IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 393 OF 2013

The Commissioner of Income Tax-III,
Member, Appropriate Authority,
Ahmedabad ...Applicant

Versus

Subhash Samudayik Sahakari Shetkari
Sangh Ltd., & Ors. ...Respondents

…...

Mr.Sham Walve for the Applicant.
Mr. Vishal C. Ghosalkar for Respondent No.1.

…...

CORAM: MRS.MRIDULA BHATKAR, J.
DATED: JULY 02, 2018

P.C. :

1. This Civil Revision Application is directed against the order dated 16th September, 2011 passed by the learned Jt. Civil Judge, S.D., Pune- On Deputation, (4th Additional Judge) below exhibit 85 in Regular Civil Suit No. 4629 of 2000.

2. The applicant i.e., defendant no.3- The Commissioner of Income Tax-III, Ahmedabad has filed an application for rejection of

the plaint under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as “the C.P.C”.) on the ground that a statutory notice under Section 80 of the C.P.C. has not been given by the original plaintiff/ respondent no.1 and also on the ground that the suit was beyond limitation. There is no cause of action against defendant no.3. The learned Judge of the trial Court has turned down all these objections and rejected the application below exhibit 85. Hence, this Civil Revision Application.

3. The original plaintiff i.e., respondent No.1 is a land owner of the suit land and lease the suit land in favour of defendant No.1 i.e., respondent No.3, who has further assigned the development right in favour of defendant No.2 i.e., respondent No.4. However, the original plaintiff has terminated the lease and filed a suit for possession against defendant Nos. 1 and 2 and also against defendant No.3. i.e., the present applicant. It is the case of the original plaintiff that in between, defendant No.3 has issued a notice under Section 269 UD (I) of the Income Tax Act, 1961 and seized the suit property, as it was action taken against defendant No.2.

4. The learned Counsel for the applicant submits that the said action was challenged by defendant No.2 in Writ Petition No.1889 of 1995 and Division Bench of this Court by order dated 4th August, 2014 allowed the said Petition and held that action taken under Section 269 UD of the Income Tax Act was illegal and devoid of merits. Thus, the Income Tax Department is out of this transaction. He further submits that as on today, there is no cause of action against the Union of India, Income Tax Department and, therefore, the proceedings against the applicant is to be dropped.

5. The learned Counsel for respondent no.1 submits that the applicant should make statement that they will not file any proceeding challenging the order dated 4th August, 2014 passed by Division Bench of this Court.

6. The learned Counsel for the applicant submits that the applicant will not file any proceeding challenging the order dated 4th August, 2014 passed by Division Bench of this Court before the Apex Court.

7. Heard submissions. In view of the above submissions, I set aside the order dated 16th September, 2011 passed by the learned Jt. Civil Judge, S.D., Pune- On Deputation, (4th Additional Judge) on the ground that there is no cause of action against the applicant in the suit in view of the order dated 4th August, 2014 passed by Division Bench of this Court.

8. Hence, Civil Revision Application is allowed.

(MRIDULA BHATKAR, J.)