Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER No. 684 OF 2017
WITH
CIVIL APPLICATION No. 894 OF 2017 IN A.O. No. 684 OF 2017

Lata Mangeshikar Medical Foundation, A
Public Charitable Trust through
Dr. Dhananjay Shrikrishna Kelkar ... Appellant/Applicant
Vs.
Municipal Corporation of City of Pune & Ors. ... Respondents

Mr. R.S.Apte, Senior Advocate i/b. S.C. Wakankar for the appellant.
Mr. A.P. Kulkarni, Advocate for the respondent.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **9th February, 2018.**

P.C.:

In this Appeal from Order, the order dated 23rd September, 2016 passed by the 4th Joint Civil Judge, Senior Division, Pune below Exhibit 5 in Special Civil Suit No. 49 of 2016 thereby rejecting the Application for interim injunction restraining the defendants/ respondents from recovering tax of Rs.1,74,38,048/- from the plaintiff/appellant, is challenged. The appellant/original plaintiff runs the hospital in Pune. The Municipal Corporation has levied tax of Rs.1,74,38,048/-. The plaintiff has filed the suit before Civil Judge Senior Division, Pune for declaration that the plaintiff, being the Public Charitable Trust, is running the hospital for charitable cause and are exempted from paying property tax under section 132(1)(b) of the Maharashtra Municipal Corporation Act. The appellant/plaintiff has also filed Appeal challenging the annual rateable value under section 406 of the Act before the Small Causes Court. The trial Court while rejecting the Application has taken into account this proceeding filed under section 406 of the Act and have considered that these are two parallel proceedings and the plaintiff has chosen two Fora for the same cause and mainly on this issue, the learned Judge has refused to grant any interim relief in favour of the plaintiff.

2. The learned senior counsel Mr. Apte has submitted that the appellant is challenging the taxability of the plaintiff-trust under section 132(1)(b) of the Act and therefore they have filed the suit in the Civil Court. They have also challenged the amount of annual rateable value in the Appeal filed before the Small Causes Court under section 406 of the Act and these are not contradictory stands or forum seeking attempt on the part of the plaintiff trust. The learned senior counsel has submitted that the appellant/plaintiff earlier have deposited an amount of Rs.75,00,000/- with the respondent-Corporation on 30th May, 2017. In support of his submission, the learned counsel relied on the ratio laid down in the judgment of **Balkrishna Dharamdas Vora vs. The Poona Municipal**

Corporation, reported in 1963 Mh. L.J. 325.

3. Per contra, the learned counsel for the respondent/Corporation has submitted that the order passed by the learned Civil Judge Senior Division is well reasoned and the learned Judge has taken into account the scope of Section 406 and the jurisdiction of the Civil Court. The learned counsel has submitted that there is no bar under section 406 to get declaration from the Court that the plaintiff is a charitable trust and hence is exempted from paying tax under section 132(1)(b) of the Act. The learned counsel has further submitted that this involves the tax issue and no injunction can be granted on the recovery of tax on the Corporation.

4. Perused the plaint, Exhibit 5 application and the order passed by the learned Civil Judge Senior Division, Pune. Perused the additional affidavit filed by Dr. Dhananjay Shrikrishna Kelkar for the appellant dated 15th November, 2017 wherein it is mentioned that the appellant-trust has paid the amount of Rs.75,00,000/- with the respondent. The appellant/plaintiff has filed the suit for declaration and injunction. The plaintiff seeks declaration pertaining to its taxability, being charitable institute/trust, whether is liable to pay tax

as levied. It is a matter of evidence. However, at this stage, the suit or application challenging the coverage under the tax is maintainable before the Civil Court. In Appeal filed under section 406 of the Act, the amount of the tax which is fixed or charged can be challenged, as it is the subject matter under section 406 of the Act. The Civil Court can pass the order of declaration as to whether a particular institute or institution is covered under the tax or is exempted under section 132(1)(b) of the Act. Considering the legal status of the plaintiff-trust, the legality of the tax which is levied and the grant of declaration further is within the jurisdiction of the Civil Court. I rely on the ratio laid down in the judgment of Division Bench of Bombay High Court in **Balkrishna Dharamdas Vora** *(supra).* While dealing with the similar issue and the jurisdiction of the Civil Court trying such issue and scope of Section 406, the Division Bench has held -

> "However, the words used in Section 406(l) of the Act, in our view, do not cover the vires of the tax or the legality of the tax which is sought to be levied. It provides for appeals against rateable value or tax fixed or charged, and, in our view, looking to the general scheme of the Act, by the words "tax fixed or charged" what was meant was the amount or quantum of tax and not the legality of the same. This view is further strengthened by Section 413 which gives finality to the rateable value fixed under the Act and the amount or the sum claimed and nothing else. Exclusion of the jurisdiction of the Civil Court is not to be lightly inferred. There is no express provision by which the jurisdiction of the Civil Court is excluded in all matters that the Commissioner may be able to decide. Moreover,

> finality is given only to decisions regarding the rateable value and the amount of tax and not to any other matter that the Commissioner may incidentally decide. It seems that the scope of the disputes that fall to be decided under the rules of assessment and in appeals under sections 406 and 411 was intended to be limited and for a good reason. There is no scope for testing the decision in any superior Courts with the result that the parties may in complicated cases suffer substantially. It seems to us, therefore, that it is always open for the Civil Court to entertain a suit where the question is one of legality of the taxation or the liability of the assessee to pay the tax."

Therefore, the order passed by the trial Court is hereby set aside.

5. The learned senior counsel has submitted that the plaintiff-trust has disputed the general tax and not the other tax, which approximately comes to Rs.63,50,691/- and therefore, the plaintiff-trust is directed to pay Rs.31,75,346/-.

6. All contentions on merits are kept open. The trial Court may endeavour to expedite the suit.

7. With this, the Appeal from Order is partly allowed. Civil Application is also accordingly disposed of.

(MRIDULA BHATKAR, J.)