

*Sayed*

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2358 OF 2018

IL & FS Financial Services Ltd.
A Company Incorporated under the
provisions of the Companies Act, 1956
having its registered office at
The IL & FS Financial Centre, Plot C-22
G-Block, Bandra Kurla Complex,
Bandra East, Mumbai-400051. ... Petitioner

Versus

1. State of Maharashtra
Through Government Pleader
Original Side, PWD Building,
Ground Floor, High Court,
Bombay.
2. The Collector of Stamps
(Enforcement-1)
Nagar Bhavan, Fort,
Mumbai 400001
3. The Collector of Stamps
(Enforcement-2)
Nagar Bhavan, Fort,
Mumbai 400001
4. The Chief Controlling Revenue
Authority,
Ground Floor,
New Administrative Building,
Opp. Council Hall, Pune-411001 ... Respondents

Mr Aditya Pimple a/w Mr Ranjit Shetty a/w Ms Avina Karnad
i/by Argus Partners, for the Petitioner.
Ms Jyoti Chavan, Addl. GP a/w Himanshu Takke, AGP for
Respondent No.1 to 3.

CORAM : Jitendra Jain, J.
RESERVED ON : 17 June 2025
PRONOUNCED ON : 18 June 2025

JUDGMENT (Per Jitendra Jain, J.):-

1. This Petition filed under Article 226 of the Constitution of India seeks to challenge impugned demand notices dated 23 December 2013 and 31 December 2014 issued under the erstwhile Bombay Stamp Act, 1958 (now renamed as ‘the Maharashtra Stamp Act’). The only prayer pressed and argued before this Court is prayer clause (a) which reads as under:

(a) That this Hon'ble Court may be pleased to issue a Writ of Certiorari or any other appropriate Writ, Order or direction in the nature of certiorari calling for the papers and proceedings in respect of the Impugned Notices dated 23-12-13 and 31-12-14 (Exhibit D and Exhibit I) and, after examining the legality and validity, thereof, this Hon'ble Court be pleased to quash and set aside the same to the extent it levy's penalty.

(emphasis supplied)

Brief facts:-

2. On 11 April 2008, an order sanctioning scheme of arrangement came to be passed, by the Company Court, under Sections 391 to 394 read with Sections 78 and 100 of the Companies Act, 1956 for the demerger of the “demerged undertaking” of the demerged company into the resulting company.

3. On 17 May 2008, the Petitioner lodged the above order of the High Court, in respect of scheme of amalgamation/ arrangement, with the Collector of Stamps for adjudication

of the stamp duty on the said document under Section 31 of the Maharashtra Stamp Act.

4. The Respondents, on 16 April 2010, in connection with adjudication of the stamp duty on the above document, sought various details from the Petitioner. It is an admitted position and accepted by the learned counsel for the Petitioner in the Court at the time of the hearing that the said requisition was not replied, and there is no explanation for not replying to the same.

5. On 23 December 2013, an interim demand letter was issued to the Petitioner directing the Petitioner to make a payment of Rs.7,07,27,090/- being the stamp duty payable under clause 25 (da) of the Schedule to the Bombay Stamp Act and a penalty under Section 31(4) of the said Act amounting to Rs.9,76,03,385/-. The period of penalty as per Section 31(4) of the Act begins with 11 April 2008 being date of the Company Court's order to 23 December 2013 i.e. 69 months @ 2% p.m.=138%. The said interim demand letter stated that if the demand is not acceptable then the Petitioner should file their written say within 30 days of the receipt of the said interim demand letter. There is no dispute between the parties that the penalty is under Section 31(4) of the Maharashtra Stamp Act.

6. The Petitioner vide letter dated 15 January 2014 requested for personal hearing in connection with the above

interim demand letter and same was duly granted to the Petitioner.

7. On 7 July 2014, the Petitioner filed written submissions with the Respondents. The said letter states that the submissions made are with respect to penalty of Rs.9,76,03,385/- levied by letter dated 23 December 2013. The said letter disputes the levy of penalty and consequently, the demand notice to the said extent.

8. On 19 December 2014, the Petitioner addressed a letter to the Respondents, in continuation with their letter dated 7 July 2014. In the said letter, the Petitioner accepts that they are agreeable to pay the stamp duty as per the application dated 17 May 2008 under Section 31 of the Stamp Act. However, the Petitioner disputed the levy of penalty imposed by demand notice dated 23 December 2013. In the last paragraph of the said letter, the Petitioner stated that the revised demand notice be issued without imposing the penalty.

9. On 31 December 2014, the Respondents issued a final demand notice at the behest of the Petitioner. In the said notice, stamp duty of Rs.7,07,27,090/- and penalty of Rs.9,76,03,385/- was confirmed. The demand notice dated 31 December 2014 refers to a demand letter dated 22 February 2011, which the Respondents have not been able to produce inspite of the attempts made as set out in the affidavits of Ashwini Patel filed in April 2024 and August

2024, since the Petitioner had disputed the receipt of such demand letter dated 22 February 2011. However, for the reasons given by me subsequently nothing turns on the said demand letter dated 22 February 2011 for the purposes of present adjudication of the Writ Petition.

10. The Petitioner challenged the final demand notice dated 31 December 2014 before the Chief Controlling Revenue Authority. On a perusal of the said appeal, it is evident that the only ground raised was with respect to penalty. The Petitioner has accepted in the said appeal memo also, in addition to the earlier letter dated 19 December 2014, that they are accepting the levy of stamp duty of Rs.7,07,27,090/-. The said challenge was instituted on 14 January 2015. The prayers in the said challenge reads as under :-

The Appellant therefore prays:

*a. That this Hon'ble Authority be pleased to call for the entire record and proceedings of adjudication case bearing No. ADJ/1134/2509/2008, and after examining the legality thereof, quash and set aside the final demand notice dated 23 December 2013 and also the Impugned Notice dated 31 December 2014 **in so far as the same relate to the levy of the penalty on the Appellant;***

*b. That pending the hearing and final disposal of this appeal, this Hon'ble Authority grant an Interim stay on the final demand notice dated 23 December 2013 and the Impugned Notice dated 31 December 2014 **in so far as the same relate to the levy of the penalty** on the Appellant and restrain the Respondent, its agents, officers, servants from acting on the aforesaid Final Demand Notice dated 23 December, 2013 and Impugned Notice dated 31 December, 2014 and/or from taking any action in furtherance thereof;*

c. That pending the hearing and final disposal of this appeal, this Hon'ble Authority pass an interim order permitting the Appellant to deposit the amount of Stamp Duty of Rs.7,07,27,090/- with the Respondent or with this Hon'ble Authority so that the period for the purpose of computation of the penalty amount shall stop running as on the date of the presentation of the present Appeal Memo or such other date as this Hon'ble Authority may deem fit and appropriate;

d. For ad-Interim reliefs in terms of prayer clauses (b) & (c);

e. For costs;

f. For such other and further reliefs as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the present case.

(emphasis supplied)

11. On 25 March 2015, an interim order under Section 53 (1A) of the Maharashtra Stamp Act came to be passed by the Chief Controlling Revenue Authority in which it is recorded that the Petitioner is not disputing the quantum of stamp duty determined and has shown willingness to deposit the same. In the light of this admission, interim relief was allowed that on payment of stamp duty of Rs.7,07,27,090/-, decision on penalty would be taken on merits of the case after hearing the Appellant i.e. the Petitioner.

12. On 27 March 2015, the Petitioner made the payment of Rs.7,07,27,090/-, so as to take the benefit of deferment of adjudication of penalty on merits in appeal.

13. On 25 April 2017, the appeal filed by the Petitioner was held to be not maintainable. Therefore, this Petition came to be instituted.

Submissions of the Petitioner:-

14. Mr. Pimple, learned counsel for the Petitioner at the beginning of the hearing submitted that the only issue involved in the present petition is justification for levy of penalty since the Petitioner has accepted the quantum of stamp duty. However, when the same came to be recorded at the conclusion of the hearing in the open Court, he changed his stand and submitted that the Petitioner is challenging the whole of the demand notices dated 23 December 2013 and 31 December 2014 i.e. they are challenging the stamp duty as well as the penalty. However, I may observe that in the course of the hearing, no submissions were made by the Petitioner as to how the stamp duty arrived at in the impugned demand notices were erroneous.

15. The only issue on which the submission was made is on the levy of penalty. Mr. Pimple submitted that as per Section 31(4) of the Maharashtra Stamp Act, if the person liable to pay the stamp duty under Section 30 fails to pay within 60 days from the date of service of the notice of demand then only the person is liable to pay penalty at the rate of 2% from the date of execution of the instrument. He submitted that in the present case, the date of the interim order of Chief Controlling Revenue Authority i.e. 25 March 2015 should be considered as the date of demand notice under Section 31(4) as the starting date for payment of the stamp duty and since the Petitioner has made the payment on 27 March 2015 i.e. within two days of the said interim order, there is no default

as contemplated under Section 31(4) of the Maharashtra Stamp Act, and consequently, no penalty can be levied/imposed. This is the only submission made by Mr. Pimple in support of this Petition. He further submitted that the notices dated 23 December 2013 and 31 December 2014 does not make a distinction between stamp duty and penalty. The Petitioner has not advanced any argument on any prayers except prayer clause (a). We may note that other than these submissions, no other submissions were made by the learned counsel for the Petitioner.

Submissions of the Respondents:-

16. Mr. Takke, learned counsel for the Respondents submitted that non-production of demand letter dated 22 February 2011, inspite of the best efforts made by the Respondents is a non-issue in the facts of the present case. He submitted that the conduct of the Petitioner is evident from letters dated 7 July 2014 and 19 December 2014 and the averments made in the appeal before the Chief Controlling Revenue Authority which clearly shows that the Petitioner had accepted the quantification of stamp duty as early as 7 July 2014 or atleast on 19 December 2014. He submitted that the interim order was only for stay of the penalty amount on making payment of the stamp duty and, therefore, the interim order dated 25 March 2015 cannot be treated as the starting date for the purposes of making payment as contemplated under Section 31(4) of the Maharashtra Stamp Act. He, therefore, submitted that the interim order date cannot be

considered for the purpose of levy of penalty u/s 31(4) of Maharashtra Stamp Act and, therefore, the Petition is required to be dismissed.

17. I have heard learned counsel for the Petitioner and the Respondents and with their assistance I have also perused the documents brought to my attention.

Analysis and Conclusions:-

18. Section 31(4) of the Maharashtra Stamp Act reads as under:

“(4) When an instrument is brought to the Collector for adjudication,—

(i) within one month of the execution or first execution of such instrument in the State; or

(ii) if, such instrument is executed or first executed, out of the State, within three months from the date of first receipt of such instrument in this State,

the person liable to pay the stamp duty under section 30 shall pay the same within sixty days from the date of service of the notice of demand in respect of the stamp duty adjudicated by the Collector. If such person fails to pay the stamp duty so demanded within the said period, he shall be liable to pay a penalty at the rate of two per cent of the deficient portion of the stamp duty, for every month or part thereof, from the date of execution of such instrument, or as the case may be, date of the first receipt of such instrument in the State:

Provided that, in no case, the amount of the penalty shall exceed (four times) the deficient portion of the stamp duty.”

[emphasis supplied]

19. The first issue which requires consideration is whether the Petitioner is challenging the levy of stamp duty of Rs.7,07,27,090/- as per the impugned notices dated 23 December 2013 and 31 December 2014. It is important to

note that, in the course of the hearing, no submissions were made by the counsel for the Petitioner as to how the said levy is erroneous. On the contrary, at the beginning of the argument, it was specifically submitted that the only issue involved in the present Petition is the levy of penalty since the Petitioner has accepted the stamp duty and has also paid the same. In this connection, it is important to note that the Respondents vide letter dated 16 April 2010 sought various details for adjudication of stamp duty, which admittedly, has not been replied to by the Petitioner, and no explanation has been given for the same. In the letter dated 7 July 2014 addressed by the Petitioner in response to the demand notice dated 23 December 2013 also the grievance raised is only with respect to the levy of a penalty of Rs. 9,76,03,385/-. The said letter dated 7 July 2014 read as a whole clearly demonstrates that it is only the levy of penalty which the Petitioner was aggrieved with.

20. In the letter dated 19 December 2014 addressed to the Respondents, the Petitioner records that they are agreeable to pay the applicable amount of stamp duty and in the said letter, the said agreement is also recorded as having taken place in the personal meeting between the Petitioner and the Respondents.

21. In the appeal filed before the Chief Controlling Revenue Authority on 14 January 2015, the prayer sought was setting aside of the impugned demand notices dated 23 December 2013 and 31 December 2014 only insofar as the same relates

to the levy of the penalty. In the appeal, prayer for interim relief expressly states that the deposit of stamp duty be permitted to stop the quantum of penalty. On a holistic reading of the grounds raised in the appeal it clearly reveals that the Petitioner was aggrieved only by the penalty and not by the stamp duty.

22. The Petitioner, today has handed over an “Updated List of Dates and Events” and at serial No.15 has referred to the appeal filed on 14 January 2015. The note appended to the said serial No.15 reads as under :-

***Note :** Petitioner did not challenge the stamp duty charged and challenge was only limited to the penalty amount imposed upon the Petitioner.*

23. The above note appended admits that the Petitioner did not challenge the stamp duty even in the appeal filed on 14 January 2015. Therefore, the submissions made today by the Petitioner that they are challenging stamp duty in the present petition is also misconceived. Even if 14 January 2015 is taken as the date when the Petitioner admitted its liability to stamp duty, the period of 60 days to make payment of Rs.7,07,27,090/- would expire around 15 March 2015 and the payment of stamp duty has been made on 27 March, 2015. Therefore, even on this count, the period of 60 days provided in Section 31(4) of the Act is violated and consequently, penalty would be leviable from the date of instrument.

24. The interim order dated 25 March 2015 cannot be construed to mean that the Petitioner disputed the demand of stamp duty which became payable on 25 March 2015 being the date of interim order. The payment of stamp duty as per the interim order was as per the Petitioner's prayer in the appeal which itself was for stopping the period for which penalty could be imposed. It is only for deferment of adjudication of penalty by the Appellate Authority that the Chief Controlling Revenue Authority directed the Petitioner to make the payment of admitted stamp duty. The Petitioner nowhere disputed/challenged levy of stamp duty at any stage.

25. On a conjoint and holistic reading of the Petitioner's letters dated 7 July 2014 and 19 December 2014, the appeal memo filed by the Petitioner on 14 January 2015 and the averments made in the present Petition it would clearly demonstrate, without any doubt, that the Petitioner from 23 December 2013 was only aggrieved by the levy of penalty and the Petitioner has accepted the stamp duty amount of Rs.7,07,27,090/-. This is more clearly brought out in the admission made by the Petitioner in its letter dated 19 December 2014 and the appeal memo. Therefore, in my view, the Petitioner's contention that since they had disputed the stamp duty which came to be payable on 25 March 2015 being the date of the interim order by the Appellate Authority cannot be accepted.

26. Section 31 (4) of the Maharashtra Stamp Act provides that the stamp duty should be paid within 60 days from the date of service of the notice of demand and if the same is not paid within 60 days, then a penalty @ 2% from the date of the instrument is to be imposed. In the instant case before me and in light of the above findings, the Petitioner has never disputed the stamp duty imposed vide demand notice dated 23 December 2013 or 31 December 2014. The limitation of 60 days provided in Section 31 (4) would start from 23 December 2013 or atleast from 31 December 2014 and since the payment was made on 27 March 2015, the same is beyond the period of 60 days from the date of notice of demand in either case and therefore, consequently, the period for levy of penalty u/s 31(4) of the Maharashtra Stamp Act would start from the date of execution of the instrument i.e., from 11 April 2008.

27. Even assuming that 23 December 2013 is not taken as a starting date, then also on 19 December 2014, the Petitioner agreed to make the payment of stamp duty. Therefore, the notice of demand dated 23 December 2013 read with the Petitioner's admission vide letter dated 19 December 2014 can be treated as the starting date for computing 60 days for the purposes of section 31(4) of the Maharashtra Stamp Act. Even in that case, since the payment was made on 27 March 2015, the same is beyond the period of 60 days and, therefore, even on this count, the Petitioner cannot escape the

levy of penalty under section 31(4) of the Maharashtra Stamp Act.

28. The phrase used in section 31(4) is "60 days from the date of service of the notice of demand....". The interim order passed by the Chief Controlling Revenue Authority whereby the adjudication of penalty was deferred on payment of stamp duty cannot be considered as a notice of demand. I have already observed that the Petitioner did not challenge the stamp duty of Rs.7,07,27,090/- in the appeal filed on 14 January 2015 before the Chief Controlling Revenue Authority.

29. Therefore, looked from any angle, the Petitioner having accepted the quantification of stamp duty, the 60 day's period would, at the most, in the worst-case scenario, start from 19 December 2014 or 31 December 2014 or 14 January 2015 and not after that. Even in these scenarios, the period of 60 days expired much before the date of payment i.e., 27 March 2015. Once there is a failure to pay the stamp duty within 60 days from the date of service of the notice of demand, the penalty provision gets triggered and the quantum of penalty starts and the period for which penalty is to be calculated from the date of execution of the instrument which, in the instant case, is the order passed by the Company Court on 11 April 2008.

30. The notice of demand clearly specifies separately the stamp duty and the penalty. On the Petitioner's request final demand notice has been issued on 31 December 2014 and,

therefore, even on this count, the period of 60 days is violated since payment is made on 27 March 2015.

31. The Petitioner has invoked equity, discretionary and extraordinary jurisdiction under Article 226 of the Constitution of this Court. The Petitioner was served with interim demand letter dated 23 December 2013 demanding separately stamp duty and penalty. On 19 December 2014, the Petitioner agreed to pay the stamp duty and requested the Respondents to issue revised demand notice. On 31 December 2014, pursuant to such request made by the Petitioner, Respondents issued demand notice specifying stamp duty of Rs.7,07,27,090/- and penalty of Rs.9,76,03,385/- to be paid. The Petitioner, instead of making payment of stamp duty, after having admitted, challenged the demand notice challenging only penalty and by way of interim prayer agreed to make the payment of stamp duty for adjudication of penalty in appeal. Based on this, interim order was made on 25 March 2015 and payment was made on 27 March 2015.

32. The petitioner after having admitted the liability of payment of stamp duty vide letter dated 19 December 2014 and made the respondents to issue final demand notice dated 31 December 2014 failed to make payment within 60 days thereof which 60 days would expire on 2 March 2015. The petitioner cannot keep on defaulting in making payment within the time provided under Section 31(4) of the Act and thereafter put a condition on the respondents that he would make the payment of stamp duty for considering the issue of

penalty on merits. In my view, this would amount to misusing the provisions of the law by the petitioner. On one hand, the petitioner admits to the payment of stamp duty but on the other hand, does not make payment within the time provided under Section 31(4) of the Act and now the petitioner cannot be heard that there is no default because the payment of stamp duty is made on 27 March 2015 pursuant to the interim order dated 25 March 2015. The interim order was for considering the issue of penalty on merits. The petitioner cannot put a condition of payment of the stamp duty for adjudication of penalty and obtain an interim relief and violate the provisions of Section 31(4) of the Act.

33. The submission of the Petitioner that on account of delay in adjudication of stamp duty by the respondents, no penalty should be levied is required to be rejected. The penalty under Section 31 (4) of the Act is imposed if the payment of stamp duty is not made within 60 days from the date of demand notice. Therefore, even if there is a delay in adjudication of the stamp duty, that delay does not have any relevance since the period of 60 days would arise only from the service of notice of demand for payment of stamp duty.

34. In my view, once there is a default of making payment of admitted stamp duty as per notice of demand within 60 days, the quantum of penalty as per Section 31(4) would have to be calculated from the date of the instrument. This is based on a plain reading of Section 31(4) of the Act.

35. Therefore, in my view, the Respondents are justified in imposing the penalty of Rs.9,76,03,385/- and the challenge raised by the Petitioner before this Court is required to be rejected.

36. We, therefore, pass the following order :-

- (i) Petition is dismissed and Rule granted on 29 November 2017 is discharged.
- (ii) Interim stay granted in terms of prayer clause (e) of the Petition on 29 November 2017 stands vacated.
- (iii) The levy of penalty on the Petitioner of Rs.9,76,03,385/- is confirmed and same to be paid by the Petitioner within 4 weeks from today.
- (iv) The Respondents to take steps for recovery of the penalty if not paid within four weeks from the date of uploading of the present order.

(Jitendra Jain, J)

37. At the stage, Mr. Pimple, learned counsel for the Petitioner prays for stay of the impugned order. The said prayer is rejected.

(Jitendra Jain, J)