**IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH**

**RSA No. 3422 of 2012(O&M)**
**Date of decision : August 19, 2015**

**Nagar Council Budhlada**

**....... Appellant**

**Versus**

**Bikramjit Singh and others**

**........ Respondents**

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present:- Mr. Anil Kumar Sharma, Advocate
for the appellant.

Mr. H. S. Rakhra, Advocate
for respondent No.1 and 2.

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1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

**<u>Amit Rawal, J (oral).</u>**
***<u>CM No. 9132-C of 2012</u>***

*This is an application under Section 5 of Limitation Act read with Section 151 CPC seeking condonation of delay in filing the appeal.*

For the reasons stated in the application, which is duly supported by an affidavit, delay of 12 days in filing the appeal is condoned.

*The application stands disposed of.*

***<u>RSA No. 3422 of 2012</u>***

The challenge in the present appeal is to the impugned judgment and decree passed by the trial court whereby the suit filed by plaintiffs-respondent Nos. 1 and 2-plaintiffs for permanent injunction restraining the appellant-defendant from recovering any house tax qua H.No.122/11 and Unit 98/11 situated in revenue estate of Nagar Council, Budhlada on the basis of resolutions bearing No.27,20 dated 2.12.1998 and 31.5.2003, has been decreed and the appellant-defendant was restrained from recovering house tax, however liberty was granted to determine fresh assessment on the basis of standard rent determinable under the provisions of Rent Act as per law.

Mr. Anil Sharma, Advocate appearing on behalf of the appellant submits that both the courts below have committed illegality and perversity in decreeing the suit as the suit ex facie was not maintainable. Moreover the liberty granted to make assessment of tax on the basis of standard rent determinable under the provisions of rent Act is no longer a good law. In support of his contentions he has relied on the judgment of Hon'ble Supreme Court in **Municipal Committee, Patiala Vs. Model Town Residents Asson. And others 2007 (3) RCR Civil 754** whereby the amendment sought in Section 3 (1) (b) and 3 (8aa) of Punjab Municipal Act has been upheld with retrospective effect.

He further submits that both the courts below have non-suited the appellant-defendant by entertaining the suit, which ex facie was not maintainable. In this context he has cited judgment rendered by this Court in **Municipal Corporation, Ludhiana and others Vs. Raghbir Kaur and another 2010 (1) RCR (Civil) 188**.

Mr. H. S. Rakhra, learned counsel appearing on behalf of the respondents submits that there is no illegality and perversity in the judgments and decrees of both the courts below, much less no substantial question of law arise for determination by this Court. The order of the civil court is not without jurisdiction and therefore the same is liable to be upheld.

I have heard learned counsel for the parties and appraised the paper book.

I am in agreement with the contention made on behalf of the counsel for the appellant that the suit for permanent injunction challenging the assessment of house tax is not maintainable, as civil court did not have jurisdiction and the remedy if any was under the Municipal Law. The amendment in Section 3 (8aa) of the Punjab Municipal Act, 1911 has been upheld and has been held applicable retrospectively, therefore, the liberty granted to assess the house tax on the basis of provisions of Rent Act, in my view would not be correct. Thus, in my view following substantial questions of law arise for determination:-

> "Whether the civil court had jurisdiction to entertain the suit for permanent injunction whereby assessment viz-a-viz house tax has been made by the Municipal Council?
>
> 2. Whether the judgment and decree of trial court upheld by the lower appellate court is sustainable in view of the law laid down by the Hon'ble Supreme Court in Municipal Committee,

Patiala's case (supra).

The Hon'ble Supreme Court after pondering on the question raised before it with regard to the amendment caused under Section 3 (1) (b) and 3 (8aa) of the Punjab Municipal Act, 1911 (as amended by Act 11 of 1994) upheld the same by holding the same would be applicable retrospectively and would also apply to pending assessment in appeal, therefrom.

In view of the ratio decidendi culled out in the aforementioned judgment, it leaves no manner of doubt that the liberty granted by the trial court to make assessment of the house tax as per unamended provisions of the Act, is not sustainable, much less, civil court did not have jurisdiction. The court below did not assign any reasons and the reasons so assigned that civil court has jurisdiction, in my view is not correct, as the remedy has been prescribed under the Municipal laws. Though, in certain cases where assessment done without jurisdiction, in my view under unamended provisions, in my view, civil court would have jurisdiction but in the present case as per the facts and circumstances, no such situation has arisen as the assessment had been done as per the amended provisions of the Act, yet the court found that it was without jurisdiction and resorted to the applicability of unamended provisions, which, in my view, is not correct in law.

In view of what has been observed above, the substantial questions framed are thus answered in favour of the appellant-defendant and against plaintiffs-respondent Nos. 1 and 2.

Accordingly, the appeal is allowed.

The Municipal Council shall be at liberty to assess the house tax in view of the amended provisions of the Punjab Municipal Act,1911 (amended by Act 11 of 1994).

**(AMIT RAWAL)**
**JUDGE**

**August 19 , 2015**
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