

Bano Saiyed Parwaz

v.

**Chief Controlling Revenue Authority and Inspector
General of Registration and Controller of Stamps & Ors.**

(Civil Appeal No. 6533 of 2024)

17 May 2024

[B.R. Gavai and Prashant Kumar Mishra,* JJ.]

Issue for Consideration

The High Court dismissed the appellant's demand for refund of Stamp Duty paid towards an un-executed conveyance deed.

Headnotes[†]

Maharashtra Stamp Act, 1958 – s.47 and s.48 – Bombay Stamp Rules, 1939 – Rules 21 and 22A – Stamp Duty – Refund of – Appellant agreed to purchase a property from vendor – To that effect, a deed of conveyance was prepared and it was sent for payment of stamp duty, which was assessed at Rs.25,34,350/- – Accordingly, the appellant paid this sum and purchased the stamp duty on 13.05.2014 – However, the said conveyance deed was not lodged for registration as the vendor was playing fraud on the appellant – Appellant applied for refund on 22.10.2014 – Thereafter, the appellant decided to cancel the said transaction and executed cancellation deed on 13.11.2014 – Appellant's case for refund was rejected by respondent nos. 1 & 2 on the ground that the application was filed beyond the limitation period – The High Court upheld the orders of respondent nos. 1 and 2 – Correctness:

Held: Admittedly, the appellant being a bonafide purchaser is a victim of fraud played upon her by the vendor – She has paid a sum of Rs.25,34,400/- towards stamp duty for registration of conveyance deed – However, the conveyance deed was not lodged for registration as she became aware of the fraud played by the vendor and thereafter, she immediately applied online on 22.10.2014 for refund of the stamp duty – Her effort to contact the vendor to execute a cancellation deed did not fructify immediately because of unavailability of the vendor which led to a police complaint and it is only at this point of time, due to intervention of

* Author

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the Police, the vendor could be traced, and a cancellation deed was executed on 13.11.2014 – From the above admitted facts, *prima facie* it appears that the appellant herein was pursuing her remedies in law and she was not lax in her approach towards seeking refund of the said stamp duty paid by her and she has been denied the same only on the ground of limitation – While submitting the online application there was no caution to the appellant that all of the documents and materials for the satisfaction of the Collector should be filed with the application- either online or hard copy- itself and the finding of the High Court is contrary to the requirements stipulated by Sections 47 & 48 which envisages only the application for relief under Section 47 of the Act to be made within six months of the date of the instrument which *prima facie* is appeared to have been done by the appellant in the present case – 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.

[Paras 10, 11, 12, 16]

Case Law Cited

In Committee-GFIL v. Libra Buildtech Private Limited & Ors. [\[2015\]](#)
[11 SCR 420](#) : (2015) 16 SCC 31 – relied on.

List of Acts

Maharashtra Stamp Act, 1958; Bombay Stamp Rules, 1939.

List of Keywords

Stamp duty; Unexecuted conveyance deed; Fraud by vendor; Refund of stamp duty; Limitation; Expiry of limitation; Pursuance of legal remedies; Denial of refund on basis of technicalities; Cancellation deed; Bonafide purchaser.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6533 of 2024
From the Judgment and Order dated 02.08.2019 of the High Court of Judicature at Bombay in WP No. 281 of 2019

Digital Supreme Court Reports**Appearances for Parties**

Subodh Markandeya, Sr. Adv., Sahil, Rahul Aggarwal, Amit Pratap Singh, Narender Kumar Verma, Advs. for the Appellant.

Aaditya Aniruddha Pande, Siddharth Dharmadhikari, Bharat Bagla, Sourav Singh, Aditya Krishna, Ms. Preet S. Phanse, Adarsh Dubey, Advs. for the Respondents.

Judgment / Order of the Supreme Court**Judgment**

Prashant Kumar Mishra, J.

Leave granted.

2. The instant appeal is directed against the judgment and order impugned dated 02.08.2019 passed by the High Court of Judicature at Bombay in Writ Petition No. 281 of 2019 whereby the High Court, dismissed the appellant's demand for refund of Stamp Duty paid towards an un-executed conveyance deed. In effect, the impugned order has upheld the orders of respondent nos. 1 and 2 dated 09.06.2015 & 25.02.2016 rejecting the aforesaid demand of the appellant.
3. Briefly stated, the facts of the matter are that the appellant agreed to purchase the property bearing C.T.S. No.340.340/1 to 340/14 of Kurla-1 Division situated lying and being Fitwalla Cottage, Fitwalla Compound Bazaar Ward, Old Agra Road, Kurla (West), Mumbai-400070 from the Vendor - Mohammed Hanif Ahmed Fitwala and to that effect, they prepared a deed of conveyance which was sent for adjudication to respondent no.1 on 07.05.2014 for payment of stamp duty, which was assessed at Rs.25,34,350 (Rupees Twenty-Five Lakhs Thirty-Four Thousand Three Hundred Fifty Only). Accordingly, the appellant paid this sum and purchased the stamp duty on 13.05.2014 for registration of conveyance deed.
4. *Albeit*, the stamp duty was paid by the appellant to respondent no.1 on 13.05.2014, said conveyance deed was not lodged for registration as the vendor of the appellant by playing fraud on the appellant had earlier sold the said property to a third party in 1992. However, before executing the said conveyance deed, the appellant had given a public notice but nobody objected to the said

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transaction. Thereafter, in view of these facts, the appellant decided to cancel the said transaction, for which he tried to contact the said vendor but he was not available, compelling the appellant to file a complaint with the Police Authority. Thereafter, the Vendor executed the cancellation deed on 13.11.2014. However, the appellant had on 22.10.2014 already applied online for refund of the said amount as per Section 48 of the Maharashtra Stamp Act, 1958¹ and had filed written application on 06.12.2014 along with the documents. The appellant's case was rejected by respondent nos.1 & 2 on the ground that the application filed by her was beyond the limitation period as per Section 48 of the Act.

5. The learned counsel for the appellant submits that the appellant's case is squarely covered within the circumstances laid down in Section 47 (c) [1] and [5] of the Act and Rules 21 and 22A of the Bombay Stamp Rules, 1939² which read as under:

"47. (c) the stamp used for an instrument executed by any party thereto which—

(1) has been afterwards found 1[by the party] to be absolutely void in law from the beginning; 2[1A] has been afterwards found by the Court, to be absolutely void from the beginning under section 31 of the Specific Relief Act, 1963;

(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;"

"21. Evidence as to circumstances of claim to refund or renewal.

The collector may require any person claiming a refund or renewal under chapter v of the Act, or his duly authorized agent, to make

1. 'Act'

2. 'Rules'

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oral deposition oath or affirmation, or to file an affidavit, setting forth the circumstances under which the claim has arisen, and may also' if he thinks fit, call for the evidence of witnesses in support of the statement set forth in any such deposition or affidavit.

NOTES***Claim for refund of stamp duty.***

Under rule 21 where a claim for refund of stamp duty is made, the procedure laid down under the rule to take evidence by the Collector. Accordingly, the Collector may direct any person claiming a refund under Chapter v to make an oral deposition on oath or affirmation or to file an affidavit, setting forth the circumstances under which the claim has arisen and if he thinks fit call all evidence of witnesses in support of the statement set forth in any such deposition or affidavit. Rule 22A deals with matters relating deducting to deduction to be made from the amount of spoiled or misused or unused stamps. The word "spoiled stamps" is not expressly defined either in the Act or in the Rules but Section 47 describe instances of such spoiled stamps for the purpose of claiming refund.

22A, Rule of deduction from the amount of stamps, allowance for spoiled, misused or unused etc.

When any person is in possession of –

(a) spoiled stamps, under section 47, misused stamps under section 50, or printed forms on-stamped paper no longer required under section 49 and he applies to the collector for making allowance in respect or the same.

(b) 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 and he delivers up the same to

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the collector for cancellation, then the collector may, give in lieu thereof may repay to such person, the same, value in money of such stamp or stamps or printed forms on stamped papers, after deducting rupees ten for each stamp or printed form on stamped paper or amount equal to (ten per cent) of the value of such stamp or such printed form, whichever is more".

6. The learned counsel for the appellant further submitted that the law of refund embodied in Sections 47 and 48 of the Act and Rules 21 and 22A of the Rules, envisages two separate and distinct stages for refund of stamp duty i.e., i) making of application for refund within six months and ii) holding of enquiry and leading of evidence as per Rules made by the State Government, to satisfy the Collector that case of refund is covered by one or more of the circumstances (a) (b) and (c) [1] to [8] set out in Section 47 of the Act.
7. The learned counsel for the appellant would further submit that the respondent no. 2 and the High Court as well misconstrued the provisions of Sections 47 & 48 of the Act and has also overlooked Rules 21 and 22A of the Rules. In as much as, the appellant's application was within time and the same could not have been rejected as barred by limitation.
8. *Per contra*, the learned counsel for the respondents vehemently opposed the present appeal and submitted that in the present proceeding though the appellant filed application for refund of stamp duty on 22.10.2014, but the cancellation deed executed between the appellant and the seller of the said property was dated 13.11.2014 i.e., beyond the limitation period of six months from the date of purchase of stamp duty, after cancellation of those documents, as prescribed under Section 48 of the Act. As per Section 48 of the Act, the last date for applying for the refund was 12.11.2014, therefore, the application filed by the appellant was beyond the period of limitation.
9. We have heard both the counsel for the parties and perused the pleadings.
10. Admittedly, the appellant being a bonafide purchaser is a victim of fraud played upon her by the vendor. She has paid a sum of Rs.25,34,400/- towards stamp duty for registration of conveyance

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deed. However, the conveyance deed was not lodged for registration as she became aware of the fraud played by the Vendor and thereafter, she immediately applied online on 22.10.2014 for refund of the stamp duty. Her effort to contact the vendor to execute a cancellation deed did not fructify immediately because of unavailability of the Vendor which led to a police complaint and it is only at this point of time, due to intervention of the Police, the vendor could be traced, and a cancellation deed was executed on 13.11.2014.

11. From the above admitted facts, *prima facie* it appears that the appellant herein was pursuing her remedies in law and she was not lax in her approach towards seeking refund of the said stamp duty paid by her and she has been denied the same only on the ground of limitation.
12. The finding returned by the High Court in the impugned order that the appellant's application for refund dated 22.10.2014 is not maintainable in law as it has been filed before the cancellation of the conveyance deed dated 13.11.2014 is misplaced in so far as while submitting the online application there was no caution to the appellant that all of the documents and materials for the satisfaction of the Collector should be filed with the application- either online or hard copy- itself and the finding of the learned single judge is contrary to the requirements stipulated by Sections 47 & 48 which envisages only the application for relief under Section 47 of the Act to be made within six months of the date of the instrument which *prima facie* is appeared to have been done by the appellant in the present case.
13. The evidence required and enquiry to be made in terms of Section 47 of the Act is a separate process altogether and apropos circumstances for refund under Section 47 (c) [1] & [5] of the Act, evidence is not required to be filed along with the application- either the online application or separately on the same day by way of hard copy.
14. **In Committee-GFIL v. Libra Buildtech Private Limited & Ors.**³, 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:

“29. This case reminds us of the observations made by M.C. Chagla, C.J. in *Firm Kaluram Sitaram v. Dominion*

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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)

"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."

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.
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

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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.

17. For the foregoing reasons, the appeal is allowed, and we set aside the impugned order dated 02.08.2019 as well as orders of respondent nos.1 and 2 dated 09.06.2015 and 25.02.2016 and direct the State to refund the said stamp duty amount of Rs. 25,34,400/- deposited by the appellant.

Result of the case: Appeal allowed.

[†]*Headnotes prepared by:* Ankit Gyan