

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.1999 of 2008

Kotak Mahindra Bank Limited & ors.

...Petitioners

V/s.

State of Maharashtra & ors.

...Respondents

Mr. Virag Tulzapurkar with Mr. Sunil Purohit, Mr.
Dhawal Mehta, Mr. Kalpesh Joshi and Mr. Kunal Doshi
i/b. M/s. Wadia Gandhi & Co. for the petitioners.

Mr. Niranjana Pandit, AGP for respondent nos. 1 to 5.

**CORAM : A.M.KHANWILKAR,J.
DATED : 30th SEPTEMBER, 2008**

P.C.

. Heard Counsel for the parties. Rule. Rule made

returnable forthwith by consent. Mr. Niranjana Pandit

waives notice for the respondents. As short question is

involved, petition is taken up for final disposal

forthwith by consent.

2. By this petition the order passed by the

Sub-Registrar under Section 33-A and consequential

notices and order of recovery of the amount quantified

in notice dated 1-3-2008 has been questioned before this

Court. If the petitioners are right in their grievance

regarding the principal order passed under Section 33-A

of the Bombay Stamps Act, 1958, it would necessarily

follow that all consequential notices and/or orders passed by the authorities from time to time including the last order passed by the Collector will have to be set aside.

3. The main grievance of the petitioners is that the order of impounding of the subject document has been passed by the Sub-Registrar in exercise of powers under Section 33-A of the Act without following necessary procedure-much less basic requirement of giving prior notice to the petitioner-although the order is a drastic order of impounding of the Conveyance executed in favour of the petitioners in respect of the property in question. In so far as that grievance is concerned, the respondents in the reply affidavit have stated that a notice before issuing order of impounding the document was duly served on the petitioners dated 15-10-2007. Copy of the said notice has been produced for the perusal of the Court. That notice, however, merely indicates that the petitioners should appear before the authority within specified time and produce the original document. That notice cannot be treated as order passed under Section 33-A as such. The reply affidavit filed before this Court also in no way suggests that subsequent order under Section 33-A passed by the Sub-Registrar was duly served on the petitioners. Assuming that the Sub-Registrar had served copy of the

notice dated 15-10-2007, that does not take the matter any further.

4. Significantly, Counsel appearing for the respondent

in all fairness accepts that since the petitioners failed to appear and produce the original documents before the Sub-Registrar, the Sub-Registrar straightway proceeded to pass order of impounding the document which was available on the record of the Sub-Registrar in exercise of powers under Section 33-A of the Act. That approach of the Sub-Registrar, in my view, is not in consonance with requirements of Section 33-A of the Act as such. For, assuming that the party failed to produce the original record within the specified time, it would only permit the Registrar to treat the true copy of the instrument available on his record as the original and then proceed to pass order of impounding the document. But before passing formal order of impounding the document, the Sub-Registrar was expected to record his satisfaction as to why the petitioners would not be entitled to claim exemption in terms of order dated 29-12-2003 issued under the signature of Under Secretary to the Government, Revenue and Forest Department. That obviously is a general notification issued by the Government in exercise of powers conferred by clause (a) of Section 9 of Bombay Stamps Act, 1958 granting exemption with regard to Stamp duty chargeable under the

Act in respect of registration of certain documents referred to therein. The case of the petitioner is that the subject document which is a Conveyance, was executed by the IT Units and IT Enabled Services Units for starting a new Information Technology Unit in Information Technology Park in Non-Public Sector and the petitioner company was an institution certified eligible unit by the Development Commissioner (Industries) to be covered by the explanation to order dated 29-12-2003 referred to above. In other words, the Sub-Registrar before passing the order of impounding the document under Section 33-A of the Act was obliged to record satisfaction as to why the petitioner was not covered by the said order dated 29-12-2003. That obviously has not been complied by the Sub-Registrar. As a matter of fact, the order passed under Section 33-A of the Act itself has not been produced by the respondents before this Court, assuming the same is in existence. Accordingly, in my opinion, it is not necessary to address any other issue at present but relegate the petitioners before the Sub-Registrar who in turn will give opportunity to the petitioners to comply with the necessary formalities as may be required including to file such other documents as may be advised and thereafter proceed to pass appropriate order as may be warranted in the facts and circumstances of the present case. All questions in that behalf are left open to be

considered by the Sub-Registrar on its own merits as per law.

5. During the course of hearing it was pointed out by the Counsel for the Petitioners that relying on the order passed under Section 33-A by the Sub-Registrar, the office of the Sub-Registrar was not registering the Leave and Licence or Lease Agreement executed by the petitioners in favour of 3rd party in respect of units in the building in question. It is not necessary to examine that aspect in the present proceedings. It is made clear that even if the said leave and licence or lease document on which the petitioners rely is not a registered document that would not be a ground available to the Sub-Registrar to ignore the said document. Indeed, it will be open to the Sub-Registrar to enquire into the fact that before execution of said document (leave and license or lease) the petitioner had already entered into similar document or for that matter was not leased at all, which may be the basis to hold that the petitioners are not entitled for benefit under Order dated 29-12-2003. All questions in that behalf will have to be addressed by the appropriate authority on its own merits.

6. Suffice to observe that the order purported to be passed under Section 33-A of the Act by the

Sub-Registrar is hereby quashed and set aside. As a result, all consequential notices and/or orders passed which were founded on the said order under Section 33-A are also set aside. The notice issued by the Sub-Registrar dated 15-10-2007 is restored to the file of sub-Registrar on the basis of which he may proceed to pass appropriate orders in exercise of powers under Section 33-A of the Act after giving opportunity to the petitioners to comply with the necessary formalities and/or produce such documents as may be required. The petitioners shall do so on or before 7th October, 2008. It is made clear that if the petitioners fail to produce necessary documents before 7th October, 2008 in the office of the Sub-Registrar and/or to appear before the Sub-Registrar on that day at 11.00 a.m., the Sub-Registrar may proceed to pass such orders as may be advised.

7. The Sub-Registrar shall pass appropriate order by following necessary procedure. All questions in that behalf are left open. Petition made absolute on above terms. No order as to costs.

8. In case the order to be passed by the Sub-Registrar is adverse to the petitioner, the same shall not be

given effect for a period of two weeks from the date of communication thereof to the petitioners so as to enable the petitioners to carry the matter before appropriate forum.

[A.M.KHANWILKAR,J.]