IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.951 OF 2026

Glider Buildcon Realtors Private Limited,
being Company under the Companies Act,
2013, through its Director / Authorized
Signatory, Mr. Rupen Kanawala,
Having address at, Piramal Tower,
8th Floor, Ganpatrao Kadam Marg,
Lower Parel, Mumbai – 400 013. ... Petitioner

versus

1. Chief Controlling Revenue Authority,
Inspector General of Stamps
State of Maharashtra, Pune,
Having office at, Office of Inspector
General of Registration, Gr. Floor,
Opposite Vidhan Bhavan,
(Council Hall), New Administrative
Building, Pune 411 001.

2. Assistant Inspector General of
Registration, Having Office at,
Office of Inspector General of
Registration, Ground Floor,
Opposite Vidhan Bhawan,
(Council Hall), New Administrative
Building, Pune, 411 001.

3. State of Maharashtra,
through Additional Chief Secretary,
Revenue and Stamps,
Mantralaya, Mumbai. … Respondents

Mr. Drupad Patil with Mr. Sunil Gangan, Mr. Namit Pansare, Mr. Swapnil Shikhare i/by RMG Law Associates, for Petitioner.
Ms. Savina Crasto, AGP for Respondents.

CORAM: N.J.JAMADAR, J.

RESERVED ON : 3 AUGUST 2026
PRONOUNCED ON : 13 OCTOBER 2026

JUDGMENT :

1. Rule. Rule made returnable forthwith, and, with the consent of the learned Counsel for the parties, heard finally.

2. By this Petition under Articles 226 and 227 of the Constitution of India, the Petitioner takes exception to the orders dated 9 June 2025 and 8 December 2025 passed by the Respondent Nos.2 and 1, respectively, thereby rejecting the application preferred by the Petitioner for refund of the stamp duty to be impressed on an instrument that was agreed to be executed, but was never executed.

3. The background facts can be stated, in brief, as under :

3.1 The Petitioner is a company registered under the Companies Act, 2013 and is engaged in the real estate business. The Petitioner was developing a project known as “Piramal Aranya” at Byculla, Mumbai. Junaid Kudia and Mehjabeen Kudia had evinced interest in purchasing a flat, being Flat No.1205, on the 12th floor of the building “Avyan Tower” in the said project, for a total consideration of Rs.5,10,45,155/-.

3.2 A Request for Reservation (RFR) was, thus, issued in favour of Kudias (hereinafter referred to as “the allottees”) on 2 December 2021. The

Petitioner and the allottees agreed upon the terms of the draft agreement for sale. The Petitioner had undertaken to pay the registration charges and the stamp duty on the agreement for sale to be executed between the parties. Thus, on 4 February 2022, the Petitioner paid the registration charges of Rs.30,000/-. On 17 February 2022, the Petitioner also paid a sum of Rs.25,52,500/- towards the stamp duty on the instrument to be executed between the Petitioner and the allottees to evidence the said transaction.

3.3 On 7 June 2022, the allottees, however, expressed their inability to complete the transaction on account of financial constraints. The allottees requested the Petitioner to cancel the RFR. Appreciating the financial difficulties faced by the allottees, the Petitioner acceded to their request for cancellation of RFR.

3.4 Subsequent to the cancellation of the transaction, as the instrument was not required to be executed, the Petitioner filed an application for refund of the stamp duty under the provisions of Section 47 of the Maharashtra Stamp Act, 1958 (the Stamp Act, 1958). Though, the application was notarized on 14 July 2022, yet, it was filed with Respondent No.2 on 20 September 2022.

3.5 By an order dated 9 June 2025, Respondent No.1 rejected the said application on the ground that the application was filed beyond the period prescribed under Section 48(3) of the Stamp Act, 1958, which mandates that

such an application be filed within a period of six months from the date of purchase of stamps.

3.6 The Petitioner preferred another application on 14 November 2025, annexing thereto a letter dated 7 June 2022 issued by the allottees seeking cancellation of the RFR. By a further order dated 8 December 2025, Respondent No.2 informed the Petitioner that the first order dated 9 June 2025 rejecting the prayer for refund of the stamp duty was confirmed.

3.6 Being aggrieved, the Petitioner has invoked the writ jurisdiction.

4. The substance of the Petition is that, the time to seek refund of the stamp duty started to run from 7 June 2022 when the allottees sought cancellation of the RFR, and, resultantly, the execution of the instrument in connection with which the stamp duty was paid became impossible. The Respondents have taken a very rigid and hyper-technical view of the matter and rejected the prayer for refund, completely ignoring the fact that the instrument in connection with which the stamp duty was paid, never came into existence.

5. The Respondents have resisted the Petition by filing an affidavit in reply. The Respondents contend that the statutory provisions contained in Sections 47 and 48 of the Stamp Act, 1958, empower the Competent Authority to refund the stamp duty only when the application is filed within the stipulated period of six months (as it then stood). The statute does not confer

any discretion upon the authorities to condone the period of delay in making such an application and refund the stamp duty on equitable considerations. Since the Respondents are not vested with any discretion to relax or condone the delay, any such exercise would lead to anomalous consequences. Therefore, the reasoned order passed by Respondent No.1 on 9 June 2025, after providing an efficacious opportunity of hearing to the Petitioner, does not merit any interference in exercise of the writ jurisdiction.

6. I have heard Mr. Drupad Patil, learned Counsel for the Petitioner, and Ms. Savina Crasto, learned AGP for the State, at some length. With the assistance of the learned Counsel for the parties, I have also perused the material on record.

7. Mr. Patil, learned Counsel for the Petitioner, submitted that, Respondent No.1 was in error in computing the period of limitation from the date of purchase of the stamp duty. Laying emphasis on the letter addressed by the allottees dated 7 June 2022, whereby the allottees sought to cancel the transaction, Mr. Patil would urge that, at no point of time prior thereto, the Petitioner could have sought a refund of the stamp duty. The inability of the allottees to complete the transaction on account of financial difficulties, gave a cause of action for the Petitioner to seek refund of the stamp duty. Therefore, by no stretch of imagination, the period of six months could have been reckoned from the date of purchase of the stamp duty.

8. Mr. Patil laid emphasis on the fact that, in the case at hand, though the registration charges and the stamp duty were paid by the Petitioner on the basis of the RFR, yet, no instrument was ever executed. Respondent No.1 lost sight of the aforesaid crucial fact. To allow the State to retain the stamp duty in respect of an instrument which was never executed would amount to unjust enrichment, submitted Mr. Patil.

9. To this end, Mr. Patil placed reliance on a three-judge Bench judgment of the Supreme Court in the case of **Harshit Harish Jain and Anr. V/s. State of Maharashtra and Ors.**[1] and a judgment of this Court in the case of **Suresh Ramchandra Sancheti and Anr. V/s. State of Maharashtra and Ors.**[2]

10. In opposition to this, Ms. Crasto, learned AGP, stoutly supported the impugned orders. Laying emphasis on the plain textual reading of the provisions contained in Sections 47 and 48 of the Stamp Act, 1958, Ms. Crasto would urge that, the authorities were within their rights in rejecting the prayer for refund of the stamp duty made after the expiry of the stipulated period. As the statute does not confer any discretion upon the authorities, Ms. Crasto would urge, reading down the provisions contained in Section 48 of the Stamp Act, 1958, may amount to exercise of jurisdiction by the authorities not vested in them and would be susceptible to the allegations of

1 (2025) 3 SCC 365
2 2025 SCC Online Bom 5198

exercise of power in an arbitrary and inequitable manner if the authorities were to relax the period in one case and decline to do so in another. As the authorities have acted in conformity with the legislative mandate, the impugned orders cannot be interfered with in exercise of the extraordinary writ jurisdiction, submitted Ms. Crasto.

11. Chapter V of the Stamp Act, 1958, makes provisions for allowances for Stamps in certain cases. Section 47 reads as under :

> "**47. Allowance for spoiled stamps**
>
> Subject to such rules as may be made by the State Government as to the evidence to be required, or the inquiry to be made, the Collector may on application, made within the period prescribed in section 48, and if he is satisfied as to the facts, make allowance for impressed stamps spoiled in the cases hereinafter mentioned, namely: -
>
> (a) the stamp on any paper inadvertently and undesignedly spoiled, obliterated or by error in writing or any other means rendered unfit for the purpose intended before any instrument written thereon is executed by any person;
>
> (b) the stamp on any document which is written out wholly or in part, but which is not signed or executed by any party thereto;
>
> (c) the stamp used for an instrument executed by any party thereto which -
>
> (1) has been afterwards found by the party to be absolutely void in law from the beginning;
>
> (1A) has been afterwards found by the Court, to be absolutely void from the beginning under section 31 of the

Specific Relief Act, 1963;

(2) has been afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended;

(3) by reason of the death of any person by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, cannot be completed so as to effect the intended transaction in the form proposed;

(4) for want of the execution thereof by some material party, and his inability or refusal to sign the same, is in fact incomplete and insufficient for the purpose for which it was intended;

(5) by reason of the refusal of any person to act under the same, or to advance any money intended to be thereby secured, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose;

(6) becomes useless in consequence of the transaction intended to be thereby effected by some other instrument between the same parties and bearing a stamp of not less value;

(7) is deficient in value and the transaction intended to be thereby effected had been effected by some other instrument between the same parties and bearing a stamp of not less value;

(8) is inadvertently and undesignedly spoiled, and in lieu whereof another instrument made between the parties and for the same purpose is executed and duly stamped;

Provided that, in the case of an executed instrument, except that falling under sub-clause (1A), no legal proceeding

> has been commenced in which the instrument could or would have been given or offered in evidence and that the instrument is given up to be cancelled or has been already given up to the Court to be cancelled.
>
> *Explanation* – The certificate of the Collector under section 32 that the full duty with which an instrument is chargeable has been paid is an impressed stamp within the meaning of this section."

12. Firstly, Section 47 is subject to such rules as may be framed by the State Government. Secondly, an application for refund has to be made within the period stipulated in Section 48. Thirdly, it enumerates the contingencies in which, upon being satisfied, the Collector of Stamps can make allowance for impressed stamps. One of the categories specified in sub clause (c) is the stamp used for an instrument executed by the party thereto which, by reason of the refusal of any person to act under the same, or to advance any money intended to be thereby secured, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose.

13. It would be advantageous to immediately notice the time stipulated by section 48, to make an application for relief under section 47. Section 48 of the Stamp Act, 1958 (as it then stood) 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 one year of the date of the instruments;

Provided that where an agreement to sale of immovable property on which stamp duty is paid under Article 25 of the SCHEDULE 1, is registered under the provisions of the Registration Act, 1908 and thereafter such agreement is cancelled by a registered cancellation deed for whatsoever reasons before taking the possession of the property which is the subject matter of such agreement, within a period of five years from the date of execution of the agreement to sale, then the application for relief may be made within a period of one year from the date of registration of cancellation deed.

(2) in the case when for unavoidable circumstances any instrument for which another instrument has been substituted cannot be given up to be cancelled, the application may be made within one year after the date of execution of the substituted agreement.

(3) in any other case, within six months from the date of purchase of stamps."

14. The authorities have reckoned that the controversy at hand was governed by sub-section (3) of Section 48. Incontrovertibly, no instrument was executed by either party. Before agreement for sale could be executed in pursuance of the RFR and the terms of the draft agreement for sale settled between the parties, the allottees sought to cancel the transaction. In other words, the situation that obtained was that, the Petitioner had paid the stamp duty towards an instrument, which the parties had agreed to execute but

never executed. Could the Petitioner thus seek refund of the stamp duty on the ground that the instrument which was intended to be executed was not executed on account of the inability and default on the part of the allottees, beyond the then prescribed period of six months from the date of purchase of stamps, is the moot question.

15. An answer to the aforesaid question hinges upon the approach of the Courts in situations where a party may suffer harsh consequences of strict rigour of statutory prescription of time, though its conduct is not blameworthy or malafide. A profitable reference can be made to the decision of the Supreme Court in the case of **Committee GFIL V/s. Libra Buildtech Pvt. Ltd. and Ors.**[3], wherein the question of refund of the stamp duty on a transaction that failed on account of reasons beyond the control of the parties had arisen for consideration. The Supreme Court observed, inter alia, as under :

> "26. In our considered opinion, while deciding a case of this nature, we have to also bear in mind one maxim of equity, which is well settled, namely, *actus curiae neminem gravabit meaning – an act of the court shall prejudice no man.* In Broom's Legal Maxims, 10th Edn., 1939 at p. 73 this maxim is explained saying that it is founded upon justice and good sense and afforded a safe and certain guide for the administration of law. This maxim is also explained in the same words in Jenk. Cent. 118. This principle is

3 (2015) 16 SCC 31

> fundamental to any system of justice and applies to our jurisprudence. (see **Busching Schmitz (P) Ltd. V/s. P.T. Menghani**[4] and **Raj Kumar Dey V/s. Tarapada Dey**[5]).
>
> ……..
>
> 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." (emphasis supplied)

16. In the case of **Rajeev Nohwar V/s. Chief Controlling Revenue Authority, Maharashtra State and Ors.**[6], the Supreme Court was confronted with a similar question, where though the stamp duty was purchased but no agreement for sale was executed. The Supreme Court found that the provisions of Section 47 had no application to the facts of the said case. Yet, the Supreme Court allowed the application for claim of refund observing, inter alia, that the rejection of the application for refund would violate equity, justice

4 (1977) 2 SC 835
5 (1987) 4 SCC 398
6 2021 SCC Online SC 863

and fairness where the applicant is made to suffer the brunt of judicial delay. The observations of the Supreme Court in paragraph Nos.30, 31 and 33 are instructive, and, hence, extracted below :

> "30. Evidently, and for the reasons that we have indicated above, the application filed by the appellant did not fall within the ambit of Sections 47, 52 and 52A. It is true that the application for refund was titled with reference to the provisions of Section 47. But, it is well settled that a reference of a wrong statutory provision, cannot oust the citizen of an entitlement to refund which otherwise follows in terms of a statutory provision.
>
> 31. In the present case, the stamp paper was purchased bona fide in view of the agreement to sell which was to be executed by the appellant with the developer. There was a dispute with the developer which led to the institution of the proceedings before the NCDRC. There was nothing untoward in the conduct of the appellant and certainly no unreasonable delay on the part of the appellant in awaiting the outcome of the proceedings. The NCDRC allowed the complaint giving the option to the appellant of either going ahead with the agreement along with an award of compensation or, in the alternative, to seek a refund with interest. The appellant having exercised the latter option applied within two months from the order of the NCDRC for the grant of refund. The conduct of the appellant, therefore, cannot be held to be unreasonable nor was there any intentional or wanton delay on the part of the appellant in applying for a refund of stamp duty. Such an application must be filed within a reasonable period.

> 32.……
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> 33. We are conscious of the fact that as a general rule of law, the right to refund is a statutory creation. A refund can be sought in terms envisaged by statute. As discussed above, the case of the appellant is not specifically barred by any substantive provision. It is an established principle that this Court while exercising its power under Article 142 of Constitution must not ignore and override statutory provisions but must rather take note of the express statutory provisions and exercise its discretion with caution. Therefore, if a statute prescribes a limitation period, this Court must be slow to interfere with the delay under Article 142. However, in the case of an eventuality such as the instant case where the facts of the case are not covered by the statute, this Court under Article 142 will have the power to do complete justice by condoning the delay. We are of the view that since the delay in filling the application for refund in the instant case was due to the prolonged proceedings before the NCDRC, the application cannot be rejected on the ground of delay. A litigant has no control over judicial delays. A rejection of the application for refund would violate equity, justice and fairness where the applicant is made to suffer the brunt of judicial delay. Therefore, this is a fit case for the exercise of the power under Article 142 of the Constitution. (emphasis supplied)

17. After adverting to the aforesaid decisions, in the case of **Satish Buba Shetty V/s. Inspector General of Registration and Collector of Stamps and Ors.**[7], this Court observed as under :

7 2024 (3) Mh.L.J. 293

> "23. I am mindful the Supreme Court has resorted to the plenary power under Article 142 of the Constitution. However, in my considered view the principle enunciated by the Supreme Court that where a party would suffer consequences of judicial delay or would be prejudiced for non-compliance of the condition which was impossible for it to perform, such course would violate equity, justice and fairness, deserves to be followed.
>
> 24. The authorities under the Stamp Act, 1958 may be justified in rejecting the application in strict adherence to the letter of the law. The statutory provision does not vest any discretion in the authorities. It is trite, refund of the amount paid under any enactment is a matter of a statutory right. Reading down the proviso to sub section (1) of Section 48 of the Stamp Act, 1958 as directory may have serious repercussions on the revenue. But, the High Court in exercise of the extraordinary writ jurisdiction cannot be denuded of the power to delve into the question as to whether the non-compliance of the stipulation as to time was brought about by factors which were beyond the control of the affected party and to insist performance would have amounted to compelling such party to do impossible and, thus, relieve such party of the hardship in deserving cases, where injustice is writ large." (emphasis supplied)

18. In the case of **Suresh Ramchandra Sancheti (supra)**, a learned Single Judge of this Court was again confronted with the question whether the extraordinary writ jurisdiction can be invoked to seek refund of the stamp duty paid with the intention of being impressed on an instrument, that was never

executed. After a survey of authoritative pronouncements, including the aforesaid judgments, this Court observed as under :

> "46. In sharp contrast to the aforesaid cases, in the instant case, the draft of the agreement for sale was not even executed; no instrument even came into existence; and therefore, there has been no reliance on the document as evidence in any forum. Without execution leading to an instrument coming into being, whether Stamp Duty is ever chargeable is a core question that rears its head. Indeed, in those cases, the delay in the conduct of judicial proceedings was factored in, but in those cases, the documents had actually been executed and the instruments not only came into existence but were also part of the evidence in the legal proceedings involved. In the instant case, the transaction was abandoned during the Covid Pandemic and the money was felt better conserved owing to Sangita's health condition.
>
> 47. Moreover, the approach of the Courts in the aforesaid cases has been just, equitable and fair, precisely in exercise of the writ jurisdiction, even while the reasoning was applied to instruments on which stamp duty had been paid. Transactions contracted and evidenced by such instruments had been reversed but in the extraordinary facts of the respective cases, the Courts invoked the extraordinary powers of the writ jurisdiction and directed the refund.
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> 48. The net result of the multiple iterations and declaration of the law can be said to be that the writ court would have the power to exercise its extraordinary jurisdiction to deal with the adjectival provisions of the deadline for an application in Section 48 of the Stamp Act, even while the Stamp Authorities

would need to adhere to the stipulated deadlines. Looking to the nature of the facts and circumstances of the case, the deadlines in Section 48 of the Stamp Act would not be directory in nature for purposes of exercise of discretion by the Stamp Authorities, but would be so in the exercise of the extraordinary writ jurisdiction.

49. The substantive right to refund must be discerned from the application of the substantive provisions of the Stamp Act to the facts of the case, while the procedural deadlines in the provisions dealt with above would bind the Stamp Authorities but not the writ courts.

50. In the instant case, Sunita has a 100% disability and the material on record shows that Suresh is the court-approved guardian taking care of her. The stamp duty being retained by the State would constitute unjust enrichment and would result in an unfair and unjust outcome for Suresh and Sunita, where without a chargeable instrument even having come into being (unlike in the aforesaid cases dealt with by the Supreme Court), an ailing couple would be out of pocket and denied an allowance of stamp duty on what was not even a still-born instrument but was an unborn instrument that had been aborted.

51. The sole hitch is that six months had elapsed from the date of purchase of the stamps. Adopting the very same approach articulated in the three decisions analysed above, and applying it to the peculiar facts of the instant case, in my opinion, a case has been made out for exercise of the extraordinary jurisdiction in favour of the Petitioners."

(emphasis supplied)

19. In the case of **Harshit Harish Jain and Anr. (supra)**, on which reliance was placed by Mr. Patil, the Supreme Court in the light of the 2015 amendment to Section 48(1) of the Stamp Act, 1958, whereby the period of limitation was reduced from two years to six months for seeking refund of the stamp duty on the instrument, underscored the approach expected in the matter of refund of the duty and the necessity to strike an equitable balance in such matters. The observations in paras 19 to 21 are instructive, and, hence, extracted below :

> "19. Even if one were to hold that the Appellants' claim is examined under the amended six-month period, we are of the considered opinion that a mere technical delay should not, by itself, extinguish an otherwise valid claim. The scheme of stamp duty refund provisions is designed to ensure fairness when the underlying transaction is rescinded for bona fide reasons. The Appellants were compelled to cancel the purchase due to the developer's inability to deliver timely possession, and were in no way remiss or at fault.
>
> 20. Denying a legitimate refund solely on technical grounds of limitation, especially when the timing of registration fell close to the legislative amendment, fails to strike the equitable balance ordinarily expected in fiscal or quasi-judicial determinations. A measure of discretion or consideration for good faith conduct is not alien to statutory processes that safeguard citizens from unjust enrichment by the State.
>
> 21. It has been laid down by this Court in **Bano Saiyed Parwaz V/s. State of Maharashtra**[8] that the limitation

8 (2025) 2 SCC 201

> provision in stamp law (to seek refund of stamp duty) should not be enforced so as to oust the remedy when the applicant is otherwise not blameworthy…….”

20. In a line of precedents the Supreme Court and this Court have adopted an approach which ameliorates the hardship which arises on account of the strict rigour of law. The provisions of law are required to be interpreted keeping in view the foundational principle that the stamp duty is collected as a measure for assurance of title. In a case where the instrument itself is not executed, much less, the transaction completed, the retention of the stamp duty may amount to an unjust enrichment. Therefore, the circumstances on account of which a party could not seek refund within the stipulated period , must inform the exercise of the extraordinary writ jurisdiction.

21. On the aforesaid touchstone, reverting to the facts of the case, the Petitioner had placed material on record to show that the allottees backed out of the transaction. The registration charges and the stamp duty were paid by the Petitioner on the representation of the allottees that they would enter into the agreement for sale. The application for refund was made within three and a half months of the cancellation of the allotment at the instance of the allottees. Therefore, in the considered view of this Court, the case at hand warrants the exercise of its extraordinary writ jurisdiction to ameliorate the harsh consequences of the rigid application of law. The Writ Petition,

therefore, deserves to be allowed.

22. Hence, the following order :

ORDER

(i) The Writ Petition stands allowed.

(ii) The impugned orders stand quashed and set aside.

(iii) The claim for refund of the stamp duty stands allowed.

(iv) The Petitioner shall be entitled to refund of the stamp duty paid on 17 February 2022 under GRN No.MH013263480202122E, and the claim for refund be processed within a period of four weeks from the date of communication of this order.

(v) Rule made absolute in the aforesaid terms.

(vi) No costs.

(N.J.JAMADAR, J.)

Signed by: S.S.Phadke
Designation: PS To Honourable Judge
Date: 13/10/2026 21:36:17