

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL APPLICATION NO. 3048 OF 2013

IN

FIRST APPEAL NO. 1067 OF 2013

Sangli Miraj and Kupwad City
Municipal Corporation, Sangli & Anr. .. Applicants

Versus

M/s. Saraswati Industries .. Respondent

Mr. Shriniwas S. Patwardhan, Advocate for the applicants.
Mr. Ashutosh M. Kulkarni, Advocate for the respondent.

CORAM:-A. S. OKA &
REVATI MOHITE DERE, JJ.
DATED : -16/07/2015

P.C.

Heard learned counsel appearing for the applicants and
learned counsel appearing for the respondent.

2 The applicant No. 1 is the appellant - Sangli Miraj and
Kupwad City Municipal Corporation, Sangli. A suit was filed by
the respondent for refund of octroi. By the impugned decree, the
applicant-Corporation has been directed to refund octroi amounts of
Rs.7,35,235.41 and Rs.39,50,386/- with interest.

3 The learned counsel for the applicants has filed additional compilation. His submission is that it is not even the case made out in the plaint that the recovery of octroi is patently illegal. His submission is that the only case made out is that, the applicant-Corporation was not entitled to collect the octroi. He urged that as the octroi was paid by the respondent without any protest, the claim for refund in any event was not maintainable. He urged that a remedy of preferring an appeal under Section 406 of the Maharashtra Municipal Corporation Act, 1949 (for short “the said Act of 1949) was available to the respondent. He submitted that, the finding that the suit was maintainable is completely erroneous.

4 The learned counsel appearing for the respondent-plaintiff invited our attention to Section 147 of the said Act of 1949. He submitted that the case made out by the respondent in examination-in-chief is that no amount was paid by the respondent as 'octroi', but what was paid was only deposit. He urged that an appeal could not have been preferred under Section 406 for claim of refund of the amount paid by way of deposit. He urged that there was no provision in law to accept deposit and, therefore, the

respondent has rightly filed a suit for recovery of the amount paid by way of deposit. He urged that as the respondent was not liable to pay octroi, the refund of amount paid by way of deposit has been granted by the trial court.

5 We have considered the submissions. The prayer made in this application is for execution of the money decree. Normal rule is that a money decree is not stayed without securing the amount covered by the Money Decree. In the present case, the applicant is a Corporation constituted under the said Act of 1949.

6 We have perused the averments made in the plaint. The plaint is cryptic which runs only into four pages. It is not even the case made out by the respondent that amounts paid from time to time by the respondent were by way of deposit and not by way of octroi. In fact in paragraph 2, there is a specific pleading that octroi was recovered from the respondent by the applicant-Corporation. Even paragraph 4 refers to payment of octroi by the respondent. Similarly in paragraph 4-A there is a specific averment that amounts have been paid by the respondent by way of octroi. Even the cause of action clause specifically refers to the fact that the claim in the

suit is for the refund of octroi.

7 *Prima facie*, the case which is sought to be made out in the evidence that the amounts were paid by the respondent by way of deposit and not towards octroi appears to be completely an afterthought. Moreover, it is not the case made out in the plaint that the octroi amount paid from time to time by the respondent was paid under protest.

8 Thus going by the averments made in the plaint, there was a demand for payment of octroi and as per the demand, the amounts were paid by the respondent from time to time. Therefore, the plain reading of Section 406 of the said Act of 1949, the remedy of preferring an appeal was available for challenging the demand.

9 *Prima facie*, it appears to us that even taking the averments made in the plaint as 'correct', the Trial Court could not have passed money decree.

10 Thus there is a strong *prima facie* case made out by the applicant. Apart from a very strong *prima facie* case, considering the fact that the applicant is a statutory Municipal Corporation, even if a blanket stay is granted, in the event of

dismissal of the appeal, the decretal amount can be easily recovered from the applicant.

11 Hence, we dispose of the application by passing the following order:

 There will be interim relief in terms of prayer clause (A).

(REVATI MOHITE DERE, J.)

(A. S. OKA, J.)

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