Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY*
*CIVIL APPELLATE JURISDICTION*

***WRIT PETITION NO. 7208 OF 2014.***

The Rupee Co-operative Bank Ltd. .. Petitioner
Vs.
Mrs.Pushpa Sharad Ranade. .. Respondent

Mr.P.G.Lad, for the Petitioner.
Mr.P.K.Dhakephalkar, Senior advocate a/w Ms.Nupur Desai i/b Markand Gandhi & Co., for the Respondent.

***CORAM: N.M.Jamdar, J.***
***Monday 6 April, 2015***

**Oral Order :**

By this petition, the Petitioner challenges the orders passed by the learned Judge, Small Causes Court Mumbai, in application filed by the Respondent seeking direction to the Petitioner to deposit the amount of arrears as regards the property taxes pending the suit filed by the Respondent, and the order passed by the Appellate Bench of Small Causes Court, dismissing the revision filed by the Petitioner.

2 The Respondent filed a Suit bearing T.E. & R Suit No.132/160 of 2012 in the Small Causes Court Mumbai against the Petitioner-Bank. According to the Respondent, the Respondent is the lessee of

the premises situated at ground floor of the building known as 'Temple of Industry' situate at 257/A, J.S. Road, Girgaum Mumbai. According to the Respondent, an agreement of sub-lease was executed between Respondent and the Petitioner on 01/11/1988. Under this Agreement, the property was let out to the Petitioner for the purpose of banking, for a period of 15 years. Thereafter another agreement was executed on 27 May 2004, which expired on 31/10/2008. According to the Respondent, the Petitioner did not vacate the premises and also did not pay the outgoings due to the Municipal Corporation and other charges. On these allegations, the Respondent filed a suit seeking possession of the premises from the Petitioner.

3 During the pendency of the suit, the Respondent filed an application Exhibit No.11 of 2012 seeking direction to the Petitioner to pay an amount of property taxes amounting to Rs.48,07,966/- for the period from 2000 to 2011 and Rs.6,14,356/- for the period from 01.04.2011 till 31.03.2012. The Respondent also sought a direction to the Petitioner to pay an amount of Rs.1,82,87,196/- for the period from 01.04.1989 to 31.03.2010 towards repairs cess and Rs.41,50,284/- for the period between 01.04.2010 till 30.03.2012. The Petitioner filed the reply and contested the Application. The Petitioner contended that under the Agreements, it was not the responsibility of the Petitioner to pay the arrears as claimed by the Respondent. On this and other grounds the Petitioner contested the Application.

4 The learned Judge, Small Causes Court Mumbai, after considering arguments of both the sides came to the conclusion that the Petitioner was liable to pay the property tax and repairs cess as claimed in the application. The Small Causes Court took note of the clauses of both the agreements and letter issued by the Petitioner bank to the Respondent on 20 May 2004. Construing the relevant clauses of these two agreements and the contents of the letter, the learned Judge, held that the Petitioner is liable to pay the amount. Accordingly, by order dated 4 September 2013, the application filed by the Respondent was allowed. The Revision Application No.66 of 2014 was filed by the Petitioner before the Appellate Bench of Small Causes Court. The Appellate Bench after considering the matter in detail rejected the Revision application by order dated 23 April 2014.

5 Being aggrieved by these two orders, the Petitioner has filed the present Revision. The learned counsel for the Petitioner, Mr.Lad, firstly submitted that it is not the liability of the Petitioner to pay the repairs cess. He relied upon Clauses (2)(ii) and (3)(i) of the agreement dated 1 November 1988. According to him all that the Petitioner was liable to pay was municipal taxes and all other charges were to be paid by the Respondent. Both the Courts below have interpreted these clauses to hold that the Petitioner was liable to pay all the charges payable to the Municipal Corporation. The question is whether the interpretation placed by both the Courts

below can be termed as perverse.

6 The Clause (2)(ii) casts the responsibility on the Petitioner to pay all municipal taxes. Excluding all municipal taxes, the other amounts are to be paid by the Respondent. If it was only municipal tax that was to be paid by the Respondent there was no question of specifying “all the municipal taxes”. The agreement will have to be construed not as of statute, but as a commercial document. The intention of the parties is clear that what is meant by employing the word 'all' is that the Petitioner will pay “all the amounts payable to the Municipal Corporation” therefore, the consideration placed on this clause by both the Courts below cannot be said to be an impossible one, so as to warrant interference under revisional jurisdiction.

7 Mr. Lad, then submitted that both the Courts have mis-interpreted the contents of the letter dated 20 May 2004. He submitted that all that the letter says is that the Petitioner is liable to pay what is presently applicable and subsequently due. He submitted that this letter could not be read to mean that the Petitioner was to pay arrears accrued on that date. This letter is of importance since reliance is placed on it by both the Courts. The contents of the letter will have to be understood with reference to the surrounding circumstances. This letter clarifies clause (20) of the agreement dated 27 August 2004 which had cast responsibility on the Respondent to pay the taxes. When the letter was written

by the Petitioner, the municipal taxes and repairs cess was not paid to the Corporation. If the taxes are not paid, an attachment from Municipal Corporation, in normal circumstances would be the consequence. The Petitioner was desirous of extending its occupation under the new agreement and therefore, the Petitioner, would be naturally anxious that attachment of the property will not follow. The word 'presently applicable' therefore, will have to be understood in the sense that whatever is presently payable to the Municipal Corporation. A provision had to be made as regards the arrears as they simply could not be ignored and this letter provided that arrangement by casting responsibility on the Petitioner. Therefore, the interpretation of both the Courts below of this letter cannot be termed as perverse.

8 Mr.Lad, then submitted that the Respondent had stood guarantor to a loan and under which the Petitioner is liable to receive substantial amount of around Rs.2,00,00,000/- and since the provision of order 15A is equitable, the said factor should be considered. The learned Senior advocate, Mr.Dhakephalkar, appearing for the Respondent has drawn my attention to clause (13) of the agreement dated 27 May 2004 in which parties had agreed that the agreement in question will have no reference as regards the loan transaction in the name of the husband of the Respondent or M/s Excel Alloys Private Limited. Both Courts have relied on this clause to negative the argument of the Petitioner. There is no perversity in that approach.

9 Mr.Lad, then submitted that the Petitioner has already paid substantial part of the municipal taxes however credit for which has not been given by the Courts below. Mr.Dhakephalkar submitted that the Petitioner / Respondent does not want to withdraw the amount if deposited by the Petitioner and the amount deposited by the Petitioner can be directly paid to the Corporation towards it's dues as the anxiety of the Respondent is to save the property from attachment. Therefore, if the Petitioner deposits the amount as directed by the Courts below and is able to show that the part of the demand made by the Respondent is already satisfied then the Petitioner can always seeks appropriate reliefs in that regard.

10 Mr.Lad, also submitted that while passing an equitable order, the fact that the Petitioner bank is unable to deposit the amount, also needs to be considered as the consequence of the order is that defence of the Petitioner will be struck off. What needs to be considered is that the amount directed to be paid are the arrears payable to the Municipal Corporation. If the amount is not paid the Municipal Corporation will proceed to take action as regards the property. Once it is found that the Petitioner was liable to pay the amount as regards the Municipal taxes, then the direction to Petitioner to pay the amount cannot be set aside. The Respondent will lose the property, which will lead to highly inequitable results.

11 At this stage, Mr.Lad states that the Petitioner be given an opportunity to demonstrate to the Court below that substantial amounts have already been deposited. In the pleadings in the Court below, no such specific stand is taken and it is only in the revision this contention is taken up. If the Petitioner is given the opportunity as prayed for by Mr.Lad then it will give rise to further litigation and the depositing of the amount will be further delayed, which as stated earlier are arrears of all the municipal taxes. It will be thus appropriate that the Petitioner first deposits the amount and thereafter the Small Causes Court, can always pass appropriate orders. In any case, the amount to be deposited is to be paid to the Municipal Corporation, directly.

12 In the circumstances, the Writ petition cannot be entertained as there is no error of jurisdiction or perversity in the impugned orders. Writ petition is accordingly rejected.

*(N.M.Jamdar, J.)*