

S.S.Kilaje

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION (L) NO. 7190 OF 2021

Ekta Housing Private Limited

.. Petitioner

Versus

Chief Controlling Revenue Authority and
Inspector General of Registration and Controller
of Stamps & Ors.

.. Respondents

.....
Mr. Zal Andhyarujina, Senior Advocate a/w. Mr. Karl Tamboly, Mr. Karan
Bhide, Mr. Nitesh Ranavat, Mr. Abinash Pradhan and Ms. Garima Agrawal
i/by Wadia Ghandy & Co. for Petitioner

Ms. Jyoti Chavan, AGP for Respondents - State

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CORAM : MILIND N. JADHAV, J.

DATE : MAY 07 2021.
(Through Video Conferencing)

P.C.:

1. Heard.
2. Mr. Andhyarujina, learned senior counsel for the petitioner, at the outset, submitted that the impugned order has been passed under Section 53(1A) of the Maharashtra Stamp Act, 1958 (hereinafter referred to as the "**said Act**") on 03.12.2020 without hearing the petitioner and only on the issue of limitation. However the impugned order refers specifically to petitioner's letters dated 09.02.2017 and 23.05.2017 addressed to respondent No.2 and knowledge of the order dated 12.01.2007 on the date of passing of the order; petitioner having refuted the same; the specific averments in this respect are in para 6.3 and 6.4 of the writ petition.

2.1. Para 6.3 and 6.4 of the writ petition read thus :

"6.3. It is submitted that the Respondent No.1 passed the Impugned Order relying on entirely irrelevant considerations and that the Respondent No.1 was misguided in its approach. It is submitted that the Respondent No.1 failed to direct its attention to the correct considerations, namely the date on which the Petitioner actually received a copy of the 12th January 2017 order. It is submitted that the Respondent No.1 has passed no findings nor made any observations as to the date on which Petitioner actually received copies of the 14th December 2016 Interim Order, 12th January 2017 Order for the purpose of assessing the starting point of the limitation period. In fact, the Respondent No.2 wholly abdicated its duty to adjudicate upon the delay, if any, in filing appeals under Section 53 (1A) of the said Act. The Respondent No.2 arbitrarily and mechanically on the basis of its own surmise and conjectures and without any manner of critical enquiry and relying upon the material produced by the Respondent No.2 behind the Petitioner's back, wrongly and arbitrarily concluded that the Petitioner had the knowledge of the said 14th December 2016 Interim Order and the said 12th January 2017 Order. It is submitted that for the purposes of reckoning the period of limitation applicable under section 53(1A) of the said Act, the date of knowledge of the order of the collector is immaterial for the purposes of the starting point of the limitation period prescribed therein. It is submitted that it is only upon the receipt of a copy of the order of the collector that the limitation period prescribed under Section 53(1A) would begin to run. It is submitted that this essential and crucial point of law was wholly ignored and not considered by the Respondent No.1 in passing the Impugned Order. It is submitted that the Respondent No.1 misdirected its enquiry in wholly ignoring the date of receipt of copy of the 12th January 2017 Order by the Petitioner.

6.4. It is submitted that the Respondent No.1 in the Impugned Order directed its attention to entirely irrelevant considerations, namely the issuance of the Petitioner's letters dated 9th February 2017 and 23rd May, 2017 addressed to the Respondent No.2. It is submitted that the Respondent No.1 relied upon the issuance of the aforesaid letters to hold that the Petitioner was aware and / or had knowledge of the passing of the 12th January 2017 Order. As aforesaid, it is submitted that knowledge of the passing of the order is entirely immaterial to a determination of the applicable limitation period under Section 53(1-A) of the said Act. Owing to the aforesaid, it is submitted that the Respondent No.1 was entirely misguided in its approach and that the Impugned Order suffers from errors of fact and law. It is submitted that the aforesaid facts demonstrate that neither did the Petitioner have knowledge of the passing of the 12th January 2017 Order until as late as November, 2018, nor did the Petitioner actually receive a copy of the same till November, 2018. Owing to the aforesaid, it is submitted that it is demonstrable that the Petitioner in fact did not have knowledge of the passing of the 12th January 2017 Order till November, 2018. Owing to the aforesaid, without prejudice, it is submitted that the findings recorded by the Respondent No.1 as to knowledge of the 12th January 2017 Order, assuming it to be a relevant consideration for deciding an appeal filed under Section 53(1-A) of the said Act, in fact and in any case does not support the findings of the Respondent No.1. It is submitted that

similarly, the purported finding as to the signature of the representative of the Petitioner on the first page of the said 12th January 2017 Order, as alleged, assuming the same to be true, in no manner establishes that the Petitioner was in fact aware of the passing of and / or had knowledge and /or had received a copy of the 12th January 2017 Order."

3. Ms. Jyoti Chavan, learned AGP has referred to the affidavit in reply dated 07.05.2021 filed by the Collector of Stamps, Kurla on behalf of the respondents and contended that though the petitioner had filed the appeal under the provisions of sub section 1A of section 53 of the said Act, petitioner failed to file a separate application seeking condonation of delay alongwith the memo of appeal. The question therefore that came to be decided was whether the petitioner had filed the appeal memo within the limitation prescribed under section 53(1A) of the said Act or otherwise.

4. Section 53(1A) of the said Act contemplates that the order in appeal shall be passed after giving parties a reasonable opportunity of being heard.

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(1)

(1A) Any person aggrieved by an order of the Collector under Chapter III, Chapter IV, Chapter V and under clause (a) of the second proviso to section 27 may, within sixty days from the date of receipt of such order, by an application in writing, accompanied by a fee of three hundred rupees, file an appeal against such order to the Chief Controlling Revenue Authority; who shall, after giving the parties a reasonable opportunity of being heard, consider the case and pass such order thereon as he thinks just and proper and the order so passed shall be final."

5. Be that as it may, adjudication in the present case is required to be done after hearing the petitioner and giving a reasonable opportunity of being heard. Though, in the affidavit in reply stand taken by the respondents is that some representative and / or advocate representing the petitioner and the intervenor were present and had made points of arguments, the averments made in the petition are very specific and clear which state that the issue has been decided only on the point of limitation and there is no adjudication on merits.

6. In view of the above discussion, petitioner is permitted to file its application for condonation of delay before the respondents within a period of one week from today. All Contentions of both the parties are kept open. If the respondents seek to refer to and rely upon any material during the course of adjudication against the petitioner, the petitioner shall be informed about the same, whether it be letters addressed by the petitioner to the respondents or any other material whatsoever, thus giving the petitioner a reasonable opportunity of meeting the respondent's case.

7. Order dated 03.12.2020 stands interfered with and is therefore quashed and set aside. Appeal filed by the petitioner under section 53(1A) of the said Act is revived and is remanded back to the

respondents for a fresh hearing as directed above. Petitioner shall provide the details i.e. email ID, name and phone number of its representative / officer who shall attend the hearing to the respondents within one week from today. Concerned respondent shall thereafter fix the date and time of hearing of the application and appeal and inform the petitioner accordingly and pass a speaking order within a period of six weeks.

8. Writ Petition stands disposed of in the above terms with no order as to costs.

[MILIND N. JADHAV, J.]