



September 2024

Bombay High Court affirms the applicability of Section 5 of the Limitation Act, 1963 *vis-à-vis* the Maharashtra Stamp Act, 1958 to condone delay in stamp duty refund applications

A 2 (two) judge bench of the Hon'ble Bombay High Court ("**Bombay HC**") in *Nanji Dana Patel vs. State of Maharashtra, Through Government Pleader and Others*¹ has upheld the applicability of section 5² of the Limitation Act, 1963 ("**Limitation Act**") to the Maharashtra Stamp Act, 1958 ("**Stamp Act**") for the purpose of condoning delay in filing of refund application. The Bombay HC noted that there is nothing in the Stamp Act that excludes the applicability of the Limitation Act. Accordingly, the delay in filing the application for a refund was condoned, and the matter was remanded to the Inspector General of Registrar and Controller of Stamps ("**Controller**") to be considered *de novo* on merits, with a specific deadline of October 31, 2024.

Brief facts

Nanji Patel, the Petitioner had entered into a development agreement dated March 3, 2014, with a counter-party, and a stamp duty of INR 78,65,000 (Indian Rupees seventy-eight lakh sixty-five thousand) was paid under the provisions of the Stamp Act.

Subsequently, in 2015, the parties decided to cancel the development agreement and convey the property to the Petitioner for valuable consideration. A cancellation deed and a conveyance deed both dated June 24, 2015, were executed, and an additional stamp duty of INR 1,00,00,000 (Indian Rupees one crore) was paid on the conveyance deed.

On February 15, 2018, the Petitioner filed an application for refund of INR 78,65,000 (Indian Rupees seventy-eight lakh sixty-five thousand) stamp duty paid on the now-cancelled development agreement. However, the Controller rejected the refund application on the grounds that it was filed beyond the 6 (six) month period mandated under Section 48(1) of the Stamp Act.

Aggrieved by the above rejection, the Petitioner filed a writ petition before the Bombay HC.

¹ 2024 SCC OnLine Bom 2817

² Section 5 of the Limitation Act, 1963 permits the condonation of delay in preferring an appeal or making an application in certain cases where the court is satisfied that the delay was due to '*sufficient cause*'.

Issues

1. Whether Section 5 of the Limitation Act is applicable to the Stamp Act?
2. If 'sufficient cause' exists, can delay in filing a refund application be condoned?

Analysis and Findings

The Bombay HC, upon consideration of the submissions adduced by the parties and the relevant provisions of the Limitation Act and the Stamp Act, opined that –

1. while Section 48 of the Stamp Act provides for a 6 (six) month limitation for filing refund applications, there is no specific exclusion of the Limitation Act, especially Section 5 of the Limitation Act. This allows for the condonation of delay in filing such applications when 'sufficient cause' is demonstrated;
2. in the present case, the Bombay HC accepted the Petitioner's argument that the delay was caused by being 'ill-advised', which constitutes 'sufficient cause' under Section 5 of the Limitation Act;
3. to support its decision, reliance was placed on the judgement of *Mohd. Abaad Ali vs. Directorate of Revenue Prosecution Intelligence*³, which held that, unless a statute (general or special) expressly excludes the applicability of the Limitation Act, Section 5 can be invoked to condone delays;
4. furthermore, the Bombay HC also extensively relied on the principles laid down in *Bano Saiyed vs. Chief Controlling Revenue Authority and Inspector General of Registration and Controller of Stamps*⁴, which directs the State to not ordinarily rely on technicalities when dealing with a citizen. It was the Bombay HC's view that if the State is satisfied that the case of a citizen is a just one, even though the legal defences may be open to it, it must act as an honest person;
5. moreover, the Bombay HC highlighted that a fiscal *lis* is not an adversarial proceeding, and the State must act as an honest party, especially where excess payments have been made. In this case, the retention of INR 78,65,000 (Indian Rupees seventy-eight lakh sixty-five thousand) by the State was deemed contrary to Articles 265 and 300A of the Constitution of India ("**Constitution**"), which prohibit the retention of taxes without legal authority; and
6. accordingly, applying the above-stated principles to the present matter, the Bombay HC treated the writ petition as an application under Section 5 of the Limitation Act and permitted condonation of delay in filing the refund application.

The Bombay HC quashed the order of the Controller rejecting the refund application and remanded the matter for *de novo* consideration on merits, after condoning the delay. The Controller was directed to pass a reasoned order on or before October 31, 2024, and provide the Petitioner with notice for a personal hearing at least 5 (five) working days in advance.

Conclusion

This judgment establishes a significant precedent for allowing delayed applications for stamp duty refunds under the Maharashtra Stamp Act by invoking Section 5 of the Limitation Act. The Bombay HC reaffirmed that, unless expressly excluded, Section 5 can be applied to condone delays, provided 'sufficient cause' is demonstrated.

However, a gap remains regarding which authority has the power to condone such delays under the Stamp Act, as the Stamp Act itself does not provide for this. As a result, individuals seeking refunds may still need to approach the High Court under Article 226 of the Constitution for delay condonation, placing an undue burden on both citizens and the judiciary. Legislative reform may be required to address this procedural gap.

³ (2024) 7 SCC 91

⁴ 2024 SCC OnLine SC 979

Despite this, the judgment delivers much-needed clarity and relief, reiterating that citizens should not be penalized for procedural delays when seeking refunds for excess payments. It also reinforces the State's obligation to avoid unjust enrichment by retaining excess payments, as such retention would violate Articles 265 and 300A of the Constitution.

Disputes Practice

With domain experts and strong team of dedicated litigators across the country, JSA has perhaps the widest and deepest commercial and regulatory disputes capacity in the field of complex multi-jurisdictional, multi-disciplinary dispute resolution. Availing of the wide network of JSA offices, affiliates and associates in major cities across the country and abroad, the team is uniquely placed to handle work seamlessly both nationally and worldwide.

The Firm has a wide domestic and international client base with a mix of companies, international and national development agencies, governments and individuals, and acts and appears in diverse forums including regulatory authorities, tribunals, the High Courts, and the Supreme Court of India. The Firm has immense experience in international as well as domestic arbitration. The Firm acts in numerous arbitration proceedings in diverse areas of infrastructure development, corporate disputes, and contracts in the area of construction and engineering, information technology, and domestic and cross-border investments.

The Firm has significant experience in national and international institutional arbitrations under numerous rules such as UNCITRAL, ICC, LCIA, SIAC and other specialist institutions. The Firm regularly advises and acts in international law disputes concerning, amongst others, Bilateral Investor Treaty (BIT) issues and proceedings.

The other areas and categories of dispute resolution expertise includes; banking litigation, white collar criminal investigations, constitutional and administrative, construction and engineering, corporate commercial, healthcare, international trade defense, etc.

This Prism is prepared by:















Varghese Thomas
Partner



Ahsan Allana
Senior Associate



Kabir Saund
Associate

		
Ranked Among Top 5 Law Firms in India for ESG Practice	Outstanding Energy and Infrastructure	Recognised in World's 100 best competition practices of 2024
		
19 Practices and 19 Ranked Lawyers	12 Practices and 42 Ranked Partners IFLR1000 APAC Rankings 2023	Among Top 7 Best Overall Law Firms in India and 11 Ranked Practices
	<p>-----</p> <p>Banking & Finance Team of the Year</p> <p>-----</p> <p>Fintech Team of the Year</p> <p>-----</p>	<p>-----</p> <p>11 winning Deals in IBLJ Deals of the Year</p> <p>-----</p> <p>12 A List Lawyers in IBLJ Top 100 Lawyer List</p>
18 Practices and 25 Ranked Lawyers	Restructuring & Insolvency Team of the Year	
		
<p>Employer of Choice 2024</p> <p>-----</p> <p>Energy and Resources Law Firm of the Year 2024</p> <p>-----</p> <p>Litigation Law Firm of the Year 2024</p> <p>-----</p>	<p>7 Ranked Practices, 16 Ranked Lawyers</p> <p>-----</p> <p>Elite – Band 1 - Corporate/ M&A Practice</p> <p>-----</p> <p>3 Band 1 Practices</p> <p>-----</p>	<p>Ranked #1 The Vahura Best Law Firms to Work Report, 2022</p> <p>-----</p> <p>Top 10 Best Law Firms for Women in 2022</p>
<p>Innovative Technologies Law Firm of the Year 2023</p> <p>-----</p> <p>Banking & Financial Services Law Firm of the Year 2022</p>	<p>4 Band 1 Lawyers, 1 Eminent Practitioner</p>	
		<p>7 Practices and 3 Ranked Lawyers</p>

For more details, please contact km@jsalaw.com

www.jsalaw.com



Ahmedabad | Bengaluru | Chennai | Gurugram | Hyderabad | Mumbai | New Delhi



This prism is not an advertisement or any form of solicitation and should not be construed as such. This prism has been prepared for general information purposes only. Nothing in this prism constitutes professional advice or a legal opinion. You should obtain appropriate professional advice before making any business, legal or other decisions. JSA and the authors of this prism disclaim all and any liability to any person who takes any decision based on this publication.