AGK

ATUL GANESH KULKARNI

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.948 OF 2021

Solanki Tea Company Private Limited **... Petitioner**

Vs.

1. **The State of Maharashtra**
2. **~~Revenue Minister,~~ ~~State of Maharashtra~~ (deleted)**
3. **Inspector General of Registration and Stamp Collector, State of Maharashtra** **... Respondents**

Ms. Leela D. Malu i/by Leela D. Malu & Associates for the Petitioner.

Ms. S.D. Chipade, AGP for Respondent Nos.1 & 3-State.

CORAM	**: AMIT BORKAR, J.**
RESERVED ON	**: SEPTEMBER 28, 2026.**
PRONOUNCED ON	**: SEPTEMBER 29, 2026**

JUDGMENT:

1. By filing the present Writ Petition under Articles 226 and 227 of the Constitution of India, the Petitioner has challenged the legality and validity of the order dated 11 September 2019, which was received by the Petitioner on 6 January 2020. The said order was passed by Respondent No.3 on the application dated 29 October 2018 filed by the Petitioner for return or refund of the stamp duty paid on the cancelled registered document bearing

No.5929/2018.

2. The property in question was mortgaged with a Bank. The Bank initiated auction proceedings and the Petitioner was required to purchase the property through the said auction. Because of this subsequent auction transaction, the earlier registered document had to be cancelled. Accordingly, the Petitioner executed a Deed of Cancellation on 18 October 2018, which was registered as Document No.14517/2018. In the meantime, in the auction proceedings conducted by the Bank, the Petitioner became the successful bidder. The Bank sold the property to the Petitioner by a Sale Deed dated 26 June 2018, registered as Document No.9114/2018. The Petitioner again paid the entire stamp duty payable on the said Sale Deed. The Petitioner filed an application for return of the stamp duty paid on the earlier document. According to the Petitioner, the said application was rejected without considering the facts and without proper application of mind. The Petitioner contends that the impugned order is illegal and is liable to be set aside. According to the Petitioner, Respondent No.2 rejected the application dated 29 October 2018 without considering the case. It is submitted that the said order has caused serious injustice to the Petitioner and deserves to be declared illegal and bad in law.

3. The Petitioner submits that he came to know that the owner or seller under the first document and agreement was not in a position to sell or transfer the property in favour of the Petitioner. The property was mortgaged with the Bank, which was the subsequent seller, and the Bank had initiated auction proceedings in respect of the property. The Petitioner had no effective option except to participate in the auction conducted by the Bank and purchase the property from the Bank. For this reason, the Petitioner executed the second Sale Deed and again paid the stamp duty on the value of the property. Thereafter, the Petitioner cancelled Document No.5929 dated 19 April 2018 by executing the Deed of Cancellation dated 18 October 2018. The Petitioner then applied for refund of the stamp duty paid on the cancelled document.

4. The Petitioner filed an application dated 29 October 2018 before the Assistant Registrar, Class-I and Stamp Collector, Thane, seeking return or refund of stamp duty of Rs.29,75,000/-. The said amount had been paid as stamp duty on registered Document No.5929/2018 dated 19 April 2018 under Article 25(B) of Schedule I to the Maharashtra Stamp Act at the office of the Registrar, Class-II, Thane.

5. Ms. Malu, learned Advocate for the Petitioner, submits that Respondent No.3 ought to have considered that the stamp duty paid under Article 25(B) of Schedule I to the Maharashtra Stamp Act on registered Deed No.5929 dated 19 April 2018 was liable to be refunded under Sections 47 and 48 of the Maharashtra Stamp Act after cancellation of the registered deed. She submits that the Petitioner came to know that the document was void in law from the very beginning. She submits that Respondent No.3 ought to have considered that the word "Assignment" means allotment or transfer and is used in the sense of sale. According to her, the document was covered by Article 25(B) of the Maharashtra Stamp

Act and the stamp duty was paid under Article 25(B). The Sub Registrar had accordingly collected the entire stamp duty applicable to the sale transaction. It is submitted that, after cancellation of the deed, the authorities were bound to return the stamp duty in accordance with law. She submits that Respondent No.3 ought to have considered that the first vendor was not in a position to execute the agreement because the property had been attached by the Bank. Therefore, the agreement was void in law from the beginning. She submits that though the document was described as a “Deed of Assignment”, in substance it was a sale deed relating to the same property. According to the Petitioner, Respondent No.3 ought to have examined the nature of the transaction and directed return of the stamp duty. It is submitted that a person cannot be required to pay stamp duty twice in respect of the same transaction concerning the same property. Once the earlier document was cancelled and the Petitioner was required to purchase the same property from the Bank by another registered Sale Deed, the stamp duty paid on the cancelled deed ought to have been refunded.

6. Ms. Chipade, learned AGP, on the other hand, submits that the Petitioner intended to acquire the leasehold rights of M/s. Vision Apparel Private Limited in respect of the land bearing MIDC Plot No.A-755, situated at Trans Thane Creek Industrial Area, within the limits of Village Khairne, District Thane, admeasuring about 1250 sq. mtrs., together with the factory building having an area of 1229.88 sq. mtrs. For this purpose, the Petitioner entered into a document described as an “Agreement for Assignment”. M/s.

Vision Apparel Private Limited was described as the “Assignor” of the First Part and the Petitioner was described as the “Assignee” of the Other Part. The said Agreement for Assignment was executed on 19 April 2018. For the said document, the Petitioner purchased stamp duty of Rs.29,75,000/- through e-challan GRN No.MH000648584201819R dated 18 April 2018 from Punjab National Bank. The Petitioner presented the document for registration before the Joint Sub Registrar, Thane No.3, and the document was registered on the same day as Sr. No.TNN-3-5929/2018. Under the agreement, the Petitioner had agreed to pay consideration of Rs.5,75,00,000/-, out of which an amount of Rs.50,50,000/- was paid as token amount. It is the contention of the Petitioner that he was unable to pay the balance amount of Rs.4,54,500/- to the Assignor and, therefore, the transaction was cancelled. The Petitioner accordingly executed a Cancellation Deed on non-judicial stamp paper of Rs.500/- on 18 October 2018. The said Cancellation Deed was registered in the same registration office on the same day as Sr. No.TNN-3-14517/2018.

7. The Petitioner filed an online application on 23 October 2018 seeking refund of the stamp duty of Rs.29,75,000/-. He filed the physical application on 29 October 2018 before the Joint District Registrar, Class-I and Collector of Stamps, Thane City, Thane, under Section 48(1) of the Maharashtra Stamp Act, hereinafter referred to as “the said Act”. The said authority forwarded the application to the office of the Deputy Inspector General of Registration and Deputy Controller of Stamps, Kokan Division, Thane, with a remark that refund ought not to be granted. The reason given was that the Agreement for Assignment was covered by Article 60 of Schedule I to the said Act and, therefore, the provisions of Sections 47 and 48(1) were not applicable. It was noted that the amount of refund claimed was more than Rs.5,00,000/-. The refund proceedings were registered as Pra. Kra.1200900/82/19. It is submitted on behalf of the Respondents that the Petitioner has failed to establish a case for refund of Rs.29,75,000/- paid as stamp duty on the Agreement for Assignment. According to the Respondents, the Petitioner is seeking to treat the Agreement for Assignment as if it were an Agreement to Sale. In support of this submission, Respondent No.3 relies upon the judgment of this Court in *Sanman Trade Impex v. State of Maharashtra*, reported in AIR 2005 Bom 94. It is submitted that, for applying the proviso to sub-section (1) of Section 48 of the said Act, certain conditions are required to be satisfied. They are: (i) there must be an Agreement to Sale relating to immovable property; (ii) the Agreement to Sale must have been stamped under Article 25 of Schedule I to the said Act; (iii) the Agreement to Sale must have been registered under the Registration Act, 1908; and (iv) the Agreement must have been cancelled before possession of the immovable property was taken and the Deed of Cancellation must have been registered.

8. It is submitted that an Agreement to Sale satisfying the above requirements may become eligible for refund. However, according to the Respondents, merely because the requirements mentioned in Section 48 are stated to have been complied with, the Petitioner does not automatically become entitled to refund. It is submitted that the document executed by the Petitioner is admittedly an Agreement for Assignment falling under Article 60 of Schedule I to the said Act. Though the stamp duty prescribed under Article 60 is equivalent to the stamp duty prescribed under Article 25, that does not mean that the document becomes a document covered by Article 25. Therefore, the Agreement for Assignment executed by the Petitioner cannot be treated as an Agreement to Sale under Article 25. The learned AGP submits that the present Petition deserves to be dismissed.

REASONS AND FINDINGS:

9. I have considered the submissions made by the learned Advocates for both sides. There is no dispute that the Petitioner first entered into an Agreement for Assignment dated 19 April 2018 concerning the property in question. It is not disputed by the Respondents that stamp duty of Rs.29,75,000/- was paid on this document and the document was presented for registration and was registered on 19 April 2018. It is not disputed that the transaction under the said document did not take place and a registered Cancellation Deed was executed on 18 October 2018. The Petitioner made the online application for refund on 23 October 2018 and submitted the physical application on 29 October 2018.

10. The main case of the Respondents is that the document executed by the Petitioner was an "Agreement for Assignment" covered by Article 60 of Schedule I and was not an Agreement to Sale covered by Article 25. According to the Respondents, because the document is covered by Article 60, the Petitioner cannot claim benefit under Sections 47 and 48 of the Maharashtra Stamp Act. This is the main question which has to be considered.

11. Section 47 deals with allowance in respect of spoiled stamps and the refund which can be claimed in such cases. For the present matter, clause (c) is relevant. It deals with an instrument executed by a party which afterwards comes within any of the cases mentioned in that clause. Clause (c)(5) is relevant here. It provides as under:

> "(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;"

12. The words used in this provision are important. Section 47(c) does not say that only an Agreement to Sale covered by Article 25 can come under this provision. It refers to "the stamp used for an instrument executed by any party thereto". Therefore, what is required to be seen first is whether the instrument has totally failed for the purpose for which it was made. The name or title given to the document cannot decide the claim.

13. The Respondents have placed strong reliance on Article 60. According to them, when the document is an Agreement for Assignment and the stamp duty under Article 60 is the same as that under Article 25, the document cannot be treated as an Agreement to Sale under Article 25. To this limited extent, this submission can be accepted. Article 60 and Article 25 are separate entries. A document cannot be treated as falling under Article 25 merely because the stamp duty under both the Articles is the same. The separate question still remains whether the stamp used on the document became spoiled within the meaning of Section 47(c)(5).

14. This difference has been considered by this Court in *Sanman Trade Impex*. In paragraph 12 of that judgment, this Court observed:

> "12. The expressions "the stamp used for an instrument executed" and "totally fails of the intended purpose" disclose that the "purpose" spoken of in sub-clause (5) of clause (c) of section 47 of the said Act relates to the utility of the stamps for the matter for which the same was required to be used."

15. Thus, what is important is the purpose for which the instrument was made and whether that purpose has totally failed. Merely giving a particular name to the document cannot finish the matter. The same paragraph says:

> "Once the transferor fails to comply with the conditions in the agreement for sale and to deliver the possession of the property, obviously the instrument is rendered ineffective and useless, unless of course, the transferee seeks for specific performance of such agreement."

16. In the present case, the position from the documents is clear. The Petitioner did not get the property under the first document. The first transaction was cancelled by a registered Cancellation Deed. Thereafter, the same property was purchased by the Petitioner through the auction proceedings conducted by the Bank and a separate Sale Deed was executed in his favour. Therefore, the result which was intended to be achieved through the first document was not achieved.

17. The Respondents submit that the Petitioner had stated that he could not pay the balance consideration and the transaction was cancelled. In my view, this fact cannot be sufficient to reject the claim of the Petitioner. Section 47(c)(5) uses the expression "totally fails of the intended purpose". This expression was considered by this Court in *Sanman Trade Impex* in paragraph 14 as follows:

> "14. Considering the provisions of law referred to above, the contention on behalf of the respondent that payment of entire consideration price under the deed dated 27th March, 2003 would render the instrument to be a deed of conveyance and not an agreement and, therefore, would not be entitled to claim refund under section 48(1) read with 47(c)(5) is totally, devoid of substance. Clause (c)(5) of section 47 nowhere distinguishes between agreement of sale and the deed of sale. It applies to all instruments irrespective of the fact whether it is a deed of sale or a mere agreement for sale. What it provides is that the instruments should be rendered ineffective and unenforceable in the sense that the purpose for which it was executed should "totally fail"."

18. These observations deal with the main objection of the Respondents. The right to seek relief under Section 47(c)(5) does not depend only upon whether the document is called an Agreement to Sale, a Sale Deed or an Agreement for Assignment. The important thing is whether the document has become ineffective for the purpose for which it was made. Here, the first document was cancelled. The Petitioner did not acquire the property under that document. The same property was transferred under another document after the Bank's auction. Thus, the first transaction came to an end without giving the Petitioner the transaction for which the stamp duty had been paid. It is true that paragraph 14 of *Sanman Trade Impex* dealt with an instrument described as an agreement for sale. But the principle stated by the Court cannot be restricted only to that description of document. The Court has clearly stated that clause (c)(5) "applies to all instruments". Therefore, merely because the present document is described as an "Agreement for Assignment", it cannot be said that Section 47(c)(5) will not apply.

19. The Respondents have relied upon the proviso to Section 48(1). It is submitted that the extended period under that proviso is available only where there is an Agreement to Sale on which stamp duty is paid under Article 25. So far as this special proviso is concerned, the submission of the Respondents can be accepted. But this does not mean that every claim under Section 47(c)(5) must necessarily relate to an Article 25 document. This difference is clear from paragraph 7 of *Sanman Trade Impex*, which states:

> "7. Section 48 deals with the subject of applications for reliefs under section 47 of the said Act. Sub-section (1) thereof provides that application for relief under section 47 shall be made within a period of six months from the date of the instrument, when a case falls under clause (c)(5) of section 47. Proviso to the said sub-section provides that in case of an agreement to sale of immovable property on which stamp duty is paid under Article 25 of Schedule I, is presented for registration under the provisions of Registration Act, 1908 and if the seller refuses to deliver possession of the immovable property which is the subject

> matter of such agreement the application may be made within two years of the date of the instrument. In other words in cases where the instrument is covered by Article 25 of the Schedule I of the said Act, the period of limitation prescribed for refund is of two years from the date of the instrument whereas when the instrument happens to be the one referred to under clause (c)(5) of section 47, and other than the agreement covered by the provisions of the proviso to Article 25 of Schedule I of the said Act the period prescribed is of six months."

20. The period referred to in *Sanman Trade Impex* was the period which was applicable at that time. The provision placed before this Court in the present case provides one year under Section 48(1) for a case falling under clause (c)(5). It provides one year in the case covered by the proviso relating to cancellation of an Agreement to Sale under Article 25. Therefore, for the present case the important point is that the application under Section 47(c)(5) was required to be made within one year from the date of the instrument. The Petitioner executed the instrument on 19 April 2018. He made the online application on 23 October 2018 and the physical application on 29 October 2018. Thus, the application was made well within the prescribed period.

21. The Respondents cannot reject the claim of the Petitioner merely because the document is not an Agreement to Sale under Article 25. The special proviso to Section 48 may not be available to the Petitioner. But the main provision of Section 48 read with Section 47(c)(5) can still apply if the other conditions of law are satisfied.

22. The Respondents have submitted that because the amount of refund claimed is more than Rs.5,00,000/-, Sections 47 and 48(1) cannot be applied. This submission cannot be accepted from the statutory provision placed before this Court. There is no such exclusion in the provision merely on the basis of the amount of stamp duty claimed for refund. The amount may have some relevance for deciding which authority has to deal with the application. But it cannot create a substantive bar when the statute itself has not provided such a bar.

23. The submission of the Petitioner that he was required to purchase the property from the Bank by a separate Sale Deed and again pay stamp duty on that document is important. It shows that the first document did not result in transfer of the property to the Petitioner. The first document was expressly cancelled. Thereafter, the property was acquired by the Petitioner through the Bank's auction. Therefore, the Petitioner did not receive the benefit which the first stamped document was intended to give.

24. The submission of the learned Advocate for the Petitioner that the first vendor was not in a position to complete the transaction because the property was mortgaged and subjected to Bank auction is supported, at least in its result, by the subsequent registered Sale Deed executed by the Bank. The Respondents have not disputed that the Bank conducted the auction or that the Petitioner became the successful bidder and acquired the property under another registered Sale Deed. Therefore, whatever may have been the exact reason for failure of the first transaction, the fact remains that the first transaction came to an end and another transaction through the Bank took its place.

25. I am unable to accept the submission of the Respondents that merely because the Petitioner was described as "Assignee" and the other party was described as "Assignor", the refund must be refused. This Court in *Sanman Trade Impex* has cautioned against deciding such question merely from the name given to the document. Paragraph 11 records:

> "11. Similarly, even in case where an instrument in relation to such an agreement is recorded with the nomenclature of deed of sale and purchase of property but after execution thereof the transferor thereunder is rendered helpless in the matter of giving effect to the sale of the property agreed upon in the sense that he fails to deliver actual possession of the property to the purchaser, certainly in such cases, it would amount to total failure of intended purpose within the meaning of the said expression under clause (c)(5) of section 47 unless, the evidence produced before the Collector discloses that the claim for refund is either bogus or is made with sole intention to defraud the Government in relation to revenue or for any other purposes."

26. In the present case, there is no finding by the Respondents that the claim made by the Petitioner is false or made with any intention to defraud the Government. The existence of the two registered transactions and the registered Cancellation Deed is not disputed. The claim of the Petitioner is supported by this sequence of registered documents. Paragraph 17 of *Sanman Trade Impex* is relevant. The Court there held:

> "17. In the case in hand undoubtedly the instrument dated 27th March, 2003 disclosed the condition relating to delivery of possession of the flat after expiry of one month from the

> date of execution of instrument. The instrument disclosed the purpose of purchase of the flat being in the occupation of the customer of the petitioner company. Undoubtedly, the occupant of the flat refused to vacate the same and the transferor company, therefore, could not deliver the possession of the flat to the petitioner company. It is not the case of the respondent that the claim for refund is bogus or false or there has been any misrepresentation of facts by the petitioner in relation to the claim for refund. Under these circumstances, the application having been made within the prescribed time, the petitioners are entitled for refund of the stamp duty in accordance with the provisions of law."

27. The principle which comes from the above discussion is that stamp duty is paid for an instrument and for the transaction which is intended to be carried out through that instrument. If that transaction totally fails and the instrument becomes ineffective for the purpose for which it was made, the statute provides a remedy for seeking relief. The Legislature has not provided that the relief will disappear merely because a different name is given to the document.

28. Therefore, in my view, the Respondents have considered the claim of the Petitioner mainly from the point of view of Article 60 and have stopped there. They have not considered the separate operation of Section 47(c)(5). The questions were whether the first instrument had totally failed for the purpose for which it was made and whether the application for relief was made within the period prescribed by law. On the material before this Court, both these questions have to be answered in favour of the Petitioner.

29. I have considered the alternative submission of the Petitioner under Section 47(c)(1), namely, that the first document was found to be void in law from the beginning. However, there is no specific adjudication before this Court declaring the particular Agreement for Assignment to be void ab initio. Therefore, it is not necessary to decide the claim for refund on this ground. The case of the Petitioner succeeds independently under Section 47(c)(5). For the same reason, it is not necessary to give any final finding as to the exact legal effect of the mortgage upon the first agreement or whether the first vendor had legal capacity to enter into the transaction. The Respondents have not pointed out any material fact which would take the present case outside the statutory relief. There is a registered Cancellation Deed. The first transaction was not completed. Possession was not delivered under that transaction. Thereafter, the Petitioner purchased the property through the Bank's auction and a separate Sale Deed was executed in his favour. Stamp duty was again paid on that subsequent Sale Deed. All these facts, when considered together, show that the first stamped document did not result in the transaction for which it was executed. It is necessary to keep in mind that merely cancelling a document does not automatically give a right to refund. Section 47 requires the conditions mentioned in the section to be satisfied. Therefore, cancellation is not sufficient. But in the present case, cancellation is not an isolated fact. It forms part of the whole sequence of events. The first instrument was executed. It did not result in the Petitioner acquiring the property. It was cancelled by a registered Cancellation Deed. The same property was later acquired from the Bank under another registered Sale Deed. The application for refund was made within the prescribed period. Therefore, the facts satisfy the requirement that the intended purpose of the first instrument had totally failed.

30. In these circumstances, the order rejecting the application cannot be sustained merely because the document falls under Article 60 and not under Article 25. The special proviso to Section 48(1) may not be available to the Petitioner because the document is not an Agreement to Sale under Article 25. But that does not take away the main entitlement under Section 47(c)(5) read with Section 48(1).

31. I hold that the Petitioner has established a case for relief under Section 47(c)(5) of the Maharashtra Stamp Act. The application for refund was made within the period prescribed under Section 48(1). The instrument had totally failed for the purpose for which it was made, and it was cancelled. The Respondents were required to consider and grant the statutory relief, subject to any lawful deduction or other condition which may be permissible under the Act and the Rules. The relevant documents and dates are before this Court. The dispute between the parties is mainly regarding the interpretation and application of the statutory provisions. In such circumstances, no useful purpose would be served by sending the matter back to the authority for taking another decision on the same material. The Petitioner has gone through the process before the authorities. The statutory question can be decided by this Court while exercising jurisdiction under Articles 226 and 227 of the Constitution of

India.

32. The impugned order dated 11 September 2019, received by the Petitioner on 6 January 2020, cannot be allowed to remain. The rejection of the Petitioner's application merely on the ground that Sections 47 and 48 do not apply because the document is described as an Agreement for Assignment under Article 60 is not sustainable in law. The Petitioner is entitled to refund of the stamp duty of Rs.29,75,000/- paid on registered Document No.5929/2018 dated 19 April 2018, subject to any deduction or condition which is expressly permitted under the Maharashtra Stamp Act and the Rules framed thereunder. The refund shall accordingly be processed and paid by the competent authority in accordance with this judgment.

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

i) The Writ Petition is allowed;

ii) The impugned order dated 11 September 2019, received by the Petitioner on 6 January 2020, is quashed and set aside;

iii) The Respondents are directed to refund to the Petitioner the stamp duty of Rs.29,75,000/- paid on registered Document No.5929/2018 dated 19 April 2018, subject to such lawful deduction, if any, as is permissible under the Maharashtra Stamp Act and the Rules framed thereunder;

iv) The aforesaid refund shall be processed and paid to the Petitioner within a period of six weeks from the date of uploading of the present order;

v) The Petition stands disposed of in the above terms.

(AMIT BORKAR, J.)