



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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WRIT PETITION NO.145 OF 2016

Mahesh Padmakar Jagtap)
Age 28 yrs. Occu. Service)
R/a. 1041, Sadashiv Peth,)
Near Nagnath Par,)
Kalyani Heights, Pune – 411 030.)Petitioner
(Orig. Appellant)

V/s.

1. Ld. Joint District Registrar Class I and)
Collector of Stamps Pune City, Pune)
having its office at 5, Finance Road,)
Government Photo Registry Building,)
1st floor, Pune – 411 001.)

2. Ld. Chief Controlling Revenue Authority)
Maharashtra State, Pune)
Copies of Nos. 1 & 2 to be served on G.P,)
Writ Cell, High Court (A.S.),)
Mumbai.) ...Respondents

Ms. Manjiri Sharad Parasnis for the petitioner.

Mr. S.H. Kankal, AGP for the respondent nos.1 & 2-State.

CORAM : JITENDRA JAIN, J.
DATE : 30th SEPTEMBER 2024

JUDGMENT :-

1 This petition is filed challenging original order dated 22nd December 2010 and appeal order dated 2nd May 2014 whereby an application for refund of stamp duty of Rs.95,100/- paid by petitioner, pursuant to the Agreement to Sale executed on 11th June 2009, is rejected on the ground that the refund application has not been made within the time limit provided under Section 48 of the Bombay Stamp Act, 1958 (now The Maharashtra Stamp Act).

2 On 11th June 2009, petitioner and one Mr. Jagtap and Ors. executed an Agreement to Sale for purchase of flat by petitioner for a total consideration of Rs.18,50,000/-. Petitioner paid stamp duty of Rs.95,100/- on the said agreement to sale and the same was also registered with the concerned authority. However, on 15th March 2010, the parties decided to cancel the agreement on various grounds namely on account of disputes between the parties and petitioner not being able to arrange the finance for the payment of balance consideration. The said cancellation deed was also registered on 15th March 2010. On 26th April 2010, petitioner made an application for refund of Rs.95,100/- being stamp duty paid on execution of agreement of sale dated 11th June 2009. Petitioner enclosed the cancellation deed and the sale agreement in support of his application.

3 The original authority and the Appellate Authority rejected the application for refund on the ground that the application is made after expiry of six months from the date of instrument.

4 Ms.Parasnis, learned counsel for the petitioner submits that as per proviso to Section 48(1) as existing at the relevant time, the period specified for making an application for refund is two years from the date of cancellation deed being registered. The reason for cancellation was disputes between parties and petitioner not being able to arrange finance for payment of balance consideration and, therefore, the application is made within the time limit provided under the first proviso. Alternatively, she submitted that even if main Section 48(1) is made applicable then also application for refund is made within six months from cancellation deed and therefore, even on this count, rejection by authorities is not in accordance with law.

5 Mr. Kankal, learned AGP vehemently supported the orders of original and appellate authority and prayed for dismissal of the petitioner. He submitted that proviso to Section 48(1) is not applicable because agreement was mutually cancelled and amendment made to proviso by Mah.5 of 2010 would not be applicable.

6 I have heard learned counsel for petitioner and learned counsel for respondents.

7 Section 48 (1) as it stood at the relevant time i.e. in 2010 reads as under :-

“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:

[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].**

(emphasis supplied)

The bracketed and bold portion was added by Mah.5 of 2010 w.e.f. 12-4-2010. Firstly I will consider the provisions as it existed prior to 12-4-2010 i.e. before the bracketed portion was added.

8 Section 48(1) of the Stamp Act provides for six months' period for making an application for refund. In my view, petitioner should succeed on this ground alone since the application is made on 26th April 2010 which is within six months from the date of cancellation of Agreement of Sale i.e. 15th March 2010. Section 48(1) provides for six months' period from the date of "instrument." Section 2(l) of the Stamp Act defines

“instrument” to include every document by which any right or liability is or purports to be created, transferred, limited, extended, extinguished or recorded.” There is no dispute that case of petitioner is covered by Section 47(c)(5) of the Stamp Act. In the instant case, by virtue of cancellation agreement, rights and liabilities of the respective parties have been extinguished and, therefore, case of petitioner is covered by main provision and petition is required to be allowed.

9 The period of six months from date of cancellation agreement under main Section 48(1) would expire on 15th September 2010 and before the said expiry date, time limit for making refund application was extended to two years from the date of cancellation deed if the cancellation deed is on account of disputes, inadequate finance etc. In the instant case, since six months time had not expired on the date of making application for refund, in my view, new grounds extending time limit would be applicable to petitioner’s case and therefore, petitioner’s case would also be covered by amended proviso by Mah.5 of 2010 and therefore, even on this count, petitioner is entitled to refund since application is made within time limit provided under amended proviso.

10 Alternatively, there is no dispute that the buyer and seller have terminated the agreement of sale. The reason given in the agreement is petitioner’s inability to arrange for funds from the financial institution and

also on account of the dispute between the parties. If that be so, then certainly no seller would hand over the possession unless full consideration is paid and since petitioner could not make the balance consideration, the case of the petitioner would fall within the proviso to Section 48(1) as it existed prior to 12-4-2010. This is so because on account of reason stated in the cancellation deed, the seller would not deliver the possession and therefore, it would fall within the eventuality of cancellation by refusal to deliver possession. Therefore, in my view, the case of the petitioner would be governed by first proviso to Section 48(1) as it existed at the relevant time.

11 The application for refund is made on 26th April 2010 and Agreement of Sale is dated 11th June 2009 which agreement was cancelled on 15th March 2010. Therefore, the application made by petitioner whether from the date of Agreement of Sale or from the date of cancellation, in either case would fall within two years and, therefore, the ground of rejection, in my view, is erroneous.

12 Therefore, looked from any angle, the application for refund is within the time limit provided by Section 48(1) of the Act including proviso as it existed prior to and post Mah.5 of 2010 amendment.

13 In view of above, I therefore, pass the following order :-

ORDER

(i) The impugned order dated 22nd December 2010 and 2nd May 2014 are hereby quashed and set aside.

(ii) Respondents are directed to refund a sum of Rs.95,100/- to petitioner within a period of four weeks from the date of uploading the present order with permissible deductions, if any, in accordance with law.

14 Rule is made absolute in aforesaid terms. Petition disposed.

(JITENDRA JAIN, J.)