

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

APPEAL AGAINST ORDER NO.28 OF 2016

Akola Municipal Corporation,

Through its Commissioner,
Akola, Tq. & Dist. Akola

... Appellant

-vs-

M/s Rungta Automobiles,

A Partnership Firm, Thr. Its Partner,
Kamalkishor s/o Onkarmal Rungta
Aged about 75 yrs, Occ. Business,
R/o Opp. Panchayat Samittee,
Akola, Tq. & Dist. Akola

... Respondent

Shri S. V. Sohoni, Advocate for appellant.

Shri A. Shelat, Advocate for respondent.

CORAM : A.S.CHANDURKAR, J.

DATE : February 28, 2017

P.C.

In view of notice for final disposal issued earlier, the learned counsel for the parties have been heard at length.

The appellant is aggrieved by the order passed by the Appellate Court dated 26/11/2015 below Exhibits-7 and 10 in the appeal filed by the respondent. By the said order the appellant has been directed to remove seals placed on the suit premises subject to the respondent depositing an amount of Rs.5,30,184/-.

2. After hearing the respective counsel for the parties, an issue as to whether the suit is maintainable or not is the bone of contention. According to the appellant the suit is not maintainable in view of the remedy available under Section 406 of the Maharashtra Municipal Corporations Act, 1949. This position is contested by the respondent by urging that the civil suit is maintainable.

3. It is not necessary at this stage to go into said aspect as the appeal is pending before the Appellate Court. By order dated 25/01/2017 the respondent was directed to deposit an amount of Rs.6,00,000/- without prejudice to its rights. This amount has now been deposited and the appellant has removed the seals on the premises.

4. In my view the following interim arrangement can be directed to be followed which would serve the interests of justice and facilitate adjudication of the appeal. According to the appellant an amount of Rs.17,00,742/- is due and payable by the respondent towards property taxes. This figure is disputed by the respondent. Hence without prejudice to the rights of the parties the respondent is directed to deposit 50% of aforesaid amount which would be an amount of Rs.8,50,000/- with the appellant Corporation. It is to be noted that amount of Rs.6,00,000/- has already been deposited by the respondent on 04/02/2017. The remaining amount

of Rs.2,50,000/- shall be deposited by 31/03/2017.

If the amount of Rs.2,50,000/- is not deposited by the respondent within said period, it would be open for the appellant to move this Court for further directions. The appellant shall return Postal Order dated 08/12/2015 for an amount of Rs.5,30,984/- to the respondent within period of ten days from today. It is made clear that this arrangement is without prejudice to the rights of the parties and the appeal shall be decided on its own merits in accordance with law by the end of April 2017.

7. The Appeal from Order is disposed of in aforesaid terms. Pending civil applications, if any, are also disposed of accordingly.

JUDGE