IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.473 OF 2015

IN

CIVIL REVISION APPLICATION NO.458 OF 2011

AND

CIVIL APPLICATION NO.418 OF 2015

IN

CIVIL REVISION APPLICATION NO.457 OF 2011

The Heirs and Legal Representatives of
Original Respondent No.1
Mr. Vasantkumar Madhavsingh Sampat and others .. Applicants

IN THE MATTER OF
The Saraswat Co-operative Bank Limited .. Applicant
Versus
Smt. Madhuri Madhavsingh Sampat and others .. Respondents

Ms. Rajkumari C. Nichani, for the Applicants.

Mr. G. V. Murti, Mr. Dakshesh Vyas, Mr. Durgaprasad Sabnis, Ms. Bhakti Nadkarni a/w Mr. Durgesh Kulkarni i/by Durgaprasad Sabnis, for the Respondent/Applicant.

Mr. Jay V. Shah, for the Respondent Nos.1B, 1D, 1H, 1I in both Applications.

CORAM : R.M. SAVANT, J.
DATE : 16th FEBRUARY 2016

P.C.

1. The above Civil Applications have been filed by the landlords for seeking implementation of the directions as contained in the order dated 20.07.2012 passed by a Learned Single Judge of this Court (V. M. Kanade, J.). The above Civil Applications are companion to Civil Application Nos.346 of 2013 and 350 of 2013 filed by the Saraswat Bank which have been rejected by an order passed today. The reliefs sought in the Applications are inter-alia to the following effect :-

> "**Civil Application No.473 of 2015**
>
> (a) that the Petitioner Bank be ordered and directed to pay and/or deposit the sum of Rs.1,09,00,000.00 lacs being arrears of compensation upto the end of April 2015;
>
> (b) that the Petitioner Bank be further ordered and directed to deposit and/or pay to the Municipal Corporation the repair cess dues of Rs.1,99,06,905/- in terms of the Notice of demand Exhibit 'C' hereto and any further demand made by the Municipal Corporation till end of April 2015;
>
> (c) that the Petitioner Bank be ordered and directed to deposit arrears of property taxes of Rs.3,22,551/- and further property taxes from 1st April 2014 to April 2015;
>
> (d) that in default of the payment/deposit of the amount claimed in prayers (a) to (c), the Petition be ordered to be dismissed and the Applicants be at liberty to execute the said order dated 20.07.2012 Exhibit 'B' hereto;
>
> (e) that costs of this application be provided for;"
>
> "**Civil Application No.418 of 2015**

> (a) that the Petitioner Bank be ordered and directed to pay and/or deposit the sum of Rs.78.00 lacs being arrears of compensation upto the end of April 2015;
>
> (b) that the Petitioner Bank be further ordered and directed to deposit and/or pay to the Municipal Corporation the repair cess dues of Rs.1,99,06,905/- in terms of the Notice of demand Exhibit 'C' hereto and any further demand made by the Municipal Corporation till end of April 2015;
>
> (c) that the Petitioner Bank be ordered and directed to deposit arrears of property taxes of Rs.3,22,551/- and further property taxes from 1st April 2014 to April 2015;
>
> (d) that in default of the payment/deposit of the amount claimed in prayers (a) to (c), the Petition be ordered to be dismissed and the Applicants be at liberty to execute the said order dated 20.07.2012 Exhibit 'B' hereto;
>
> (e) that costs of this application be proved for;"

2. As indicated above, the said reliefs in the above Civil Applications have been sought in terms of the directions as contained in the order dated 20.07.2012 passed by a Learned Single Judge of this Court (V. M. Kanade, J.). The arrears of compensation sought for the two premises are up to end of April 2015. The amount in terms of the notice of demand dated 19.03.2015 and the arrears of property tax are also sought in terms of the demand raised by the Municipal Corporation of Greater Mumbai ("MCGM" for short). In so far as the amount towards repair cess and property tax are concerned, the said reliefs are sought on the basis that it is the obligation of the Saraswat Bank to pay the outgoing towards

the municipal taxes etc. to the MCGM in terms of the agreement and therefore the Saraswat Bank cannot escape the liability. The deposit is also sought on the ground that if the amount is not paid towards the repair cess and property tax, then the same would have the effect on the property of the Respondents/landlords wherein the suit premises are situated being subjected to an action for recovery of the amount.

3. An affidavit in reply has been filed on behalf of the original Applicant i.e. Saraswat Bank Ltd. A stand is taken in the affidavit in reply in so far as the amount of arrears are concerned that the said amount at Rs.1,00,000/- per month for each of the premises was to be paid as a condition for stay. It is sought to be contended that the Saraswat Bank was never interested in the stay of the decree and in fact wanted to hand over possession of the suit premises in respect of which they have filed Civil Application Nos.310 of 2013 and 312 of 2013. In the affidavit in reply contentions are sought to be raised as to the exact liability towards repair cess and property tax, as it is the case of the original Applicants that the issue regarding fixation of rateable value in respect of the premises in question is subjudice before this Court in a First Appeal. In so far as the arrears of compensation is concerned, it is sought to be contended that since the original Applicants have handed over possession on 27.04.2015 if the amount is not deposited then the Respondents/landlords are free to

execute the order.

4. The Learned Counsel for the parties i.e. Ms. Rajkumari Nichani for the Applicants and Mr. Vyas for the original Civil Revision Applicant were heard. It was the submission of Ms. Rajkumari Nichani that in spite of the directions as contained in the order dated 20.07.2012 passed by the Learned Single Judge (V. M. Kanade, J.) the said order has not been complied with as yet. The Learned Counsel sought to reiterate the case made out in the Civil Application to contend that if the amounts towards repair cess and property tax are not paid, the property of the Respondents/landlords would be in jeopardy.

5. Per contra, the Learned Counsel appearing for the original Applicant Mr. Vyas at the outset states that the liability to pay repair cess and property tax is of the Saraswat Bank in terms of the agreement between the parties, he however sought to reiterate the contentions of the original Applicant in so far as the payment of repair cess and property tax are concerned, the fact that the proceedings relating to fixation of rateable value are subjudice before this Court was sought to be highlighted. It was also sought to be pointed out that the repair cess and property tax are not in terms of the amounts appearing in the prayer clauses of the above Civil Applications. In fact, it was the case of the original Civil Revision Applicant

i.e. the Saraswat Bank that the amount of repair cess would come down considerably in view of the method of fixation of rateable value having been changed by the MCGM. In so far as the property tax is concerned, it was sought to be brought to the notice of this Court that in fact Saraswat Bank is entitled to refund. It was lastly contended that if the amount of Rs.1,00,000/- per month as compensation not being paid, then the Respondents/landlords are free to execute the order.

6. Having heard the Learned Counsel for the Applicants and the Learned Counsel appearing for the original Civil Revision Applicant, I have considered the rival contentions. Taking the prayer in respect of the deposit of repair cess and property tax first, as indicated above, the said relief is sought on the basis of the demand which has been raised by the MCGM. The said demand is in respect of the repair cess and property tax for the period ending April 2015. The Respondents/landlords as well as the Saraswat Bank have now received communication dated 27.01.2016 in respect of the repair cess for the periods mentioned in the said communication. The total amount of repair cess up to 31.03.2015 comes to Rs.3,14,32,665/- as also the communication dated 15.02.2016 also addressed to the Saraswat Bank to the landlords wherein the property tax up to end of April 2015 is Rs.3,26,563/-. Though contentions were sought to be raised as regards the entitlement of the MCGM to the said amounts

as according to the Learned Counsel appearing for the Saraswat Bank, the said amount of repair cess would appreciably come down and would be in the region of about 2.50 crores as also that the Saraswat Bank having paid the amount of property tax on the basis of the earlier method of the fixation of rateable value has in fact paid excess and therefore would be required to be refunded the excess amount. In my view, it is not necessary for this Court to enter into or delve into the said aspect. Neither are the original landlords concerned with any dispute with the original Civil Revision Applicant, Saraswat Bank may have raised with the MCGM. If the original Civil Revision Applicant i.e. the Saraswat Bank is successful in getting the amount reduced, the same would undoubtedly enure to its benefit as the liability to pay the outgoing to the MCGM is undoubtedly that of the Bank as fairly accepted by the Learned Counsel. The reliefs relating to the property tax and the repair cess have been sought principally on the ground that the non-payment of the same would put the landlords property in jeopardy, as in the event of default in payment of the said amounts, the MCGM is likely to proceed against the property. In my view, therefore, it would be necessary to secure the interest of the Respondents/landlords in so far as the property is concerned. This would be having regard to the fact that the liability to pay the taxes etc. to the MCGM is that of the Saraswat Bank, appropriate directions would therefore have to be issued in that regard.

7. Now coming to the contentions of the Learned Counsel appearing on behalf of the Saraswat Bank that the Respondents/landlords in view of the fact that the amount of Rs.1,00,000/- as compensation for each of the premises being not paid may proceed against the Civil Revision Applicant in execution. In my view, it does not behove a institution like the Saraswat Bank to make such a submission. As indicated above, the order dated 20.07.2012 which mandates the payment of Rs.1,00,000/- for each of the premises was passed in Civil Applications where the Saraswat Bank was served and in spite of the same it chose to remain absent. The order having been founded on the well settled principles laid down by the Apex Court in ***Atma Ram Properties (P) Ltd. Vs. Federal Motors (P) Ltd.,***[1] Saraswat Bank cannot escape its liability from depositing the amount calculated on the basis of Rs.1,00,000/- per month at least up to the date when it handed over possession i.e. 27.04.2015. In my view, therefore, the Civil Application Nos.473 of 2015 and 418 of 2015 would have to be allowed and are accordingly allowed and the following directions are issued :-

I) The Saraswat Bank is directed to deposit an amount of

1 **(2005) 1 SCC 705**

Rs.3,14,32,665/- towards payment of repair cess as also an amount of Rs.3,26,563/- towards property tax. The Learned Counsel for the Saraswat Bank Mr. Sabnis states that the said amounts would be deposited in this Court within a period of six weeks from date. The said amounts would lie in deposit in this Court and would not be dealt with in any manner. The Saraswat Bank would be entitled to apply for withdrawal of the said amount on discharging its liability towards repair cess and property tax for the period ending April 2015. It is made clear that the said deposit is only as and by way of securing the interest of the Respondents/ landlords so that their property is not put in jeopardy. In the event the amount towards the repair cess and property tax is not paid, the Respondents/landlords can apply for the amount being paid out of the deposit made in terms of the instant clause.

II) In so far as the deposit of compensation at the rate of Rs.1,00,000/- per month is concerned, the Saraswat Bank to deposit the amount calculated at said rate up to end of April 2015, the same to be done also within period of six weeks from date.

8. The photocopies of the communications dated 27.01.2016 and 15.02.2016 of the MCGM addressed to the Saraswat Bank as well as the Respondents/landlords are taken on record and marked as “X” and “Y” for identification.

9. With the directions as aforesaid, the above Civil Applications are disposed of.

[R.M. SAVANT, J]