

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

REVIEW PETITION NO.33/2017
IN
WRIT PETITION NO.258/2017

Assistant Assessor & Collector “D” Ward ... Petitioners

V/s.

Cine Properties & Finance Pvt. Ltd. & Ors. ... Respondents

Mr. S. S. Pakale a/w. Ms. Pooja Yadav, Ms. Oorja Dhond, Mr. Sagar Patil for the Petitioners

Mr. M. A. Vaid I/b. M/s. Vaid Associates for Respondent No.1.

Mr. Mohd. Yunus Jusab, Director of Respondent No.1, present in court.

Mr. Himanshu B. Takke, AGP for Respondent No.2.

Mr. Bhagit AA & C, “D” Ward, present.

Mr. Paradkar, Ward Inspector, “D” Ward – present

CORAM: K.K. TATED, J.

**DATED : SEPTEMBER 7, 2018
(In Chamber at 2.30)**

P.C. :

1 Heard. After arguing for some time, both the counsel have placed on record minutes of order dated 07.09.2018. Same is taken on record and marked “X” for identification.

2 The learned counsel for the parties submit that their respective clients are present in court. Their presence is recorded.

3 The Writ Petition stands disposed of in terms of the minutes of order, which read thus:

Minutes of Order

The present Review Petition is filed by the Review Petitioner against that final order dated 07.03.2017, passed by this Hon'ble Court in Writ Petition no. 258 of 2017 filed by the present Respondents (Original Petitioners). Vide the said Order notice dated 15.12.2016 issued by Assistant Assessor and collector D Ward, Municipal Corporation of Greater Mumbai for recovery of Outstanding taxes of Rs. 45, 54,431/- as on 31.03.2016 in respect of property bearing SAC No. DX-05-0223-006-0000 situated at Padmasi Road, Dream Land Theatre, came to be set aside and Rev. Petitioners were directed to refund the sum of Rs, 25, 18, 507/- to the Original Petitioner (present Respondents) within Two weeks from the date of the Order.

In the Review Petition the Review Petitioners contended that the figure provided in the reply was a tentative figure and was subject to verification and audit and after carrying out verification and audit it was found that the refund amount due and payable to present Respondents come to Rs. 13,29,139/- and not Rs. 25, 18,507/-.

Shri. Suresh Pakale Sr. Advocate during the course of the argument on instructions informed to this Hon'ble Court that as a matter of fact the total tax amount due and payable by the present Respondents (Org. Petitioners) is Rs. 70,58,967/- and they are liable to pay the said amount with interest and penalty.

The Advocate for present Respondents could not seriously dispute this facts pleaded in the Review Petition but, pleaded that on account of pendency of the Original Petition and also the Review Petition in this Hon'ble Court, the Property Tax payable by his client from 1.10.2012 is remained to be paid to the present Petitioner. He further stated that his client is willing to pay the said amount to the present Petitioner in instalments. Finally, he also pleaded that considering the present litigation which was pending for about 2 years the interest and penalty be not charged.

On examining the averments made in the Review Petition by the respective parties and also considering the oral submissions made by the Advocates appearing for respective parties, the review Petition needs to be allowed and order dated 07.03.2017 liable to be modified with the following terms;

- a. That present Respondents (Original Petitioner) shall pay the outstanding Property Tax amount of Rs. 57,29,828/- (70, 58,967 – 13,29,139 as on 31.03.2019) in 12 equal instalments to the Review Petitioners i.e Rs. 4,77,485.70/- each month.
- b. Considering the pendency of litigation for about 2 years and particularly, the Affidavit of the Review petitioner dated 12.07.2017 the prayer of the present Respondent in claiming waiver of the interest and penalty is just and reasonable and accordingly, it is directed that the present

Respondent shall pay outstanding tax amount as provided in clause (a) above.

- c. The said Order is passed in peculiar facts and circumstances of the case and the same should not be treated as precedent. It is made further clear that if the present Respondent (Org. Petitioner) makes any single default in making payment as per clause (a) above, the Review Petitioners would be free to recover the balance amount in accordance with law including permissible interest and penalty if any.
- d. The Review Petitioners (Original Respondents) are at liberty to withdraw the amount of Rs. 25, 18, 507/- deposited on 27.03.2017 under the order dated 22.03.2017. The Prothonotary and Sr. Master is directed to refund the said amount with accrued interest to the Review Petitioners.
- e. With the above terms the Present Review Petition and Original Writ Petition stands disposed of with no order as to cost.

(K. K. TATED, J.)