IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 753 OF 2018

Mr. Jayantilal K. Bhagat and Anr. .. Petitioners

v/s.

The Tax Recovery Officer-21
Mumbai & Ors. .. Respondents

Mr. Sridharan, Senior Cousnel a/w Mr. Vachan Bodke, Ms. Madhu Hiraskar, Mr. P.S. Savla, Ms. Tanuja Bhagat i/b V & M Legal for the petitioners
Mr. Ashok Kotangle a/w Mr. Prabhakar Ranshur i/b A.K. Saxena for the respondents

CORAM : M.S. SANKLECHA &
SANDEEP K. SHINDE, J.J.

DATED : 13th MARCH, 2018.

P.C.

1. This petition primarily challenges the auction by the respondent Revenue of the attached properties scheduled to be held tomorrow i.e. on 14th March, 2018. The petitioners had earlier filed petition bearing Writ Petition No.567 of 2018 at which time, we passed the following order :-

> *1. The primary challenge in this petition is to holding of auction by the respondent – Revenue of the attached properties (for non-payment of tax) on 1st March, 2018. This without having disposed of the petitioner's objection to the attachment of properties and auction of the same. In support, our attention is also invited to the Notices dated 16th February,*

2018 and 20th February, 2018 issued by the Tax Recovery Officer calling the petitioners for a hearing in respect of the above objection, which were received after the date fixed for the hearing.

2. *Mr. Thakkar, learned Counsel appearing for the petitioners on instructions of petitioner no.2 who is present in Court states that the respondent Revenue will pay the entire cost which have been incurred by the respondent Revenue for scheduling the auction on 1st March, 2018.*

3. *Mr. Kotangle, learned Counsel for the respondent Revenue states that he would communicate the exact quantum of the costs incurred for scheduling the auction on 1st March, 2018 to the petitioners by tomorrow. The petitioners undertake to pay the same by 5th March, 2018.*

4. *Mr. Kotangle, on instructions, states that the respondent would adjourn the auction of the attached properties for a period of 2 weeks from 1st March, 2018. In the meantime, on instructions, he states that the Tax Recovery Officer would hear the petitioners (either by themselves or through authorized representatives) in respect of the two Notices dated 16th February, 2018 and 20th February, 2018 issued by the Tax Recovery Officer on 1st March, 2018 at 3.00 p.m. Mr. Thakkar, learned Counsel for the petitioner takes notice of the same and states that the petitioners shall appear tomorrow at the scheduled time. The Tax Recovery Officer shall communicate the order passed consequent to the hearing to the petitioners by 7th March, 2018.*

5. *We accept the undertaking given by the petitioners to this Court that they will pay the costs and charges incurred by the respondents for scheduling the auction on or before 5th March, 2018 subject to the respondents informing the petitioners of the costs by 1st March, 2018.*

6. In view of the above, Mr. Thakkar, does not press this petition and seeks to withdraw. Therefore, we have not examined the merits of the petition or the respondents objections to it.

> *7. The petition is disposed of as withdrawn. No order as to costs."*

8. It appears that the petitioners were thereafter heard by the Tax Recovery Officer in respect of the two Notices dated 16th February, 2018 and 20th February, 2018 on 1st March, 2018 at 3.00 p.m. The petitioners' objections that the proposed sale and the continuance of the attachment of properties belonging to the petitioners' predecessor cannot continue, was negatived by an order dated 6th March, 2018 of the Tax Recovery Officer. The order was received by the petitioners on 7th March, 2018 and in terms of Rule 86 in Schedule-II to the Income Tax Act, 1961, the petitioners preferred an appeal to the Principal Commissioner of Income Tax. The appeal is still awaiting disposal.

9. Notwithstanding the above, the respondent Revenue was proceeding with the scheduled auction on 14th March, 2018. The aforesaid conduct on the part of the respondent Revenue has led to the filing of this petition.

10. After the petition was argued for some time, Mr. Kotangle, learned Counsel for the Revenue, on instructions, states that the auction of the attached properties scheduled for tomorrow i.e.

14th March, 2018 would be cancelled. On instructions, he further states that steps for auction of the attached properties would be taken by the respondent Revenue only after the petitioners' appeal under Rule 86 Schedule II of the Act is disposed of by the Principal Commissioner of Income Tax.

11. Mr. Kotangle, learned Counsel for the Revenue, on instructions, states that the Principal Commissioner of Income Tax will hear the petitioners on its appeal dated 8th March, 2018 filed under Rule 86 Schedule II to the Act at 11.00 a.m. on 15th March, 2018. Mr. Sridharan, learned Senior Counsel for the petitioners, on instructions, states that the petitioners would attend the hearing either by themselves or through their authorized representatives and make their submissions in support of the appeal.

12. In the above view, Mr. Sridharan, learned Senior Counsel for the petitioners seeks to withdraw this petition.

13. The writ petition is disposed of as withdrawn.

(SANDEEP K. SHINDE, J.) **(M.S. SANKLECHA, J.)**