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IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 514 OF 2013

Pimpri Chinchwad Municipal Corporation … Applicant

Vs.

Dnyan Prabodhini
A Public Charitable Trust .. Respondent

Mr.S.P.Thorat, Advocate for the Applicant.
Mr.Sandip Pathak i/b Mr.Sugandh B.Deshmukh, Advocate for the Respondent.

CORAM : R. G. KETKAR, J.
DATE : 20th JULY, 2015

P.C. :

. Heard Mr.S.P.Thorat, learned Counsel for the applicant and Mr.Sandip Phatak, learned Counsel for the respondent at length. Rule. Mr.Pathak waives service for the respondent. At the request and by consent of the parties, rule is made returnable forthwith and the Application is taken up for final hearing.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.), original defendant has challenged the judgment and order dated 27/08/2012 passed by the learned 6th Additional Judge, Small Causes Court, Pune below Exhibit 15 in Special Civil Suit No. 847 of 2011. By that order, the learned trial Judge decided preliminary issue and held that Civil

Court has jurisdiction to entertain and try the Suit. The parties shall hereafter be referred to as per their status before the trial Court. The relevant and material facts, that are necessary for disposal of the present Application, briefly stated, are as under.

3. The respondent, hereinafter referred to as plaintiff, has instituted Suit for declaration that plaintiff trust being a Public Charitable Trust is exempted from payment of general tax as per Section 132 (1)(b) of the Maharashtra Municipal Corporation Act, (for short 'Act'); for declaration that decision dated 27/01/2010 and bills no.0112101101987, 0112101101985, 0112101101986 and subsequent action of issue of notices prior to attachment served by the defendant Corporation, are illegal and ultra virus to the provisions of the Act; for perpetual injunction restraining the defendant from recovering general tax from the plaintiff trust.

4. It appears that during the pendency of the Suit, plaintiff took out application for interim relief at Exhibit 5. The defendant filed reply dated 20/09/2011 opposing that application. The defendant filed application dated 25/08/2011 at Exhibit 15 under Section 9A of the C.P.C. for framing preliminary issue regarding maintainability of the Suit as also whether the Civil Court has jurisdiction to entertain and try the Suit. The plaintiff filed reply dated 20/11/2011 at Exhibit 16 opposing the application. After hearing both sides, the learned trial Judge had framed following

preliminary issues on 07/08/2012 .

> "Whether this Court has jurisdiction to try and entertain the present Suit ?"

By the impugned order, the learned trial Judge held that Suit is maintainable and Civil Court has jurisdiction to entertain and try the Suit.

5. In support of this Application, Mr.Thorat strenuously contended that the learned trial Judge has reproduced the submissions advanced by the parties. The learned trial Judge has reproduced the provisions of Sections 132 & 406 of the Act. The learned trial Judge has also referred to decisions. In paragraph 13, the learned trial Judge has observed thus:

> "Considering the provisions under section 132 and 406 of BPMC Act and also considering the law laid down by the Hon'ble Bombay High Court in the rulings supra, it is clear that Civil Court hold jurisdiction in case where the legality and validity of unauthorized tax is challenged. In the instant matter undisputed plaintiff is a public Charitable Trust and it claims that the said 3 buildings are used for objects of the Trust, therefore, plaintiff is exempted from payment of General Tax under Section 132(1)(b) of the BPMC Act. It is also clear that the Provision under Section 406 of the BPMC Act provides for appeal against dispute of rateable value of tax and not against decision of unauthorized imposition of tax. Thus, having regards to this, I am of the opinion that, this Court retains jurisdiction in this case. Therefore, I record my finding in affirmative on this issue and proceed to pass following order."

6. He submitted that in the first place, the learned trial Judge did not record any reasons. Without recording any reasons, he has come to the conclusion that the Civil Court has jurisdiction.

Secondly, the learned trial Judge has observed that undisputedly, the plaintiff is a Public Charitable Trust and claims that said three buildings are used for objects of the trust, therefore, exempted under Section 132(1)(b) of the Act. The learned trial Judge has, however, not considered provisions of sub-section (2) of Section 132 of the Act.

7. On the other hand, Mr.Pathak supported the impugned order. He submitted that after considering the provisions of the Act as also decisions cited, the learned trial Judge held in paragraph 13 that the plaintiff is a Public Charitable Trust and that the three buildings are used for the objects of the trust. In other words, the learned trial Judge has recorded a finding as contemplated by Section 132 (2) of the Act and therefore, held that plaintiff is exempted from payment of general tax. He further submitted that Section 406 of the Act provides for appeal against disputed rateable value and/or tax cannot be against the decision of unauthorised imposition of tax.

8. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. Perusal of the impugned order shows that the learned trial Judge has referred to submissions advanced by the learned Counsel appearing for the parties, provisions of Sections 132 & 406 of the Act as also decisions in the cases of i) Sant Kanwarram

Education and Social Welfare Society Vs. Municipal Corporation of City of Amaravati, 2008 LAWS (BOM)-10-40 ii) Balkrishna Dharmdas Vora Vs. The Poona Municipal Corporation, (1963) 65 BOM. L.R. 119 iii) Titan Industries Ltd. Vs. Thane Municipal Corporation, 2011 LAWS(BOM) 7-15. The learned trial judge has thereafter held in paragraph 13 that plaintiff is a Public Charitable Trust and it claims that 3 buildings are used for objects of the trust. The learned trial Judge has, however, not considered Section 132(2) of the Act which is to the following effect

> "132(2) :
> The following buildings and lands or portions thereof shall not be deemed to be solely occupied and used for public worship or for a public charitable purpose within the meaning of clause (b) of sub-section (1) namely : –
> (a) buildings or lands or portions thereof in which any trade or business is carried on and
> (b) buildings or lands or portions thereof in respect of which rent is derived whether such rent is or is not applied solely to religious or charitable purposes."

9. Merely by claiming that 3 buildings of the trust are used for objects of the trust will not satisfy the conditions laid down under sub-Section (2) of the Section 132. The Court has to record finding about satisfaction of conditions laid down in Section 132(2). It is only when the the conditions laid down under clauses (a) & (b) are satisfied, exemption from payment of general tax can be granted. No such finding is recorded by the learned trial Judge. The learned trial Judge has also not recorded any reasons in paragraph 13. Without recording any reasons, the learned trial Judge held that as the

defendant has imposed unauthorised tax and, therefore, Civil Court has jurisdiction to entertain and try the suit. As the learned trial Judge has not dealt with the matter properly as also has not recorded reasons, I find that the impugned order cannot be sustained and is liable to be set aside. Mr.Thorat relied upon the decision of this Court in the case of *Sindhu Educational Trust Vs. The State of Maharashtra* in **Writ Petition No. 1057 of 2015 decided on 12/06/2015 (Coram: A.S.Oka and Revati Mohite Dere J.J.)** and submitted that plaintiff should be directed to deposit the amount in the trial Court. It will be open to the defendant to agitate this submission in the trial Court.

10. In the light of the above discussion, Application succeeds and the same is disposed of in the following terms.

i) The impugned order dated 27/08/2012 is quashed and set aside.

ii) Application at Exhibit 15 is restored to the file of the trial Court.

iii) Parties will be at liberty to lead evidence for deciding preliminary issue, if they so desire.

iv) The learned trial Judge will decide the application after recording the reasons.

11. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)