

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

SECOND APPEAL NO. 487 OF 2021

Ultratech Cement Limited

.. Appellant

vs.

Thane Municipal Corporation & Ors.

.. Respondents

...

Mr. Faizal Sayyed, i/b. Manilal Kher Ambalal & Co., for the
Appellant.

...

CORAM: SANDEEP V. MARNE, J.

DATE : 7th FEBRUARY, 2024.

P. C.:

1. The Appeal is filed challenging the judgment and order dated 19th September, 2019 passed by District Judge, Thane in Civil Appeal No. 40/ 2016. By that Court, the District Court has allowed the Appeal filed by the Thane Municipal Corporation and has set aside the judgment and decree dated 9th July, 2015 passed by the Civil Judge, Senior Division, Thane in Special Civil Suit No. 435/2011.

2. Perusal of the order passed by the District Court would indicate that the Decree of the Trial Court is held to be without jurisdiction in view of provisions of Section 406 of the Maharashtra Municipal Corporation Act, 1949 [**“the MMC Act”**]. The

Appellant/Plaintiff's grievance in Special Civil Suit No. 435/2011 was in respect of the Notices dated 8th December, 2010 and 12th December, 2011 with regard to levy of octroi duty. The Appellant/Plaintiff has remedy of preferring Appeal under Section 406 of the MMC Act against the impugned Notices. The Appellant had erroneously invoked the jurisdiction Civil Court rather than availing the remedy of filing Appeal under Section 406 of the MMC Act. The District Judge has rightly set aside the order passed by the trial Court and has returned the plaint to the Appellant/Plaintiff for presentation before the proper forum in the form of Appeal. No serious error is traced in the order passed by the District Judge.

3. Learned counsel appearing for the Appellant would submit that various findings recorded by the District Court may be cited against the Appellant/Plaintiff in the Appeal that he needs to file under Section 406 of the MMC Act.

4. In my view, once the Appellate Court holds that the Decree of the Civil Court was without jurisdiction, none of the findings recorded by the Trial Court or by the First Appellate Court on merits would have any binding effect. Therefore, nothing held by the District Court in its order dated 19th September, 2019 would come in the way of Appellant prosecuting Appeal under Section

406 of the MMC Act. No substantial question of law is involved in the Appeal.

5. The Appeal is rejected.

SANDEEP V. MARNE, J.