

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO. 177 OF 2021
WITH
INTERIM APPLICATION NO. 3322 OF 2019
WITH
INTERIM APPLICATION NO. 2158 OF 2022**

Ashutosh Yogesh Maneklal
Aged 41 years, Occu.: Self employed
R/at17(B-2) Woodland Apartments,
Peddar Road, Mumbai – 400 026.

...Appellant

Versus

- 1 Lina Y. Maneklal
Aged 69 years, Occu : Housewife
Residing at 17(B-1) Woodland
Apartments, Peddar Road, Mumbai –
400 026.
- 2 Madhav Maneklal
Residing at Shyam Niwas, 5B-63, 51
Bhulabhai Desai Road, Breach Candy,
Mumbai – 400 026
- 3 Surinder Singh Bagai
Occupation : Tax Consultant,
Residing at G-14, Masjid Mith, Near
Savitri Cinema, New Delhi 110048
(deleted)
- 4 Maneklal Enterprises Private Ltd.
Company,
A Private Limited Company having its
Registered Office at Manek Mahal, 7th
Floor, 90, Veer Nariman Road, Mumbai
– 400 020

...Respondents

Mr. Vineet Naik, Senior Advocate, a/w Mr. Farhan Dubash, Mr.
Anosh Sequeira, Mr. Kalpesh Mehta and Ms. Mansi
Shah, i/b Mr. Pravin Mehta, for the Appellant.
Mr. Siddesh Bhole, a/w Mr. Yakshay Chheda, i/b SSB Legal
and Advisory, for Respondent No.1
Ms. Shruti Sardesai i/b Vimadalal & Co., for Respondent
No.2.

CORAM: N. J. JAMADAR, J.

RESERVED ON: 28th MARCH, 2023

PRONOUNCED ON: 28th JUNE, 2023

JUDGMENT:-

1. This appeal is directed against an order dated 11th November, 2019 passed by the learned Judge, City Civil Court, Greater Bombay in Notice of Motion No.1182 of 2019 in SC Suit No.4321 of 2013, whereby the Notice of Motion taken out by defendant No.1 – respondent No.1 came to be allowed, *inter alia*, permitting defendant No.1 to pay the statutory dues by liquidating the fixed deposits held by M/s. Maneklal Enterprises Pvt. Ltd (“M/s. Maneklal”) - defendant No.4, with Bank of Baroda, Mumbai.

2. For the sake of convenience and clarity, the parties are hereinafter referred to in the capacity in which they are arrayed before the City Civil Court in Suit No.4321 of 2013.

3. Corporate and family disputes are intertwined. It is, therefore, necessary to note the background facts in which the appeal arises, in a little detail.

(a) Late Yogesh Maneklal was the husband of defendant No.1. The plaintiff and defendant No.2 are their sons. After the demise of Mr. Yogesh Maneklal, on 16th March, 2010, disputes

arose as different Wills of the deceased Yogesh were propounded by plaintiff and defendant No.1. Defendant No.4 M/s. Maneklal is a private limited Company. Manek Mahal situated at Veer Nariman Road, Church Gate, Mumbai, is the asset of defendant No.4 M/s. Maneklal.

(b) In the wake of dispute between the plaintiff and defendant Nos.1 and 2, the plaintiff alleges, defendant No.1, in a meeting held on 22nd November, 2013, without requisite coram, removed the plaintiff and defendant No.3, who came to be subsequently deleted, from the post of the Directors of defendant No.4 Company and instead appointed defendant No.2 as an Additional Director of defendant No.4 Company. The plaintiff thus instituted Suit No.4321 of 2013 challenging, *inter alia*, his alleged illegal removal from the directorship of defendant No.4 Company, and also to protect the financial assets of defendant No.4 from being siphoned off by defendant Nos.1 and 2.

(c) In Suit No.4231 of 2013, the plaintiff took out a Notice of Motion No.272 of 2014 seeking interim and ad-interim reliefs. As the ad-interim reliefs, by an order dated 3rd December, 2013, were not granted, to the extent sought, the plaintiff preferred Appeal from Order No.1375 of 2013. By an

order dated 20th December, 2013, this Court was persuaded to grant ad-interim relief in terms of prayer Clause f(i) of the Civil Application No.1638 of 2013 taken out in the said appeal, thereby restraining defendant Nos.1 and 2 from altering the share holding pattern and Board of Directors of defendant No.4 till the hearing and final disposal of the Notice of Motion. This Court further directed the defendants not to alter the fixed deposit/investment of defendant No.4 Company.

(d) Another suit being Suit No.2546 of 2012 was instituted by the plaintiff for administration of the assets of deceased Yogesh Maneklal.

(e) In Notice of Motion (L) No.3035 of 2012 in the administration suit, while referring the parties to mediation, this Court directed that the parties shall be entitled to carry out their business and incur expenses in the normal course.

(f) In the said administration suit, in Notice of Motion No.1551 of 2016, by an order dated 24th March, 2017 this Court permitted defendant No.4 Company to make payment of property tax and repair cess out of the funds that it had at its disposal, or if necessary, by liquidating but only to the extent necessary any investment, it holds to effect the said payment by its due date, without prejudice to the rights and contentions of

the parties and without claiming any equities. It would be suffice to note that at that stage also, the plaintiff had resisted the prayer to liquidate the fixed deposit held by defendant No.4 Company to discharge the tax liability.

(g) The aforesaid order was carried in appeal, being Appeal No.186 of 2017. The Appeal Bench purportedly upon being apprised of the aforesaid order passed by the learned Single Judge in Appeal from Order No.1375 of 2013 dated 20th December, 2013 restraining the defendants from altering the fixed deposits/investments, permitted defendant No.1 to seek clarification of the said order.

(h) Thereupon an application seeking clarification, being Civil Application No.278 of 2017, was filed by defendant No.1. The learned Single Judge disposed of the application expressing the view that no case was made out for any clarification of the order dated 20th December, 2013, based on subsequent events. Eventually the Appeal Bench, with the consent of the parties, set aside the order dated 24th March, 2017 and remitted the matter back to the learned Single Judge for deciding the Notice of Motion No.1551 of 2016 afresh.

(i) By a judgment dated 18th/19th April, 2018 in Notice of Motion (L) No.608 of 2018 in Suit No.2546 of 2012, the learned

Single Judge noted that when the order dated 24th March, 2017 was passed permitting defendant No.4 Company to liquidate the investment, the order dated 20th December, 2013 was not shown to the learned Judge. After considering the material tendered on behalf of the parties and the submissions canvassed, the learned Single Judge was persuaded to hold that there was no such change in circumstances as to warrant a variation or modification of the order dated 20th December, 2013 passed in Appeal from Order No.1375 of 2013 and thus the Notice of Motion to the extent of the prayer for liquidation of the assets of the Company to pay the statutory dues, came to be dismissed with costs.

(j) The aforesaid order was carried in appeal by defendant No.1 in Appeal No.234 of 2018. By an order dated 26th September, 2018 the Appeal Bench dismissed the appeal. The Appeal Bench, *inter alia*, observed that the learned Single Judge could not have, even otherwise, modified the order dated 20th December, 2013 passed in an independent proceedings (Appeal from Order No.1375 of 2013) by passing an interim order in Suit No.2546 of 2012 and that too after an unsuccessful attempt was made by defendant No.1 to get the order dated 20th December, 2013 modified and the order rejecting prayer for

modification or clarification had attained finality. The Appeal Bench further observed that, perhaps the only remedy available to defendant No.1 was to move the City Civil Court and pray for early hearing of the pending Notice of Motion or for vacating the ad-interim relief on the basis of the subsequent events, if any, and that the remedy adopted by defendant No.1 (in Suit No.2546 of 2012) was completely misconceived.

(k) Defendant No.1 thereupon took out Notice of Motion No.1182 of 2019 in SC Suit No.4321 of 2013 before the City Civil Court seeking expedite hearing and final disposal of Notice of Motion No.272 of 2014 and/or the suit itself and, pending the hearing and final disposal of the said Notice of Motion, a direction that a sum of Rs.1,09,48,624/-, which was then due and payable to the Municipal Corporation of Greater Mumbai (“MCGM”) towards property taxes and repair cess in respect of the Manek Mahel, be paid from and out of the fixed deposit held by defendant No.4 Company in Bank of Baroda.

(l) The learned Judge, City Civil Court, considered the prayer for ad-interim relief in terms of prayer Clause (b) and by an order dated 28th March, 2019 declined to grant ad-interim relief in terms of prayer Clause (b) seeking permission to liquidate the fixed deposit and pay municipal taxes, doubting

the very maintainability of prayer Clause (b) as the said restraint was ordered by the High Court in Appeal from Order No.1375 of 2013 by order dated 20th December, 2013, as, according to the learned Judge, it would amount to modification of the order passed by this Court as an Appellate Court.

(m) Defendant No.1 came in appeal, in Appeal from Order No.735 of 2019. By an order dated 18th September, 2019, with the consent of the parties, the appeal came to be disposed by remitting the Notice of Motion to the City Civil Court for afresh hearing on its own merits without being influenced by any of the orders passed by this Court till then. It was specifically clarified that none of the orders passed by this Court till then in the litigation between the parties would come in the way of the City Civil Court entertaining and hearing the Notice of Motion. It was further provided that the order dated 20th December, 2013 passed in Appeal from Order No.1375 of 2013 did not in any way restrict the Civil Court's jurisdiction or power to decide Notice of Motion No.1182 of 2019 on its own merits.

(n) In the meanwhile, National Company Law Tribunal ("NCLT") on an application of the petitioners in Company Petition, namely M/s. Suyash Traders, being application No.433 of 2018, (wherein allegations were made that respondent Nos.2

and 3 therein - defendant Nos.1 and 2 herein were illegally controlling the management of defendant No.4 Company and had siphoned off the funds resulting in the property taxes remaining outstanding) by an order dated 17th May, 2018, directed the petitioners and the respondents in the said petition, excluding respondent No.1 Company, to contribute Rs.5,00,000/- for making immediate payment to the MCGM. It was, *inter alia*, directed that defendant No.4 Company shall open a separate bank account, in the nature of escrow, in which the total rent, property tax, repair cess and any other amount collected should be deposited thenceforth and withdrawal should be made only upon obtaining the permission and subject to the satisfaction of the NCLT and the first charge over the amounts so collected shall be of MCGM till the outstanding dues were squared-up.

(o) In the backdrop of the aforesaid proceedings and orders, post remand, Notice of Motion No.1182 of 2019 was taken up for hearing. Defendant No.1 contended that the amounts standing to the credit of the accounts of defendant No.4 were not sufficient to meet the tax liability. A notice was served on defendant No.4 by MCGM on 9th January, 2019 levying a demand of Rs.1,09,48,628/- towards outstanding property tax

and repair cess etc. The defendant had no other go but to liquidate and utilise amounts kept in the fixed deposit. Certain allegations were made against the plaintiff of mismanagement of the affairs of defendant No.4 while the plaintiff was at the helm of the affairs and how the plaintiff had then made an effort to liquidate the investment to meet day to day expenses.

(p) The plaintiff resisted the prayer contending that since 2014 despite having collected the rent, property tax and repair cess, defendant Nos.1 and 2 committed default in timely discharge of the tax liability. The substance of the resistance of the plaintiff was that defendant Nos.1 and 2 diverted income of defendant No.4 Company, fudged the accounts and siphoned off the money. It was contended that defendant No.4 had received a sum of Rs.2,62,85,374/- under the head of property tax and repair cess from the tenants and yet did not pay the property tax to the MCGM. Having allegedly committed misappropriation and breach of trust, defendant Nos.1 and 2 were not entitled to touch the investments of defendant No.4 Company in the face of the restraint order.

(q) After appraisal of the rival contentions and submissions canvassed across the bar the learned Judge, City Civil Court, was persuaded to allow the Notice of Motion, subject

to certain conditions, primarily with a view to save the assets of the company from coercive action which MCGM would initiate upon default in payment of the property taxes. The learned Judge thus directed that the amount of statutory dues be paid out of fixed deposit held by defendant No.4 Company by demand draft/pay order/cheque and direct the defendant to deposit any amount which would be collected inclusive of rent/property tax/repair cess in the escrow account/new account opened as per the directions of the NCLT.

4. Being aggrieved the plaintiff is now in appeal.

5. I have heard Mr. Naik, the learned Senior Advocate for the appellant and Mr. Bhole, the learned Counsel for respondent No.1 – defendant No.1, at some length. The learned Counsel took the Court through the relevant pleadings and the various orders referred to above.

6. Mr. Naik, the learned Senior Advocate for the Appellant, submitted that the learned Judge, City Civil Court, completely misdirected himself in permitting the liquidation of the fixed deposits of defendant No.4 in the face of the restraint ordered by this Court by order dated 20th December, 2013 and that too without any justification. Mr. Naik urged with tenacity that despite having noted that defendant Nos.1 and 2 were in breach

of the order of NCLT to deposit the amount received towards rent, property taxes, repair cess in a separate account, which was directed to be opened, could not have lent assistance in liquidating the fixed deposit. Mr. Naik strenuously submitted that having noted, more than once, that the defendant Nos.1 and 2 were guilty of breach of the order of NCLT, the learned Judge fell in error in granting the relief on the premise that the estate of company was required to be preserved irrespective of the question as to who was at fault. Such approach vitiated the impugned order.

7. Mr. Naik would further urge that while granting an equitable relief, at an interim stage, the conduct of the parties also assumes material significance. By non-compliance of the order of the NCLT to open, and deposit the amount received in, a separate account, defendant Nos.1 and 2 had dis-entitled themselves from claiming any equitable relief. Failure to give due weight to the said circumstance renders the impugned order legally infirm. To lend support to this submission Mr. Naik placed reliance on a judgment of the Supreme Court in the case of *Gujarat Bottling Co. Ltd. and others vs. COCA COLA Co. and others*¹.

1 (1995) 5 Supreme Court Cases 545.

8. Mr. Naik also made an endeavour to take the Court through the statements of accounts of defendant No.4 to bolster up the submission that defendant Nos.1 and 2 have mis-managed affairs of defendant No.4 and siphoned off funds and were in the process of liquidating the assets of defendant No.4 on a spacious plea that the property taxes remained outstanding.

9. In contrast, Mr. Bhole, the learned Counsel for respondent No.1, would submit that there is no restraint on defendant Nos.1 and 2 in conducting the business and incur expenditure. By order dated 16th October, 2012 this Court had expressly permitted the parties to conduct the business and incur the expenditure in the normal course. Thus the order passed by this Court on 20th December, 2013 cannot be banked upon to prevent defendant Nos.1 and 2 from conducting the business. In any event, the order passed by this Court in Appeal from Order No.735 of 2019 dated 18th September, 2019 (S.C. Gupte, J.) unshackled the City Civil Court of the burden of the previous orders.

10. Mr. Bhole laid emphasis on the fact that with the consent of the parties the Notice of Motion was remitted to the City Civil Court for decision afresh without being influenced by the orders

passed by this Court, especially clarifying that the order dated 20th December, 2013 did not, in any way, restrict the City Civil Court's jurisdiction to decide the said Notice of Motion on its own merits.

11. Mr. Bhole would urge that the learned Judge, City Civil Court has, therefore, rightly exercised the discretion to permit the liquidation of the fixed deposit so as to save the asset of defendant No.4 Company from coercive action, which the default in payment would otherwise entail. Such a discretionary order, does not warrant any interference in exercise of the Appellate Jurisdiction, as the learned Judge, City Civil Court, has imposed conditions which, on the one hand, incorporate a fail-safe mechanism and, on the other hand, protect the interest of both sides, urged Mr. Bhole.

12. To draw home the point that the expenses of the operations of Manek Mahal far exceed the income, Mr. Bhole took the Court through the documents especially the statements of accounts. The allegation of misappropriation or breach of trust was thus stated to be wholly unsubstantiated.

13. Manek Mahal is indisputably a completely tenanted property. The income of defendant No.4 primarily and predominantly consists of the rent, charges and cess received

from the tenants. Evidently, defendant Nos.1 and 2 have been at the helm of affairs of defendant No.4 since the alleged ouster of the plaintiff in the year 2013. Equally, indisputable is the fact that the arrears of the property taxes have accumulated over a period of time, with a fair share of interest and penalty for delayed payment. When the order was passed in Notice of Motion No.1551 of 2016 in Suit No.2546 of 2012 the property taxes and repair cess to the tune of Rs.52,71,997/- were due. In the instant Notice of Motion, defendant No.1 claimed that a demand was levied by MCGM in the sum of Rs.1,09,48,624/-. Under the latest notice dated 24th January, 2023, the MCGM called upon defendant No.4 to pay the property tax to the tune of Rs.2,21,06,152 (with penalty) and repair cess of Rs.63,06,240/- (without penalty) within 21 days thereof (Exhibit-D to the affidavit-in-reply of respondent No.1).

14. In the light of the aforesaid facts, it becomes abundantly clear that the liability to pay the property taxes has not been diligently discharged. An endeavour has been made on behalf of defendant Nos.1 and 2 to draw home the point that the expenses exceed the income and there are huge trade receivables accumulated on account of the default on the part of the tenants to pay the rent/charges/cess. In contrast, the

plaintiff alleges the funds have been diverted to other purposes and to persons/entities, who have no concern with the affairs of defendant No.4 Company. These allegations and counter-allegations cannot be legitimately delved into in this appeal. The remit of this appeal would be to consider as to whether the City Civil Court correctly exercised the discretion to permit the liquidation of the investment of defendant No.4.

15. On first principles, defendant Nos.1 and 2, being in the management of the affairs of defendant No.4, of which the primary income is rent, charges and cess, ought to have deposited the municipal taxes and cess, as and when they fell due, on priority, and by giving precedence over other expenses. That would have been a measure of prudent business management.

16. Had the aforesaid been the only premise, on the touchstone of which the prayers in the Notice of Motion were to be decided, different considerations would have come into play. The Court may have then considered should the assets of defendant No.4 be put at risk for imprudent management? However, there is a significant intervention by NCLT.

17. The order passed by NCLT on 17th May, 2018 in the wake of the situation, which arose on account of accumulation of

arrears of property taxes, cast obligations on defendant Nos.1 and 2. The directions in Clause (i), (ii) and (iv) of the said order have a significant bearing on the prayer of defendant No.1 in the instant Notice of Motion. They read as under:

(i) That the petitioners of the main petition shall contribute Rs.5,00,000/- (five lakhs) likewise, the Respondents, barring Company the (Respondent No.1) shall contribute Rs.5,00,000/-, thus totalling Rs.10,00,000/- (ten lakhs) immediately within 24 hours without fail to make the payment to MCGM. Being aware of the fact that the parties are contesting over the rights in the Company hence it is hereby made explicit that the contribution as directed shall not create any right of any nature to either side in the Company M/s. Maniklal Enterprises. The fate of this contribution shall depend upon the outcome of the main petition.

(ii) The management of the Company shall move an application to the authorities of MCGM to grant installment for rest of the outstanding property tax. An undertaking on oath by filing an Affidavit be submitted to MCGM by the present Management. Hopefully the Ld. Authorities of MCGM shall consider the proposal judiciously and also favorable.

.....

(iv) That henceforth the first charge over the collection shall be of MCGM till the outstanding due is squared-up.

.....”

18. Having found that the income of defendant No.4 was not appropriated towards the discharge of statutory dues, in priority, defendant No.4 was directed to open a separate bank account and the total rent/property tax/repair cess/any other amount collected was to be deposited and withdrawal therefrom was also made subject to the permission and satisfaction of NCLT. It was provided in black and white that MCGM shall have

first charge over the receipt till the outstanding dues were squared-up. It is incontrovertible that the aforesaid directions were not complied with in letter and spirit. The order dated 15th February, 2019 passed by the NCLT denounced the attempt to shield the respondents from ensuring compliance of the aforesaid order.

19. It is in the aforesaid context, the manner in which the City Civil Court approached the issue deserves consideration. The learned Judge, City Civil Court, records that bills were raised on behalf of defendant No.4 under different heads i.e. property taxes/repair cess/rent. It was the responsibility of defendant No.1 to ensure that the statutory dues were deposited preferentially. The Court further noted that the direction for opening a separate bank account were not complied with by the defendants till 1st February, 2019, as noted in the order of NCLT. It went on to record that defendant No.1 did not faithfully disclose as to whether the directions of the NCLT were complied with.

20. The observations of the learned Judge, City Civil Court, in paragraphs 18 and 19 deserve to be extracted, as they also spell out the reason which weighed with the learned Judge in allowing the prayer of defendant No.1. They read as under:

“18. On perusal of the rejoinder of defendant No.1, it reveals that there is no whisper whether the compliance was done as per the order of NCLT. The learned Counsel for defendant No.1 submitted new account has been opened as per the direction NCLT but the amounts received were not deposited in the said amount. The details are not placed on record. The defendant No.1 has not given the account of the receipts since 17/05/2018 till the date and the payment of statutory dues to the MCGM This amount to deliberate suppression of the facts by defendant No.1.

19. The income of the company is from building Manek Mahal and it is required to preserve and protect the property of Maneklal Enterprises which is in short of funds to pay the statutory dues of MCGM. The reason for short fall of amount may be whatever. The argument of the Ld. Counsel for defendant No.1 is not acceptable that the plaintiff earlier desired to break the fixed deposit for payment of statutory dues. This cannot be the ground but at the same time when the court is required to balance the equity, it has to consider that the main source of the income of the company i.e. Manek Mahal building is required to be preserved. The liquid assets are of the company required to be utilized for the purpose of preserving the property of the company which is in the larger interest of the company. As the defendant No.1 has not given the details of the act done in pursuance of the order of NCLT, therefore some conditions are required to be put to make up the liquid assets of the company utilized for the purpose of payment of statutory dues. Hence, in order to save the asset of the company from coercive action of the MCGM which is in the larger interest of the company, the notice of motion is required to be considered.”

21. In the context of the aforesaid observations Mr. Naik urged, with a degree of vehemence, that the impugned order puts premium on the wrongful act of defendant Nos.1 and 2 in non-compliance of the directions of NCLT. Not only there was default in opening a separate account and crediting the amount therein but also in furnishing the details of the receipts since 17th May, 2018. And yet the City Civil Court permitted liquidation of the fixed deposits, urged Mr. Naik.

22. I find substance in the aforesaid submissions. The very *raison d'être* of the directions of the NCLT was to ensure that the amount received from the tenants towards rent, charges and cess was primarily appropriated toward the outstanding property dues. NCLT went on to provide that the outstanding property tax dues would constitute a first charge on the said receipts. The situation is accentuated by the fact that the amounts were collected from the tenants under different heads including property taxes and repair cess. If that was the case, the failure to appropriate the said amount which was collected for the specific purposes is clearly inexplicable.

23. Defendant Nos.1 and 2 neither complied with the order of the NCLT nor indicated the amount which they had received in the intervening period. In such circumstances, the learned Judge could not have condoned the lapse on the premise that whatever be reason for the shortfall of the amount to meet the demand of the property taxes, the asset of defendant No.4 was required to be protected. In the process, the learned Judge lost sight of the fact that there was a flagrant violation of the order of NCLT which was passed to ensure payment of the property taxes. In the face of such order defendant Nos.1 and 2 could not

have lawfully appropriated the receipts, without express permission of the NCLT, for any other purpose.

24. A situation where the assets of the Company were required to be liquidated to meet a statutory demand, which entails drastic consequences in the event of default, despite prudent management of the affairs of the company, stands on a different footing than a case where despite there being a specific direction by the Court or Tribunal to accumulate the receipts in a separate account and appropriate the proceeds for the discharge of such statutory liability. In the latter case, if in breach of the order of the Tribunal, the amounts are appropriated for different purposes and thereafter the assets of the company are sought to be liquidated for the discharge of the statutory dues, it would give a long leash to the persons who disobey the orders of the Court/Tribunal.

25. Mr. Naik was justified in canvassing a submission that the predicament which defendant No.4 faces is brought about by the conduct of defendant Nos.1 and 2. Such conduct must enter the judicious determination while considering the grant of an equitable relief at an interim stage. In the case of *Gujarat Bottling* (supra), the Supreme Court enunciated that while considering the grant of an equitable injunctive relief the Court

should apart from other considerations also look to the conduct of the party invoking the jurisdiction of the Court and refuse to interfere unless the conduct was unblemished. Observations of the Court in paragraphs 47 and 49 are material and hence extracted below.

“47. In this context, it would be relevant to mention that in the instant case GBC had approached the High Court for the injunction order, granted earlier, to be vacated. Under Order 39 of the Code of Civil Procedure, jurisdiction of the Court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the Court, on being approached, will apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the Court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the Court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking relief. His conduct should be fair and honest. These considerations will arise not only in respect of the person who seeks an order of injunction under Order 39 Rule 1 or Rule 2 of the Code of Civil Procedure, but also in respect of the party approaching the Court for vacating the ad-interim or temporary injunction order already granted in the pending suit or proceedings.

....

49. It is contended by Shri Nariman and, in our opinion, rightly, that the GBC, having itself acted in violation of the terms of agreement and having breached the contract, cannot legally claim that the order of injunction be vacated particularly as the GBC itself is primarily responsible for having brought about the state of things complained of by it. Since GBC has acted in an unfair and inequitable manner in its dealings with Coca Cola, there was hardly any occasion to vacate the injunction order and the order passed by the Bombay High Court cannot be interfered with not even on the ground of closure of factory, as the party responsible, prima facie, for breach of contract cannot be permitted to raise this grievance.”

(emphasis supplied)

26. I am mindful of the fact that the non-payment of the statutory dues despite their being liquid assets in the form of investment, may entail consequences of the attachment and sale of the only property of defendant No.4 i.e. Manek Mahal. Thus, to ascertain as to what was the extent of the receipt during the intervening period, respondent No.1 was directed to file an affidavit indicating the amounts received in terms of the order of NCLT dated 17th May, 2018.

27. In the additional affidavit dated 28th March, 2013 to which the audited balance-sheet of respondent No.4 from 2018-2019, 2019-2020 and 2021-2022 were annexed the following information regarding total income and expenses of respondent No.4 is furnished in a tabulated form:

Year	Income form Operations (A) + FDR & Bonds (B) = Total (in INR)	Expenses without depreciation (in INR)
2018 – 19	(40,38,624 + 11,62,067 = 52,00,691)	71,75,002.00
2019 – 20	(41,82,110 + 13,22,894 = 55,05,004)	58,33,162.00
2020 – 21	(60,94,934+12,15,456 = 73,10,390)	59,12,701.00
2021 – 22	(62,04,164+11,07,690=73,11,854)	63,43,245.00
	Trade Receivables till date	1,58,51,351.00

28. I have perused the audited balance-sheets. The revenue from operations were Rs.40,38,624/-, Rs.41,82,110/-, Rs.60,94,934/- and Rs.62,04,164/- for the year ending 31st March, 2019, 2020, 2021 and 2022, respectively. In the break-

up of the receipts, under caption 'note forming an integral part of the statements of profit and loss account', the receipts are further divided into compensation and service charges, general maintenance charges, furniture hire charges and other related charges.

29. In the face of the aforesaid statements of account, it can hardly be contested that there were receipts under the heads which were directed to be deposited in a separate account by NCLT for being appropriated towards the discharge of the tax liability, though what was the exact amount received under the heads rent/property taxes/repair cess, is not clearly discernible.

30. It would be contextually relevant to note that the table appended below paragraph 35(e) of the affidavit-in-reply of respondent No.1 shows that sums of Rs.1,16,86,036.55, Rs.1,84,43,999.00 and Rs.84,49,300.60 were deposited in the HDFC Bank account of respondent No.4 for the financial year 2018-2019, 2019-2020 and 2020-2021, respectively. It is true that defendant No.1 has indicated amount withdrawn from the said account in the respective financial years also which, by and large, match with the deposits. However, *prima facie*, it appears that defendant Nos.1 and 2 had the means and opportunity to

appropriate the amount towards the payment of the property taxes.

31. What exacerbates the situation is the default in payment of property tax and repair cess collected from the tenants post the order of NCLT. It does not seem that even post the impugned order any attempt was made to discharge a part of the tax liability, as is evident from huge tax demand of Rs.2,84,12,392/- vide notice dated 24th January, 2023.

32. Mr. Bhole attempted to salvage the position by canvassing a submission that there were other pressing demands, which necessitated the appropriation of income towards those demands. I am afraid in the face of the order of the NCLT, such submission can be readily acceded to. Had it been a case that the defendant No.1 made a clean breast and placed the entire material including the amounts which were received under the heads rent, property taxes and repair cess, before the City Civil Court and still the City Civil Court considered it appropriate to direct the liquidation of the assets of defendant No.4, to make up the shortfall, the matter could have been appreciated in a different perspective.

33. As noted above, the City Civil Court observed in no uncertain terms that neither the compliance of the order of

NCLT was ensured nor the receipts were disclosed. In this view of the matter, the impugned order which does not take into account the *prima facie* blameworthy conduct of defendant Nos.1 and 2 and non-compliance of the order of NCLT, deserves to be interfered with. The fact that the City Civil Court had directed defendant Nos.1 and 2 to comply with the directions of NCLT, after liquidation of the assets of defendant No.4 and payment of the property taxes, is of no avail in infusing legality and validity into the impugned order.

34. For the foregoing reasons, I am impelled to allow the appeal and set aside the impugned order. At the same time, the issue of payment of property taxes cannot be left unaddressed as it will entail drastic consequences qua the asset of defendant No.4.

35. Undoubtedly the property tax liability deserves to be discharged and, if need to be, the liquid assets of defendant No.4 ought to be utilized for payment of property taxes to obviate drastic consequences. However, defendant Nos.1 and 2, who have violated the order of NCLT and appropriated the amounts to other purposes must be put to terms.

36. So far as the default in remittance of the property taxes and repair cess collected from the tenants, to MCGM, there can

be no justification. Therefore, defendant Nos.1 and 2 must bring back the entire amount which has been collected from the tenants under the head of property tax and repair cess from the date of the order of NCLT. As regards the amount collected from the tenants towards the rent and appropriated by defendant Nos.1 and 2 in breach of NCLT order, in my view, defendant Nos.1 and 2 deserve to be directed to bring back 25% of the total rent collected from the date of the order of NCLT. In case, even after defendant Nos.1 and 2 bring back the aforesaid amount there remains shortfall to clear the tax liability, the fixed deposits of defendant No.4 can be liquidated and the proceeds utilized to discharge the tax liability.

37. Defendant Nos.1 and 2 also deserve the liberty to recoup the amount which they are made to deposit to discharge the tax liability out of the outstanding trade receivables and the income of defendant No.4 which may be generated. I am, therefore, inclined to pass the following order.

: O R D E R :

- (i)** The appeal stands partly allowed.
- (ii)** The impugned order dated 11th November, 2019 stands quashed and set aside.

- (iii) Defendant Nos.1, 2 and 4 shall submit on an affidavit the exact amount received from the tenants towards rent, property taxes, repair cess and other charges from 17th May, 2018 till the date of filing of the affidavit.
- (iv) Such affidavit shall be filed before the City Civil Court within a period of two weeks from today.
- (v) Defendant Nos.1 and 2 shall bring back and deposit the entire amount of property taxes and repair cess and 25% of the total rent collected from the tenants from 17th May, 2018, within four weeks of filing of the affidavit disclosing the receipts under the aforesaid heads.
- (vi) Upon aforesaid deposit being made, the City Civil Court shall ascertain if there is still a shortfall to meet the tax liability and permit defendant Nos.1 and 2 to liquidate the fixed deposits held by defendant No.4 with Bank of Baroda to the extent of the shortfall and pass consequential order as to transfer/payment of the amount to the MCGM and re-investment of the balance amount, if any, as may be required.

- (vii) Defendant Nos.1, 2 and 4 are at liberty to seek exemption from, and waiver of, penalty and/or interest on the due amount for the delayed payment or otherwise from the MCGM as permissible under the Rules.
- (viii) Defendant Nos.1 and 2 are entitled to recoup the amount which is deposited from the outstanding trade receivables, when recovered, and from the receipts/income of defendant No.4 in such installments as the City Civil Court may determine depending upon the amount deposited by defendant Nos.1 and 2 and the receipts/income of defendant No.4.
- (ix) Notice of Motion No.1182 of 2019 stands restored to the file of the learned Judge, City Civil Court, for the purpose of compliance of aforesaid directions and passing appropriate orders in terms thereof.
- (x) The hearing of Notice of Motion No.272 of 2014 stands expedited.
- (xi) In view of disposal of the appeal, interim applications do not survive and stand disposed.
- (xii) No order as to costs.

[N. J. JAMADAR, J.]