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Bombay High Court affirms citizen's rights by ruling that stamp duty refund cannot be denied on hyper technical grounds

In a consolidated ruling on 2 (two) writ petitions, the Hon'ble Bombay High Court ("**Bombay HC**"), in *Qwik Supply Chain Private Limited vs. Chief Controlling Revenue Authority*¹, examined the legality of orders passed by the Chief Controlling Revenue Authority ("**CCRA**") rejecting the petitioners' refund applications filed under Section 47(c)(5) of the Maharashtra Stamp Act, 1958 ("**Mah Stamp Act**"). These applications sought refunds of stamp duty paid on unregistered and undated deeds of transfer related to 2 (two) proposed property transactions that ultimately failed to materialise. The Bombay HC held that where transactions fail at inception and insistence on a formal deed of cancellation by the revenue authority amounts to a hyper-technicality, especially when the petitioners have supported their claims with affidavits and indemnity bonds.

Brief facts

The petitioners, originally known as New Empire Millennium Investments and Trading Private Limited, entered into 2 (two) proposed deeds of transfer in October 2010 involving flats and leasehold rights in Ashok Nagar Co-operative Housing Society Limited, Mumbai. The agreed considerations to be paid were INR 3,50,00,000 (Indian Rupees three crore fifty lakh) and INR 8,50,00,000 (Indian Rupees eight crore fifty lakh) respectively. In connection with these transactions, the petitioners made stamp duty payments of INR 17,50,000 (Indian Rupees seventeen lakh fifty thousand) and INR 42,50,000 (Indian Rupees forty-two lakh fifty thousand) respectively. Although both deeds were duly signed, they were undated and remained unregistered due to disputes between the parties. Consequently, neither the consideration was paid, nor was the possession handed over.

Subsequently, on April 13, 2011, the petitioner filed applications for refund under Section 47(c)(5) of the Mah Stamp Act, which were rejected by the CCRA, *vide* order dated March 7, 2015, for failure to produce a duly executed deed of cancellation. Aggrieved by this, the petitioners appealed to the Appellate Authority under Section 53(1A) of the Mah Stamp Act, but the appeals were dismissed on maintainability grounds *vide* order dated February 8, 2018. Consequently, the petitioners filed writ petitions challenging the orders dated March 7, 2015, and February 8, 2018 ("**Impugned Orders**") before the Bombay HC.

Issue

Whether, in the absence of a formal deed of cancellation, the petitioner is entitled to a refund of stamp duty due to the failure of the transaction?

¹ 2025 SCC OnLine Bom 3074 (decided on September 3, 2025)

Analysis and findings

1. **Failure of transaction:** The Bombay HC observed that the proposed property transactions never fructified and, therefore, there was no 'transfer of property' as defined under Section 5 of the Transfer of Property Act, 1882. The fact that the deeds remained undated, unregistered, and unacted upon, coupled with the absence of payment of consideration and possession transfer, clearly established that the transactions failed at inception.
2. **Sufficiency of documentary evidence:** The Bombay HC observed that, in support of their refund claims, the petitioners had submitted 3 (three) affidavits from company directors along with an affidavit-cum-indemnity bond specifically explaining their inability to produce a formal deed of cancellation due to the non-cooperation of the vendors. The Bombay HC held that these documentary evidence sufficiently safeguarded the interests of the revenue and served the very purpose of a formal cancellation deed.
3. **Rejection of hyper-technical approach:** The Bombay HC criticised the CCRA's insistence on a formal deed of cancellation as hyper-technical, mere formality that amounted to an arbitrary exercise of power, defeating the substantive rights of petitioners and undermining the intent of refund provisions.
4. **Reliance on authoritative precedents:** The Bombay HC relied on Supreme Court and Bombay HC decisions (notably *Bano Saiyed Parwaz vs. Chief Controlling Revenue Authority*² and *Kaluram Sitaram vs. Dominion of India*³) emphasising that the State must act fairly and not rely rigidly on procedural technicalities when dealing with citizens. Further, the statutory right to refund survives despite procedural bars like limitation periods.
5. **Violation of impartial adjudication in appeal:** The Bombay HC observed a violation of the principle of impartial adjudication '*nemo judex in causa sua*', as the appeals were decided by the same authority that had issued the original rejection orders. This procedural defect rendered the appellate orders unsustainable and warranted judicial intervention.

Conclusion

The Bombay HC held that the petitioners' case clearly falls within the ambit of Section 47(c)(5) of the Mah Stamp Act, which is intended to prevent the unjust enrichment of the State where a stamped instrument fails to result in actual conveyance. Faced with undisputed facts and comprehensive evidence, the Bombay HC exercised its writ jurisdiction under Articles 226 and 227 of the Constitution of India to grant relief without remanding the matter, thereby ensuring expeditious justice. In view of the foregoing, the Bombay HC quashed and set aside the Impugned Orders, affirming the petitioners' right to a refund of the stamp duty, along with simple interest at 4% per annum from the date of the refund application, to be paid within 4 (four) weeks from the judgment.

This landmark ruling emphasises that the State must act fairly and cannot rely on hyper-technicalities to withhold rightful refunds. It also recognises that under Section 47(c)(5) of the Mah Stamp Act, affidavits cum indemnity bonds can serve as adequate substitutes for a formal deed of cancellation where vendors refuse cooperation.

² Civil Appeal No. 6533 of 2024 (Arising out of SLP (C) No. 4111 of 2020)

³ AIR 1954 SC 223

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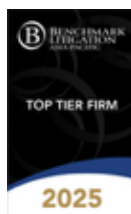
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