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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8851 OF 2016

Satish Anant Bhadri & Another … Petitioners

V/s.

The State of Maharashtra, through
its Chief Secretary & Others … Respondent

WITH
WRIT PETITION NO.8852 OF 2016

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Havovy Khushru Readymoney & Anr. … Petitioners

V/s.

The State of Maharashtra, through
its Chief Secretary & Others … Respondent

WITH
WRIT PETITION NO.8849 OF 2016

Jain Manoj Mangilal & Another … Petitioners

V/s.

The State of Maharashtra, through
its Chief Secretary & Others … Respondent

Ms. Ketki Gadkari for the petitioners.

Mr. Y.D. Patil, AGP for respondent Nos.1 to 3-State.

CORAM : AMIT BORKAR, J.

RESERVED ON : OCTOBER 12, 2026

PRONOUNCED ON : OCTOBER 14, 2026

JUDGMENT:

1. Since all these Writ Petitions involve the same questions of law and similar facts, they are being decided by this common Judgment. For the sake of convenience, the facts stated in Writ Petition No. 8851 of 2017 are being considered as the facts of the lead matter.

2. By filing these Writ Petitions under Article 226 of the Constitution of India, the Petitioners are challenging the orders dated 15 February 2016 passed by Respondent No. 2. By these orders, the applications made by the Petitioners for refund of stamp duty paid on the Agreements to Sell, after cancellation of those agreements, were rejected.

3. According to the Petitioners, the facts which led to the filing of these Writ Petitions are as follows. By an Agreement to Sell dated 7 January 2013, registered on 11 January 2013 with the Sub-Registrar of Assurances at Mumbai-4 under Serial No. BBE4-135 of 2013, the Petitioners agreed to purchase a residential flat bearing No. 3003, situated on the 30th floor of the East Tower in the Lodha Venezia Project, at Parel Tank Road, Parel Sewree Division, Parel, Mumbai 400 033. The terms and conditions of the purchase were mentioned in the said Agreement. The Petitioners paid stamp duty of Rs. 24,45,010/- (Rupees Twenty-Four Lakhs Forty-Five Thousand and Ten only) on the said Agreement., Respondent No. 4 failed to hand over possession of the flat on the date agreed between the parties. Therefore, after discussions between them, the Petitioners and Respondent No. 4 mutually

agreed to cancel the Agreement to Sell. Accordingly, they executed a Deed of Cancellation dated 9 December 2014, which was registered on 11 December 2014 with the Sub-Registrar of Assurances at Mumbai-4 under Serial No. BBE4-4802 of 2014.

4. The Petitioners contend that, as Respondent No. 4 failed to hand over possession of the flat, the Agreement to Sell could not achieve the purpose for which it was executed. According to them, they are entitled to get back the stamp duty of Rs. 24,45,010/- paid on the said Agreement. For this reason, the Petitioners submitted an application dated 23 June 2015 to Respondent No. 3, seeking a refund of the stamp duty paid on the Agreement to Sell dated 7 January 2013. This application is referred to as the "Refund Application". It appears that the Refund Application was forwarded to Respondent No. 4 for his opinion and decision. Respondent No. 2 decided the Refund Application and passed the impugned order dated 15 February 2016. The application was rejected on the ground that it had been filed after the expiry of six months from the date on which the Deed of Cancellation was registered. Being aggrieved by this decision, the Petitioners have filed the present Writ Petitions.

5. In Writ Petition No. 8849 of 2016, filed by Jain Manoj Mangilal, the Petitioner entered into an Agreement to Sell dated 19 April 2014, which was registered on 30 April 2014., a Deed of Cancellation dated 18 December 2014 was registered on 19 December 2014. According to the Petitioner, the developer was unable to hand over possession of the residential flat on the date mentioned in the Agreement to Sell. Therefore, the parties

cancelled the Agreement to Sell. The Petitioner filed an application dated 6 July 2015 seeking refund of the stamp duty paid on the said Agreement. However, the application was rejected on the ground that it had been filed after the expiry of six months from the date of registration of the Deed of Cancellation, as provided under Section 48(1) of the Maharashtra Stamp Act.

6. In Writ Petition No. 8852 of 2016, filed by Havovy Readymoney, the Petitioner entered into an Agreement to Sell dated 7 February 2014, which was registered on 15 February 2014. Subsequently, a Deed of Cancellation dated 17 November 2014 was registered on 18 November 2014. The reason for cancellation was that the developer was unable to hand over possession of the residential flat on the date mentioned in the Agreement to Sell. The Petitioner sought a refund of the stamp duty paid on the said Agreement. The application was submitted online on 2 May 2015 and the physical application was submitted on 26 May 2015. However, the application was rejected on the ground that it had been submitted after the expiry of six months from the date of registration of the Deed of Cancellation, as provided under Section 48(1) of the Maharashtra Stamp Act.

7. Thus, in all these Writ Petitions, the Petitioners are seeking refund of stamp duty paid on their respective Agreements to Sell after those agreements were cancelled. The reasons for cancellation and the dates of the agreements, cancellation deeds and refund applications differ from case to case. However, the common question raised is whether the applications for refund were rightly rejected on the ground that they were filed beyond

the period of six months prescribed under Section 48(1) of the Maharashtra Stamp Act.

8. Ms. Gadkari, learned Advocate appearing for the Petitioners, submits that the impugned order is illegal because Respondent No. 2 failed to consider an important fact. According to her, the seller had failed to hand over possession of the flat, which was the subject matter of the Agreement to Sell. Therefore, the case of the Petitioners was covered by Section 47(5) of the Maharashtra Stamp Act, as the purpose for which the Agreement was executed had failed. She submits that, in such a case, the Petitioners were entitled to make an application for refund within two years. Learned Advocate submits that, once it is established that the purpose for which an instrument was executed has failed, the claim for refund must be considered under Section 47 read with Section 48 of the Maharashtra Stamp Act. According to her, Respondent No. 2 failed to consider the Petitioners' claim in the light of these provisions and rejected the application only on the ground of delay. She, therefore, submits that the impugned order deserves to be set aside.

9. In support of these submissions, Ms. Gadkari relies upon the judgment of the Supreme Court in *Harshit Barish Jain & Another vs. State of Maharashtra & Ors.,* (2025) 3 SCC 365, the judgment in *Suresh Ramchandra Sancheti & Another vs. State of Maharashtra, through the Department of Revenue & Others,* 2025 SCC OnLine 5198, and the judgment of the Supreme Court in *Bano Saiyed Parwaz vs. Chief Controlling Revenue Authority and Inspector General of Registration & Controller of Stamps & Others,*

(2025) 2 SCC 201. On the basis of these decisions, she seeks to support the Petitioners' claim for refund of stamp duty.

10. Mr. Patil, learned Assistant Government Pleader appearing for the State, opposes the Writ Petitions on behalf of Respondent Nos. 2 and 3. He submits that the Petitioners have failed to consider the amendment made to Section 48(1) of the Maharashtra Stamp Act by Maharashtra Act No. 20 of 2015, which came into effect on 24 April 2015. By this amendment, the proviso below Section 48(1) was amended.

11. Learned Assistant Government Pleader submits that, after the amendment, the grounds on which a refund of stamp duty could be claimed and the period within which the application had to be filed were governed by the amended provision. According to him, the Petitioners were required to file the Refund Application either within two years from the date of the Agreement to Sell or within six months from the date of registration of the Deed of Cancellation. In the present case, the Agreement to Sell was registered on 11 January 2013, while the Deed of Cancellation was registered on 11 December 2014. Therefore, according to him, the application ought to have been filed on or before 10 January 2015, if the Petitioners relied upon the Agreement to Sell, or on or before 10 June 2015, if they relied upon the Deed of Cancellation. However, the Petitioners filed the online application for refund on 23 June 2015 and submitted the physical application on 24 June 2015. Thus, according to the State, the application was filed after the prescribed period had expired and was rightly rejected.

12. Learned Assistant Government Pleader submits that the Petitioners have not explained why they failed to file the Refund Application within the prescribed period, particularly when the Deed of Cancellation had been executed on 9 December 2014 and registered on 11 December 2014. He submits that the Petitioners have not produced any document to show that Respondent No. 4 had informed them, or had otherwise expressed his inability, to hand over possession of the flat within the agreed period. Although possession was to be handed over on or before 31 March 2017, the Petitioners have not placed on record any communication showing that Respondent No. 4 had indicated, before 2014, that the project would not be completed within the stipulated time. According to the State, the Petitioners have failed to produce any documentary evidence before Respondent Nos. 2 and 3 to support their claim in this regard. On these grounds, learned Assistant Government Pleader submits that the Writ Petitions deserve to be dismissed with costs. In support of his submissions, Mr. Patil relies upon the judgment of this Court in *Bhaskar Ramgonda Patil vs. District Deputy Registrar (Class I),* reported in 2025 SCC OnLine Bom 1075.

REASONS AND FINDINGS:

13. From the above facts, it is clear that all the Agreements to Sell in these Petitions were cancelled before the amendment dated 24 April 2015 came into force. In some cases, the applications for refund were made before the amendment, while in the other cases, they were made shortly after it. In all these cases, the Petitioners are asking for refund because their agreements were cancelled

before they took possession of the flats. Therefore, before deciding whether their applications can be rejected for not being filed within six months, it is necessary to consider the nature of their claims and the law which applies to them.

14. The above submissions raise two questions. First, whether the amendment dated 24 April 2015 can take away a right to claim refund which had arisen before that date. Second, whether the facts show that the original transactions were genuinely cancelled, or whether the Petitioners are asking for excess stamp duty in transactions which continued to remain valid.

15. Before the amendment, Section 48(1) of the Maharashtra Stamp Act allowed a period of two years in certain cases mentioned in its proviso. An application could be made where the seller refused to give possession of the immovable property which was the subject matter of the Agreement to Sell. The provision allowed two years from the date of registration of the cancellation deed where the agreement was cancelled for the reasons mentioned in the proviso. These reasons included a dispute regarding the premises concerned, inadequate finance, a financial dispute regarding the agreed consideration, illegal construction or suppression of a material fact. By the amendment dated 24 April 2015, the period for making an application in the cases covered by the amended proviso was reduced to six months from the date of registration of the cancellation deed. The question is whether this shorter period can apply to agreements which had been cancelled by registered deeds before the amendment came into force, particularly when the earlier period had not expired or the

application for refund had been made under the earlier provision.

16. The Supreme Court considered this question in Harshit Harish Jain. In that case, the cancellation deed was executed before 24 April 2015 but registered after that date. The Supreme Court held that the right to claim refund arose when the cancellation deed was validly executed. The Court held that the earlier provision allowed a longer period of two years and that reducing this period retrospectively would unfairly affect a right which had arisen. The Supreme Court observed that "the appellants' accrued right to claim a refund arose the moment the Cancellation Deed was validly executed." It held that "Constricting that window retroactively, merely because registration happened post-amendment, unduly defeats a vested cause of action."

17. The facts of the present Petitions support the application of the earlier provision. In these cases, the cancellation deeds were both executed and registered before 24 April 2015. Therefore, when the amendment came into force, the respective agreements had been cancelled. The Petitioners' right to claim refund had arisen under the earlier provision. In some cases, the applications had been filed before the amendment. In the remaining cases, the right to claim refund had arisen while the earlier provision was still in force. In these circumstances, applying the shorter period retrospectively would be unfair. The amendment cannot be treated as having immediately taken away an existing right merely because the application for refund had not been finally decided by 24 April 2015. The principle laid down by the Supreme Court in *Harshit Harish Jain* is that a later amendment reducing the period

of limitation cannot be used to take away a right which had arisen under the earlier law. The Petitioners are entitled to have their claims considered under the unamended provision, depending upon the reason for cancellation in each case.

18. Another important part of the judgment in *Harshit Harish Jain* requires consideration. The Supreme Court examined the matter even on the assumption that the amended period of six months applied. In paragraph 19, the Court observed that "a mere technical delay should not, by itself, extinguish an otherwise valid claim." The Court explained that the provisions for refund of stamp duty are meant to ensure fairness when a transaction is cancelled for genuine reasons. Where a purchaser has to cancel the purchase because the developer cannot give possession within the agreed time, the purchaser should not be treated as being at fault merely because the application for refund was not made within the shorter period. In paragraph 20 of the judgment, the Supreme Court observed that rejecting a genuine claim for refund only on a technical ground of limitation may not be fair in fiscal or quasi-judicial matters. The Court relied upon Bano Saiyed Parwaz, which had in turn relied upon Committee-GFIL v. Libra Buildtech (P) Ltd., (2015) 16 SCC 31. The principle laid down in *Libra Buildtech* is important. The Supreme Court referred to the observations in Kaluram Sitaram (Firm) v. Union of India and stated:

> "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."

19. The Supreme Court in *Bano Saiyed Parwaz* observed that expiry of the period of limitation may prevent a person from pursuing a remedy, but it does not, by itself, take away the right to claim refund where the claim is otherwise justified. This principle was again applied in *Harshit Harish Jain*. These decisions support the view that the State should not retain stamp duty merely by relying upon a technical delay when the transaction has genuinely been cancelled and the claim for refund is otherwise established. However, these judgments do not mean that every application for refund must be allowed, irrespective of the facts or the applicable legal provision. The person claiming refund must establish a proper ground for it. A court cannot direct refund only because an application has been made or because the parties have cancelled an agreement for a reason which is not supported by the record. These judgments apply where the transaction has genuinely come to an end and there is a proper basis for refund. The claims in these Petitions must be examined on this basis.

20. The State has relied upon *Bhaskar Ramgonda Patil*. In that case, the Petitioner was a developer who had entered into development agreements. Those transactions were completed, and development rights had passed in his favour. His case was that excess stamp duty had been paid because of the manner in which the market value of the land and the proposed building had been calculated. He was asking for refund of alleged excess stamp duty in a transaction which had been completed. In paragraph 24 of *Bhaskar Ramgonda Patil*, this Court distinguished such a case from

one where the transaction had been cancelled. The Court observed that the earlier judgments dealt with situations where "the underlying transaction, on which stamp duty was paid, ceased to remain in existence." The Court held that where a transaction has resulted in rights passing to a purchaser or developer, the person cannot avoid the statutory period of limitation merely by relying upon judgments dealing with cancelled transactions. In paragraph 26, this Court stated the principle in the following words:

> "The golden thread that runs through all the judgments relied upon by Mr Patil is the principle that 'when there is no transaction, there should be no stamp duty payable'."

21. The Court explained that this principle would not apply where the transaction had been completed and the dispute was only about how the market value or the amount of stamp duty should be calculated. In paragraph 27, the Court distinguished cases where the whole transaction had been cancelled and the entire stamp duty was claimed back from cases where the transaction had been completed and only excess stamp duty was claimed. In my view, *Bhaskar Ramgonda Patil* does not support the State's objection in the present cases. The Petitioners are not claiming that excess stamp duty was wrongly calculated on agreements which continued to give them rights over the property. Their case is that the Agreements to Sell were cancelled before possession was taken and that the transactions did not proceed to completion. There is no material to show that they continued to enjoy the rights under the agreements after cancellation. The distinction drawn in *Bhaskar Ramgonda Patil* supports

consideration of their claims under the principles which apply to cancelled transactions.

22. The claims in Writ Petition Nos. 8851 of 2016, 8849 of 2016 and 8852 of 2016 arise from the stated inability of the developer to give possession of the flats. The cancellation deeds were registered before possession was taken. The applications for refund were made after cancellation. The delay relied upon by the State mainly arises because the authorities applied the six-month period under the amended provision. For the reasons stated, the amended provision cannot be used retrospectively to take away a right which had arisen under the earlier law.

23. The State has objected that the Petitioners have not produced any communication from the developer showing that it was unable to complete the project before the agreed date. This submission requires consideration. Where the Agreement to Sell mentions a date for possession, the mere fact that the parties later cancel the agreement does not automatically prove that the developer had refused possession or was unable to give it. The reason for cancellation must be examined from the material available on record. However, in the present cases, the recorded reason for cancellation is that the developer could not give possession as agreed. The Petitioners and the developer executed and registered deeds cancelling the respective agreements. The State has not pointed out any finding in the impugned orders that the cancellation deeds were false, that possession had been handed over, or that the transactions continued even after cancellation. The applications were rejected because of the reasons stated for

refund or because they were filed after six months. The authorities did not record a finding, based on evidence, that the transactions had been completed or that the cancellations were not genuine. The absence of an earlier communication from the developer cannot be considered separately from the registered cancellation deeds and the reasons stated in them. The Petitioners rely upon the fact that the agreements were cancelled before possession was taken. They are not merely complaining about the terms of completed transactions. On the material available before this Court, the State has not shown sufficient reason to treat these cases as claims for excess stamp duty on transactions which continued to remain valid. I do not accept the submission that the absence of a separate communication from the developer, by itself, defeats the claims of the Petitioners.

24. The question of limitation must be considered separately for the different applications. In Writ Petition Nos. 8851 of 2016, 8849 of 2016 and 8852 of 2016, the cancellation deeds had been executed and registered before the amendment. The right to seek refund had arisen under the earlier provision. In the facts of these cases, the later reduction of the period cannot be used to take away that right. The State has submitted that the Petitioners have not given a satisfactory explanation for the delay. This objection cannot be accepted as a common ground for rejecting all the applications. In some cases, the applications were made within a few months after cancellation. In other cases, they were made after six months, but the earlier provision was applicable or the right to claim refund had arisen under that provision. The delay must be

considered in the light of the applicable law and the nature of each transaction. It cannot be treated as decisive merely because the amended proviso mentions six months.

25. The Supreme Court in *Harshit Harish Jain* did not hold that the period of limitation has no meaning. The Court considered whether the right to claim refund had arisen before the amendment and whether the claim was otherwise genuine. It then held that the claim could not be rejected by applying the shorter period retrospectively. The same approach must be followed here. The Petitioners are not seeking to change the market value of properties after completing the transactions. They seek refund of stamp duty paid on agreements which were cancelled before possession. The registered cancellation deeds and the stated reasons for cancellation support their case that the original transactions did not proceed to completion.

26. I hold that Respondent No. 2 was not justified in rejecting the applications merely by applying the amended period of six months. I hold that, on the facts available on record, the cancellation of the agreements and the reasons stated for cancellation bring the Petitioners' claims within the principles governing refund of stamp duty where the original transaction has come to an end. The decision in *Bhaskar Ramgonda Patil* does not require a different conclusion because that case concerned completed transactions and claims for refund of excess stamp duty. The facts before this Court are different.

27. In the result, the Writ Petitions are allowed. The impugned orders rejecting the applications for refund of stamp duty are quashed and set aside. Respondent Nos. 2 and 3 are directed to refund to each Petitioner the stamp duty paid on the respective Agreement to Sell, as shown by the receipts and applications forming part of the record, within eight weeks from the date of this Judgment.

28. Since the refund claims were rejected and the amounts have remained with the State, the Petitioners shall be entitled to simple interest at the rate of 6% per annum on the respective refundable amounts from 15 February 2016, being the date of the impugned orders, until actual payment. This direction follows the approach adopted by the Supreme Court in *Harshit Harish Jain*, where simple interest at 6% per annum was directed on the stamp duty amount which had been wrongly retained by the State.

29. If the amounts directed to be refunded, together with the interest stated above, are not paid within eight weeks, the unpaid amount shall carry simple interest at the rate of 12% per annum after expiry of that period until payment. The refund shall be made directly to the respective Petitioners. They shall not be required to start fresh proceedings before the revenue authorities to receive the amounts.

30. In view of the foregoing discussion, and upon overall assessment of the material record, the following order is passed:

i) The Writ Petitions are allowed;

ii) The impugned orders rejecting the applications for refund of stamp duty are quashed and set aside;

iii) Respondent Nos. 2 and 3 shall refund the stamp duty paid by the respective Petitioners on the Agreements to Sell, as reflected in the receipts and applications on record, within eight weeks from the date of this Judgment;

iv) The Petitioners shall be entitled to simple interest at the rate of 6% per annum on the respective refundable amounts from 15 February 2016 until actual payment;

v) In the event the refund amounts, together with the interest stated above, are not paid within eight weeks from the date of this Judgment, the unpaid amount shall carry further simple interest at the rate of 12% per annum from the expiry of the said period until actual payment;

vi) The refund shall be paid directly to the respective Petitioners, without requiring them to initiate fresh proceedings before the revenue authorities;

vii) Rule is made absolute in the above terms.

viii) There shall be no order as to costs.

(AMIT BORKAR, J.)