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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5385 OF 2018

President Kai Sushilatai Gaikwad
Bahuudeshiya Sanstha ... Petitioner.
V/s.
Solapur Municipal Corporation
and anr ... Respondent

Mr. Uday Warunjikar, for petitioner
Mr. D. G. Dhanure, for respondent

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 3rd MAY, 2018.

P.C. :

1] Heard learned counsel for the petitioner and respondents.

2] By this writ petition filed under Article 227 of the Constitution of India, the petitioner is challenging the order passed by the District Judge-6, Solapur on 17th April, 2018, below application Exh.5 in Tax Appeal No.2 of 2018.

3] Application at Exh.5 was filed by the present petitioner seeking stay to the order passed by the Court of Civil Judge Junior Division, Solapur, thereby directing the petitioner to deposit entire tax amount of Rs.67,85,526/- with the Commissioner of Solapur Municipal Corporation, within a period of six weeks from the date of the order. The order was passed on 23.3.2018.

4] The submission of learned counsel for the petitioner is that by the said order, the petitioner is even directed to pay amount of tax which was for the period from the year 2006-07 till 2011-12, during which the petitioner was exempted from payment of tax. Thus, the petitioner is directed to pay the tax with retrospective effect. Hence, the petitioner needs to be heard in the matter and for that purpose, time is required to be given to the petitioner.

5] However, the perusal of the order passed by the Appellate Court, clearly goes to show that the Appellate Court has taken into consideration the mandatory provision of Section 406(5) of the Maharashtra Municipal Corporation Act, which reads thus :-

> "406 (5) In the case of any appeal, which may have been entertained by the Judge before the date of commencement of the Act aforesaid or which may be entertained by him on and after the said date, the Judge shall not hear and decide such appeal, unless the amount of the tax claimed by each of the bills, which may have been issued since the entertainment of the appeal, is also deposited, from time to time, with the Commissioner, in the first month of the half year to which the respective bill relates. In case of default by the appellant at any time before the appeal is decided, on getting an intimation to that effect from the Commissioner, the Judge shall summarily dismiss the appeal.

6] This provision, thus, clearly mandates that unless the amount of the tax claimed is deposited, the appeal cannot be taken up for hearing.

7] The Appellate Court has accordingly directed the petitioner to deposit the said amount within a period of six weeks from the date of the order. I do not find that at this stage any reason is being made out to interfere in the said order. The question whether the retrospective effect can be given or not, will be considered at the time of hearing of the appeal by the Appellate Court, and the appeal can be heard only when the petitioner complies with the mandatory requirement of depositing the entire amount as claimed, as laid down under Section 406 (5) of the Maharashtra Municipal Corporation Act. Hence in my considered opinion, no interference is warranted in the impugned order passed by the Appellate Court

8] The Writ petition, therefore, being without merits stands dismissed.

9] At this stage learned counsel for the petitioner submits that considering huge amount of Rs.67,85,526/- which is directed to be deposited in the Court within six weeks, the petitioner may be granted some more time. It is urged that in order to show the bonafides of the petitioner, the petitioner is ready to deposit an amount of Rs.5 lacs within a period of two weeks. Hence, some more time be given to deposit the remaining amount.

10] Learned counsel for respondent, however, submits that already the petitioner was granted period of six weeks by the Appellate Court itself for depositing the amount. Till date the petitioner has not deposited a farthing and therefore, having regard to the amount of Rs.67,85,526/-, which is to be deposited in the Court, at least 75% of the amount be directed to be deposited forthwith to prove the bonafides of the petitioner.

11] Considering the submissions advanced at Bar, the petitioner is directed to deposit 50% of amount within a period of four weeks from the date of this order and remaining 50% to be deposited within four weeks thereafter.

12] In case of failure on the part of petitioner to deposit any of the two intalments, the order of the stay shall stand automatically vacated.

[DR.SHALINI PHANSALKAR-JOSHI, J.]