IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 319 OF 2015
WITH
CIVIL APPLICATION NO. 718 OF 2015 IN SA/319/2015

Gold Lab & Studio ..Appellant

Vs

1. The Solapur Municipal Corporation, through its Octroi Superintendent .. Respondent

Mr. Ashok B. Tajane, Advocate for Appellant.
Mr.Deendayan G. Dhanure , Advocate for Respondent.

CORAM : R.G.KETKAR,J.
DATE : 29/04/2015

PC:

1. Heard Mr. Ashok B. Tajane, learned counsel for the appellant and Mr. Deendayan G. Dhanure, learned counsel for the respondent .

2. By this Second Appeal under section 100 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the appellant has challenged the Judgment and decree dated 6.11.2014 passed by the learned Adhoc-District Judge-1, Solapur in Civil Misc. Appeal No.159 of 2011. By that order, the learned District Judge allowed Appeal preferred by the respondent-Corporation and dismissed Tax Appeal No.18 of 2007 preferred by the appellant.

3. It is not in dispute that the appellant preferred Tax Appeal No.18 of 2007 under section 406 of the Maharashtra Provincial Municipal Corporations Act, (for short, 'Act'). By order dated 28.6.2011, the learned District Judge allowed the Appeal and directed the respondent-Corporation to refund Rs.3,19,114/- to the appellant. Aggrieved by that decision, the respondent preferred Appeal under section 411 of the Act before District Court, Solapur. By the impugned order, the learned District Judge allowed the Appeal. It is against this decision, the appellant has instituted present Second Appeal under section 100 of C.P.C.

4. Section 413 (1) of the Act reads as under :

> **413. Unappealed values and taxes and decisions on appeal to be final**.- (1) Every rateable value or the capital value, as the case may be, fixed under this Act against which no complaint is made as herein-before provided, and the amount of every sum claimed from any person under this Act on account of any tax, if no appeal therefrom is made as hereinbefore provided, and the decision of the Judge aforesaid upon any appeal against any such value or tax if no appeal is made therefrom under section 411 **and if such appeal is made the decision of the district court in such appeal shall be final. "**

5. Perusal of above section clearly shows that the decision of the District Court in Appeal under Section 411 is final. In my opinion, Second Appeal challenging the decision of the District Court which is final, is incompetent. In view thereof,

the Appeal is dismissed as not maintainable, with a liberty to the appellant to adopt appropriate proceedings including Writ Petition. Refund of Court-fee as per Rules.

6. It is made clear that I have not expressed any opinion on merits of the case. All contentions of the parties on merits are expressly kept open. In view of disposal of the Appeal, Civil Application No. 718 OF 2015 for stay does not survive and the same is disposed of.

(R.G.KETKAR, J.)