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

NOTICE OF MOTION NO. 2023 OF 2017
IN
INCOME TAX APPEAL NO. 1509 OF 2015

M/s. Jayantilal Investments .. Applicants

In the matter between
M/s. Jayantilal Investments .. Appellants

v/s.
The Income Tax Officer-25(3)(2)C-11
and Ors. .. Respondent

Mr. Swapnil Bangur a/w Mr. Y.R. Shah for the applicants / orig. appellants

Mr. Tejveer Singh for the respondent

CORAM : M.S. SANKLECHA &
RIYAZ I. CHAGLA J.J.

DATED : 16th FEBRUARY, 2018.

P.C.

1. This notice of motion seeks following reliefs :-

"(a) That this Hon'ble Court be pleased to fix an early date for hearing of the above appeal;

(b) That pending the hearing and final disposal of the Appeal, the Hon'ble Court be pleased to stay the further hearing of Income Tax Appeal No.59 / 2014-15 before the respondent no.2 (i.e.) the Commissioner of Income Tax (Appeals) – 45 till further

order;

(c) That this Hon'ble Court be pleased to stay all further recovery proceedings in the matter and to direct the respondent to release the Bank Accounts of the Appellants in the Bharat Co-operative Bank Ltd., Kandivali West Branch A/c No. 001512100006761 from attachment."

2. So far as prayer clause (a) is concerned, it has already been granted by the order dated 4th December, 2015.

3. So far as prayer clause (b) is concerned, we find that the Assessing Officer has in penalty proceedings, confirmed the penalty in respect of the applicants. The applicants have thereafter filed an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. No stay of the order imposing penalty by the Assessing Officer has been granted nor has the demand of penalty been stayed.

4. Mr. Bangur, learned Counsel for the applicants is unable to tell us the quantum of penalty imposed by the order of the Assessing Officer. We are informed by Mr. Bangur that the appeal is ready for hearing before the CIT(A). In any event, mere admission of an appeal in quantum proceedings would not warrant and / or justify that the

applicant's penalty proceedings have to be stayed. Thus, prayer clause (b) cannot be granted.

5. So far as prayer clause (c) is concerned, Mr. Bangur, on instructions, informs us that the applicant's bank account was attached was attached on 23rd September, 2014 and the attachment continues till date. It is the case of the applicant that the Apex Court on 12th December, 2014 had while issuing notice in the Special Leave to Appeal (C) No. 33416/2014 filed by the petitioner, had directed the petitioner to deposit the balance of the principal amount within six weeks from 12th December, 2014. We are informed that the principal amount has been deposited in terms of the order dated 12th December, 2014 of the Supreme Court. The above Special Leave to Appeal of the applicant's was thereafter dismissed on 24th August, 2015 by the Supreme Court. However, the applicants herein were given liberty to approach this Court for early hearing of the matter. We note that the Supreme Court orders do not give any direction with regard to the lifting / vacating the attachment of the bank account either while directing the petitioner to deposit the principal amount or while dismissing the SLP. Further, we also note the fact that, as of today, penalty has already been imposed by an order of the Assessing Officer. Besides Mr. Tejveer Singh, learned

Counsel for the Revenue states that there would be interest payable on account of delayed payments of taxes. The applicants in their affidavit in support are silent about the quantum of penalty imposed by the Assessing Officer or even if any interest is payable on account of delayed payment of taxes.

6. In these circumstances, we see no reason at this stage to direct the respondent- Revenue to vacate the attachment of the bank account. More particularly, for the reason that the applicants have not made any offer to deposit with Revenue the penalty imposed in the absence of stay by the Appellate Authority or under Section 220(6) of the Act nor any offer to deposit the interest, if any, which may be payable on the delayed payment of the principal amount.

7. Accordingly, Notice of Motion is dismissed.

(RIYAZ I. CHAGLA, J.) **(M.S. SANKLECHA, J.)**