amendment, unduly defeats a vested cause of action.

9. Moreover, in M.P. Steel Corporation v. Commissioner of Central Excise1 , this Court has held that amendment to provision as to limitation is inapplicable to accrued cause of action where the amendment has reduced the period earlier provided. The relevant paras of this judgement have been extracted hereunder:

> "53. Shri A.K. Sanghi, learned Senior Counsel appearing on behalf of the Revenue, has strongly contended before us that the present appeal must attract the limitation period as on the date of its filing. That being so, it is clear that the present appeal having been filed before Cestat only on 23-5-2003, it is Section 128 post amendment that would apply and therefore the maximum period available to the (2015)7 SCC 58 appellant would be 60 plus 30 days. Even if time taken in the abortive proceedings is to be excluded, the appeal filed will be out of time being beyond the aforesaid period.

54. It is settled law that periods of limitation are procedural in nature and would ordinarily be applied retrospectively. This, however, is subject to a rider. In New India Insurance Co. Ltd. v. Shanti Misra [(1975) 2 SCC 840 : (1976) 2 SCR 266] , this Court held : (SCC p. 844, para

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5. "On the plain language of Sections 110-A and 110-F there should be no difficulty in taking the view that the change in law was merely a change of forum i.e. a change of adjectival or procedural law and not of substantive law. It is a well-established proposition that such a change of law operates retrospectively and the person has to go to the new forum even if his cause of action or right of action accrued prior to the change of forum. He will have a vested right of action but not a vested right of forum. If by express words the new forum is made available only to causes of action arising after the creation of the forum, then the retrospective operation of the law is taken away. Otherwise, the general rule is to make it retrospective."

55. In answering a question which arose under Section 110-A of the Motor Vehicles Act, this Court held : (Shanti Misra case [(1975) 2 SCC 840 : (1976) 2 SCR 266] , SCC p. 846, para 7)

7. "... '(1) Time for the purpose of filing the application under Section 110-A did not start running before the constitution of the tribunal. Time had started running for the filing of the suit but before it had expired the forum was changed. And for the purpose of the changed forum, time could not be deemed to have started running before a remedy of going to the new forum is made available.

(2) Even though by and large the law of limitation has been held to be a procedural law, there are exceptions to this principle. Generally the law of limitation which is in vogue on the date of the commencement of the action governs it. But there are certain exceptions to this principle. The new law of limitation providing a longer period cannot revive a dead remedy. Nor can it suddenly extinguish a vested right of action by providing for a shorter period of limitation.'"

56. This statement of the law was referred to with approval in Vinod Gurudas Raikar v. National Insurance Co. Ltd. [(1991) 4 SCC 333] as follows : (SCC p. 337, para 7).

7. "It is true that the appellant earlier could file an application even more than six months after the expiry of the period of limitation, but can this be treated to be a right which the appellant had acquired. The answer is in the negative. The claim to compensation which the appellant was entitled to, by reason of the accident was certainly enforceable as a right. So far the period of limitation for commencing a legal proceeding is concerned, it is adjectival in nature, and has to be governed by the new Act—subject to two conditions. If under the repealing Act the remedy suddenly stands barred as a result of a shorter period of limitation, the same cannot be held to govern the case, otherwise the result will be to deprive the suitor of an accrued right. The second exception is where the new enactment leaves the claimant with such a short period for commencing the legal proceeding so as to make it unpractical for him to avail of the remedy. This principle has been followed by this Court in many cases and by way of illustration we would like to mention New India Insurance Co. Ltd. v. Shanti Misra [(1975) 2 SCC 840 : (1976) 2 SCR 266] . The husband of the respondent in that case died in an accident in 1966. A period of two years was available to the respondent for instituting a suit for recovery of damages. In March 1967 the Claims Tribunal under Section 110 of the Motor Vehicles Act, 1939 was constituted, barring the jurisdiction of the civil court and prescribed 60 days as the period of limitation. The respondent filed the application in July 1967. It was held that not having filed a suit before March 1967 the only remedy of the respondent was by way of an application before the Tribunal. So far the period of limitation was concerned, it was observed that a new law of limitation providing for a shorter period cannot certainly extinguish a vested right of action. In view of the change of the law it was held that the application could be filed within a reasonable time after the constitution of the Tribunal; and, that the time of about four months taken by the respondent in approaching the Tribunal after its constitution, could be held to be either reasonable time or the delay of about two months could be condoned under the proviso to Section 110-A(3)." Both these judgments were referred to and followed in Union of India v. Harnam Singh [(1993) 2 SCC 162 : 1993 SCC (L&S) 375 :

(1993) 24 ATC 92] , see para 12.

57. The aforesaid principle is also contained in Section 30(a) of the Limitation Act, 1963:

> 30. "Provision for suits, etc., for which the prescribed period is shorter than the period prescribed by the Indian Limitation Act, 1908.—Notwithstanding anything contained in this Act—

> (a) any suit for which the period of limitation is shorter than the period of limitation prescribed by the Indian Limitation Act, 1908, may be instituted within a period of seven years next after the commencement of this Act or within the period prescribed for such suit by the Indian Limitation Act, 1908, whichever period expires earlier:"

58. The reason for the said principle is not far to seek. Though periods of limitation, being procedural law, are to be applied retrospectively, yet if a shorter period of limitation is provided by a later amendment to a statute, such period would render the vested right of action contained in the statute nugatory as such right of action would now become time- barred under the amended provision."

10. 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.

11. 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. It has been laid down by this Court in Bano Saiyed Parwaz v. Chief Controlling Revenue Authority & Inspector General of Registration & Controller of Stamps2 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:

> "14. In Committee-GFIL v. Libra Buildtech Private Limited3, 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:
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> "29. This case reminds us of the observations made by M.C. Chagla, C.J. in 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, SCC OnLine Bom) 2024 SCC OnLine SC 979 "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.

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> 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."
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> 15. The legal position is thus settled in Libra Buildtech (supra) that when the State deals with a citizen it should not ordinarily rely on technicalities, even though such defences may be open to it.
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> 16. We draw weight from the aforesaid judgment and are of the opinion that the case of the appellant is fit for refund of stamp duty in so far as it is settled law that the period of expiry of limitation prescribed under any law may bar the remedy but not the right and the appellant is held entitled to claim the refund of stamp duty amount on the basis of the fact that the appellant has been pursuing her case as per remedies available to her in law and she should not be denied the said refund merely on technicalities as the case of the appellant is a just one wherein she had in bonafide paid the stamp duty for registration but fraud was played on her by the Vendor which led to the cancellation of the conveyance deed."

12. We also find merit in the Appellants' submission that the CCRA, having once granted a refund by its order dated 08.01.2018, lacked any express statutory power to review or recall that decision. A quasi- judicial authority can only exercise such powers as the statute confers. There is no provision in the Act enabling the CCRA to sit in review of its own orders. In the absence of any enabling clause, the subsequent orders dated 03.03.2018, 16.04.2019, and ultimately 16.12.2022, reversing the earlier sanction of the refund, cannot be sustained solely because the Appellants participated in the proceedings.

13. We are unable to concur with the High Court's reasoning that the Appellants "submitted themselves" to the authority's review process or somehow acquiesced in the second decision. Jurisdiction cannot be created by consent or waiver. The law does not permit a statutory functionary to assume powers not conferred upon it, regardless of how the parties engage in subsequent litigation. Hence, we see clear infirmity in the High Court's endorsement of the CCRA's review-like exercise.

14. In light of the above, the findings recorded by the High Court in the impugned judgment warrant interference. The High Court's focus on the date of registration as determinative of the applicable legal regime under Section 48(1) of the Act overlooks the accrued right crystallizing at the time of

execution of the Cancellation Deed. Further, its refusal to disturb the recall of the earlier refund order, despite acknowledging the absence of statutory review power, is difficult to sustain. Participation in an erroneous procedure cannot, in our considered view, confer review jurisdiction upon the CCRA where none exists in law.

15. For the reasons discussed, we conclude that the Appellants are entitled to the benefit of the un-amended proviso of Section 48(1) of the Act. Their refund application, therefore, cannot be repelled as time-barred merely because the deed's registration was post-amendment. Equally, the subsequent orders recalling the already sanctioned refund stand vitiated, given the CCRA's lack of statutory mandate to review its own final orders.

16. In view of the foregoing, we hold that the Appellants' claim for refund falls under the un-amended proviso to Section 48(1) of the Maharashtra Stamp Act, 1958. Consequently, the impugned judgment dated 18.04.2024 of the High Court of Judicature at Bombay, in W.P. No. 2018 of 2024, is hereby set aside and the writ petition stands allowed.

17. The subsequent orders of the Chief Controlling Revenue Authority (CCRA) recalling the earlier sanction of refund, including the Order dated 16.12.2022, are accordingly quashed. The Order dated 08.01.2018, which allowed the Appellants' refund, shall stand restored.

18. The appellant had applied for refund of the stamp duty on 6th August, 2016. The same had been allowed by the CCRA vide order dated 08.01.2018. Instead of refunding the amount, the CCRA, by a subsequent order dated 03.03.2018 illegally recalled its earlier decision of 08.01.2018 and rejected the request for refund. We have already held above that the subsequent order dated 03.03.2018 was vitiated in law and secondly that the appellant was entitled to refund. In such circumstances, we find that the amount of Rs.27,34,500/- had been wrongly retained by the State from 08.01.2018 for almost seven years. As such, we are of the view that the appellant would be entitled to simple interest @ 6 per cent per annum on the above amount from the date of the first order of CCRA dated 08.01.2018 till the date it is paid.

19. The Respondents are directed to process and disburse the refund of stamp duty, already paid by the Appellants along with accrued interest as directed above within a period of four weeks from today, in accordance with law. Any further delay will entail further interest component @ 12% p.a.

20. The appeal stands allowed.

21. There shall be no order as to costs.

21. Pending applications, if any, shall stand disposed of.

.....J. (VIKRAM NATH) .....J. (SANJAY KAROL)
.....J. (SANDEEP MEHTA) NEW DELHI JANUARY 24, 2025