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WP-14843-2014

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DEEPAK KHOT

ON THE 6th OF MAY, 2026WRIT PETITION No. 14843 of 2014*M/S BETUL TOWN**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

Shri Yash Tiwari - Advocate for petitioner.

Smt. Vaaridhi Pathak Sharma - Panel Lawyer for the

respondents/State.
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ORDER

The petitioner has filed the present petition under Article 226/227 of the Constitution of India seeking following relief:-

- (i) to hold that the authority under section 45 (2) of Indian Stamp Act 1899 is a quasi judicial authority and is a court for the purposes of section 29 (2) of Limitation Act, 1963.
- (ii) to set aside the order dated 04.04.2014 (Annexure P-5) passed by the Respondent no.3 and 4.
- (iii) to remand the matter to the Respondent no. 3 for affording opportunity to the present Petitioner to seek condonation of delay in terms of section 5 of Limitation Act, 1963.
- (iv) to grant any other relief deemed just and proper in the facts and circumstances of the case.
- (v) Cost of petition may be awarded.

2. In short, the facts of the case are that petitioner submitted a sale deed before the respondent no. 5 for registration and affixed the adequate stamp duty. However, the respondent no. 5 while examining the instrument came to the opinion that the instrument is not sufficiently stamped and, therefore, additional stamp duty was required to be deposited. Although the



petitioner was orally communicated by the respondent No. 5 that if sufficient stamp duty is not affixed, the sale deed or register would not be attested, but the said information was communicated after a sufficient delay.

3. As averred in the petition, such sale deed was accordingly resubmitted for registration on 31.03.2013 after affixing additional stamp duty and thus the sale deed was registered and supplied to the petitioner on 02.04.2013 (Annexure P/2). However, later on, it came to the knowledge of the petitioner that subject land was within the limits of Gram Panchayat and not the Municipal Corporation, therefore, demand of additional stamp duty was improper and illegal, however, during the course of such process, it took some time. Thus an application for refund of such stamp duty was made on 30.08.2013 (Annexure P/3). Thereafter, respondent No.3 sought comments from respondent Nos. 4 and 5, which was communicated on 07.02.2014 (Annexure P/4), according to which, since the application was made beyond the period of three months as specified under Section 45(2) of the Indian Stamp Act, 1899 (for short 'Act of 1899'), the same needs no consideration being beyond the period of limitation. Consequently, on the basis of the said opinion, the application for refund of the stamp duty has been rejected by the respondents by the impugned order dated 04.04.2014 (Annexure P/5). Hence, this petition.

4. It is contended by the learned counsel for the petitioner that by the impugned order dated 04.04.2014 (Annexure P/5) the application filed by the petitioner for refund of the excess amount of stamp duty paid on the registration of the sale deed was dismissed. The said dismissal was only on



the ground that the application was filed beyond the period of limitation i.e. beyond three months from the date of registration.

5. The petitioner has referred to the provisions of the Act of 1899 i.e. sub-section (2) of Section 45. It is submitted that the authority only taking aid of the said provision has dismissed the application. It is submitted that where in any statute the application of the provisions of Limitation Act are not expressly barred then in such case by taking aid of the Limitation Act, such delay can be condoned. It is submitted that the delay was not inordinate and, according to him, it was only of one month. Therefore, the authority ought to have considered the case of the petitioner leniently by applying the provisions of the Limitation Act.

6. The petitioner has relied upon the judgment passed by the High Court of Bombay in the case of **Nanji Dana Patel vs. State of Maharashtra - WP No. 1897/2019** decided on 27th August, 2024. It is submitted that in a similar set of facts the writ petition was allowed considering that though the application for condonation of delay was not filed but treating the writ petition to be an application for condonation of delay, the petitioner therein was allowed to prosecute the application filed beyond the period of limitation, therefore, prayed for quashment of the impugned order.

7. *Per contra*, learned counsel for the respondents has submitted that as the statute contains the strict provision of filing the application for refund of excess amount of stamp duty within three months, therefore, in no case such period of limitation can be extended. It is submitted that when the statute does not contain any provision of application of the Limitation Act then it



would be deemed that it is not applicable.

8. Heard learned counsel for the parties and perused the record.

It is evident from the impugned order that the application for refund of excess amount of stamp duty has been rejected only on the ground of limitation. The respondents/authority has not dwelt upon the merits of the case. From the perusal of the application and pleading of writ petition, it is gathered that the petitioner is entitled for refund and the adequate interest thereon in accordance with law in case it is found that the stamp duty has been paid in excess of the requisite stamp duty. In that case, the authority ought to have considered the merit of the case whether such stamp duty has been paid in excess to the required requisite stamp. The application has been rejected only on the ground of limitation.

Sub-section (2) of Section (45) of the Act of 1899 provides as under:-

"45. Power to Revenue-authority to refund penalty or excess duty in certain cases. —

(1) xxxxx

(2) Where, in the opinion of the Chief Controlling Revenue-authority, stamp-duty in excess of that which is legally chargeable has been charged and paid under section 35 or section 40, such authority may, upon application in writing made within three months of the order charging the same, refund the excess."

9. The Bombay High Court in **Nanji Dana Patel (supra)** while deciding the issue has referred the judgment passed by the Hon'ble Apex Court in the case of **Bano Saiyed Parwad vs. Chief Controlling Revenue Authority and Inspector General of Registration and Controller of Stamp and others** reported in 2024 SCC OnLine SC 979, which reads as under:-

13. The Apex Court in *Bano Saiyed Parwad (supra)* in paragraph Nos. 14 to 17 held as under:-

"14. Committee-GFIL v. Libra Buildtech Private Limited and Ors., 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 (Firm) v. Dominion of India* [1953 SCC OnLine Bom 39]. 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.

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 insofar 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 bona fide 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 2-8-2019 as well as orders of Respondents 1 and 2 dated 9-6-2015 and 25-2-2016 and direct the State to refund the said stamp duty amount of Rs 25,34,400 deposited by the appellant."



Further in paragraphs 15 and 16, the Bombay High Court has held as under:-

"15. On an analysis of the Stamp Act, we find that there is no provision which excludes applicability of Section 5 of the Limitation Act, 1963 to the Stamp Act and more particularly in Section 48 of the said Act which provides for time limit for making the application for refund of stamp duty. We also note that the authority constituted under the Stamp Act does not have the power to condone the delay if the application is made beyond the time specified in Section 48 of the said Act. However, the present petition is filed under Article 226 of the Constitution of India for seeking condonation of delay in making application for refund of the stamp duty. Admittedly, there is no dispute that petitioner is entitled to apply for the refund under consideration, but the only ground of the denial of the refund is the delay on the part of petitioner in making the refund application. The merits have not been discussed in the impugned order. In our view, the present petition is to be treated as an application under Section 5 of the Limitation Act which provides that any application may be admitted after the prescribed period if the applicant satisfies the Court that he had sufficient cause for not making the application within the period specified. In the instant case, the petitioner has averred in the petition that as he was ill-advised, there was a delay in making the application for refund. However, that would *prima-facie* not result into Respondent-State to retain the amount which, is admittedly refundable to petitioner. Moreover, retention of stamp duty of the amount of Rs.78,65,000/- would be contrary to Article 265 and 300A of the Constitution of India. Therefore, in our view, the present petition can be treated as an application under Section 5 of the Limitation Act and accepting the reason for the delay, the petition is required to be allowed by condoning the delay in making the refund application."

16. The view which we have taken above by invoking Section 5 of the Limitation Act, 1963 is supported by a recent decision of the Supreme Court in *Mohd. Abaad Ali & Anr Vs. Directorate of Revenue Prosecution Intelligence*, (2024) 7 SCC 91 wherein the Supreme Court observed that unless there is an express or implied bar to the applicability of the Limitation Act in a particular Special Act, the provisions of Section 5 of the Limitation Act would apply. That was a case where a belated appeal against acquittal was filed under Section 378 of the Code of Criminal Procedure and the appeal was accompanied by an application for condonation of the appeal. The delay condonation application was allowed by Delhi High Court and, thereafter, an application was moved for recalling of the said order on the ground that Section 5 of the Limitation Act would not apply, since the period of filing an appeal against acquittal has been prescribed under Section 378(5) of the Code of Criminal Procedure itself and there is no provision for condonation of delay. The said application came to be



dismissed which was challenged before the Supreme Court and the Supreme Court after analysing the provisions of the Code of Criminal Procedure, 1973 and Limitation Act, 1963 held that the benefit of Section 5 can be availed in an appeal against acquittal in the absence of exclusionary provision under Section 378 of the Code of Criminal Procedure or at any other place in the Court. In our view, the ratio laid down by the Supreme Court would apply to the facts of the present petitioner before us moreso, when this Court is exercising its extra-ordinary jurisdiction under Article 226 of the Constitution of India and when there is no dispute that petitioner is admittedly entitled to apply for refund. The fiscal lis is not an adversarial proceeding but if a particular person is entitled to refund, since he has paid the excess tax then certainly the State cannot retain it. Therefore, in our view, the belated application made by the petitioner for refund of the duty is required to be considered on merits by condoning the delay in making such application."

10. On going through the observation made by the Bombay High Court, this Court is also of the opinion that the remedy can be barred by the limitation, but right of the parties cannot be. It is also found that the Act of 1899 does not provide any express bar on application of Limitation Act, therefore, in the light of the judgment of the Hon'ble Apex Court, the benefit of condonation of delay as provided under the Limitation Act can be extended to the petitioner.

11. In view of the above enunciation of law, it is clear that in cases where there is no express bar has been provided under the statute or the procedure then by taking aid of the provisions of Limitation Act, such delay in filing the application, appeal, revision or availing the statutory remedy can be condoned.

12. As in the present case in hand, the application has been filed for refund of excess stamp duty, in no stretch of imagination, the State can be benefited for the additional stamp duty for which the petitioner is not liable to make payment of.



13. From the above analysis of facts and law, in the considered opinion of this Court, the impugned order could not succeed the judicious scrutiny of this Court and therefore, the impugned order dated 04.04.2014 (Annexure P-5) is found to be not in consonance of the law and is hereby quashed. The matter is remanded back to the authority to decide the application on its merit. The delay in filing the application is hereby condoned.

14. With the aforesaid, the petition is allowed and disposed of.

(DEEPAK KHOT)
JUDGE

RAGHVENDRA