

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4123 OF 2025**

**SWAROOP
SHARAD
PHADKE**

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M/s. A.R.Builders,
a Partnership firm, registered under
the Indian Partnership Act,
having their address at D-5, 2nd Floor,
Manoj Co-operative Housing Society
Ltd., Prabhadevi, Mumbai – 400 025
through C.A. Gaurav Chitnis

... Petitioner

versus

1. Vipul Chandrakant Rajgor,
Age 42 years, Occu – Business
2. Paresh Chandrakant Rajgor,
Age 39 years, Occu – Business,
3. Ashit Chandrakant Rajgor,
Age 36 years, Occu – Business,
4. Leena Bharat Bhatt,
Age 32 years, Occu – Business,
All of Mumbai, Hindu Inhabitants,
having their address at 311,
Narsi Natha Street, Mumbai – 400009

5. The State Bank of India
having its office at Rajgor Chambers,
99, Surat Street, Mumbai – 400 009.

... Respondents

**WITH
WRIT PETITION (ST) NO.16410 OF 2025**

The State Bank of India
Masjid Bunder Branch,
Bhumideep Chambers, Narshi
Natha Street, Masjid Bunder (W),
Mumbai – 400 009

... Petitioner

versus

1. Vipul Chandrakant Rajgor,
Age 42 years, Occu – Business
2. Paresh Chandrakant Rajgor,
Age 39 years, Occu – Business,
3. Ashit Chandrakant Rajgor,
Age 36 years, Occu – Business,
4. Leena Bharat Bhatt,
Age 32 years, Occu – Business,
All of Mumbai, Hindu Inhabitants,
having their address at 311,
Narsi Natha Street, Mumbai – 400009
5. M/s. A.R.Builders,
a Partnership firm, registered under
the Indian Partnership Act,
having their address at D-5, 2nd Floor,
Manoj Co-operative Housing Society
Ltd., Prabhadevi, Mumbai – 400 025
through C.A. Gaurav Chitnis
6. The Brihanmumbai Mahanagarpalika (BMC),
Through the Assistant Assessor and
Collector, Property Tax Department,
B Ward, Mahapalika Building,
1st floor, Babula Tank Road,
Mumbai – 400 009. ... Respondents

Mr. Kunal Bhanage with Ms. Priyanka Acharya i/by Mr. Akshay Pawar for
Petitioners in WP No.4123 of 2025 and for Respondent No.5 in WPST
No.16410 of 2025.

Mr. Suresh Pakale, Sr. Advocate with Mr. Rakesh L. Singh, Mr. Nilesh Desai
i/by M.V.Kini and Co., for Petitioner in WP(ST) No.16410 of 2025 and for
Respondent No.5 in WP No.4123 of 2025 and

Mr. Bhavik Lalan i/by Mr. Rajesh Chheda, for Respondent No.3 in WP
No.4123 of 2025.

CORAM: N.J.JAMADAR, J.
RESERVED ON : 26 JUNE 2025
PRONOUNCED ON : 12 SEPTEMBER 2025

JUDGMENT :

1. Rule. Rule made returnable forthwith and, with the consent of the parties, heard finally at the stage of admission.

2. The Petitioners – Defendant Nos.1 and 2 assail the legality, propriety and correctness of the judgment and order dated 12 February 2025 passed by the Appellate Bench of the Court of Small Causes in Revision Application No.39 of 2023, whereby the Revision Application preferred by the Petitioner in WP No.4123 of 2025 against an order dated 18 November 2022 passed by the learned Judge, Court of Small Causes, on an application (Exh.156) in T.E.& R. Suit No.117/123 of 2002 directing the Petitioners to deposit the arrears of municipal taxes in respect of the premises consisting of the first floor and north eastern portion of the 2nd floor of the building known as Rajgor Chambers, Elphinstone Estate, Surat Street, Mumbai – 400 009 (the subject premises) from the period 1 April 2000 to 31 March 2021, came to be dismissed by affirming the said order.

3. Shorn of superfluities, the background facts necessary for the determination of these petitions, can be stated as under :

3.1 Respondent Nos.1 to 4 are the owners / landlords of the subject

premises. Under an Indenture of Lease dated 15 February 1973, the landlord gave the subject premises on lease to M/s. A.R.Builders (Defendant No.1), a partnership firm. Rent was payable at Rs.2,550/- per month and at an increased rate after the initial term of 10 years. Defendant No.1 was also liable to pay the landlord the increase in taxes payable to the Municipal Corporation.

3.2 The lessee was allowed to sublet the subject premises. Accordingly, Defendant No.1 executed an Indenture of Lease in favour of State Bank of India (SBI), Defendant No.2, on 19 October 1973. It was, inter alia, agreed that in addition to the rent and compensation, Defendant No.2 - bank would pay any increase in the taxes or new taxes which may be levied by the Municipal Corporation.

3.3 Respondent Nos.1 to 4 and their mother late Jyoti (Plaintiff No.1) instituted a suit for eviction of Defendant Nos.1 and 2, being T.E. & R. Suit No.117/123 of 2002. In the meanwhile, Defendant No.1 terminated the tenancy of Defendant No.2, and, eventually, Defendant No.2 handed over the possession of the subject premises to Defendant No.1, on 8 March 2022. The municipal taxes of the subject premises were, however, not regularly paid. A substantial amount accrued as arrears of the municipal taxes. Thus, on 28 March 2022, a warrant of attachment of the subject premises was issued by the Brihanmumbai Municipal Corporation ("BMC").

3.4 Thereupon, in the said Suit, the Plaintiffs – landlord filed an application Exh.156 seeking directions to the Defendants to deposit the arrears of outstanding municipal taxes from 1 April 2000 to 31 March 2021 along with the penalty levied thereon, aggregating to Rs.3,26,45,316/-. It was, inter alia, asserted that the defendant No.2 – bank having been in the actual possession of the subject premises, was liable to pay the arrears of taxes.

3.5 The Application was resisted by both the Defendants by controverting their liability to pay the municipal taxes under the terms of the contract and in law. The Defendant No.2 - bank contended that it had duly paid the monthly rent and taxes to Defendant No.1, in accordance with the contract with the Defendant No.1. Conversely, there was no privity of contract between the Defendant No.2 and the Plaintiffs. Therefore, it was not liable to pay the taxes.

3.6 By an order dated 18 November 2022, the learned Judge, Court of Small Causes, was persuaded to allow the application and direct the Defendant Nos.1 and 2 to deposit the arrears of municipal taxes along with penalty aggregating to Rs.3,26,45,316/-. Learned Judge was of the view that there was nothing to indicate that the alleged rent agreed to be paid to the Plaintiffs/landlords was inclusive of taxes. At any rate, the Defendant No.2 - bank was in the occupation of the premises upto the March 2022. Defendant No.2, therefore, cannot deny the liability to pay the municipal taxes in respect

of the subject premises till the date it was in the occupation thereof. Thus, both the defendants were jointly and severally liable to pay the municipal taxes.

3.7 Defendant No.1 assailed the said order passed by the learned Judge in Revision Application No.39 of 2023. The Appellate Bench of the Court of Small Causes, found no error in the order passed by the trial Court. It was noted that, indisputably, the Defendant No.2 bank was in the occupation of the subject premises for the period for which the taxes remained outstanding. Under the terms of the agreements between the parties, the lessees were liable to pay the increase in the taxes. There was substantial increase in the taxes levied by the Municipal Corporation after the bank (Defendant No.2) started banking operations in the subject premises, and, therefore, Defendant Nos.1 and 2 were liable to pay the taxes.

3.8 Being aggrieved, Defendant No.1 has preferred WP No.4123 of 2025, and the Defendant No.2 – bank has preferred WP (ST) No.16410 of 2025.

4. I have heard Mr. Kunal Bhanage, the learned Counsel for the Petitioner in WP No.4123 of 2025; Mr. Suresh Pakale, the learned Senior Advocate for the Petitioner - Bank in WP (ST) No.16410 of 2025 and Mr. Bhavim Lalan, the learned Counsel for the Respondent No.3 – Plaintiff at some length. With the assistance of the learned Counsel for the parties, I have perused the material on record.

5. The jural relationship between the parties is not in dispute. Respondent Nos.1 to 4 – Plaintiffs are the owners of the subject premises. Defendant No.1 is the lessee of the subject premises. The execution of the Indenture of Lease by the owners in favour of Defendant No.1 on 15 February 1973 is not in dispute. Nor the fact that, under the terms of the lease, the lessee was entitled to sublet the subject premises. Incontrovertibly, the defendant No.2 - bank had been in the occupation of the subject premises under the lease deeds; commencing from the Indenture of Lease dated 9 October 1973. Indisputably, the bank – Defendant No.2 vacated the subject premises in the month of March 2022. The fact that the bank was in the occupation of the subject premises for the period for which the municipal taxes remained outstanding and for the recovery of which the warrant of attachment came to be issued is also not in dispute.

6. In the backdrop of the aforesaid admitted position, the core controversy revolves around the question as to who is liable to pay the municipal taxes.

7. Mr. Bhanage, the learned Counsel for the Petitioner – Defendant No.1, would submit that the learned Judge, Court of Small Causes, was in error in directing the Defendant No.1 to pay the huge arrears of taxes along with the penalty jointly and severally with the defendant No.2 bank, when in the application (Exh.156), the Plaintiffs had categorically averred that since the Defendant No.2 - bank was in the occupation of the subject premises, the

Defendant No.2 - bank was liable to pay the taxes.

8. Taking the Court through the recitals and covenants in the Indentures of Lease executed by and between Defendant Nos.1 and 2, Mr. Bhanage would submit that the bank has unjustifiably declined to discharge its liability to pay the taxes despite clear stipulations in those documents. In any event, since the bank was in the occupation of the subject premises and had been carrying on banking business therein, the liability to pay the municipal taxes is clearly that of the bank only.

9. Mr. Suresh Pakale, learned Senior Advocate for the Petitioner in WP(ST) No.16410 of 2025 submitted that, in accordance with the terms of the modified agreement between the landlord and the Defendant No.1, the landlord was enjoined to give notice to the tenants about the increase in the taxes. However, no such notice was given. In fact, the material on record would indicate that the bank had paid the rent to the Defendant No.1 inclusive of taxes.

10. Mr. Pakale further submitted that if it could be demonstrated that the bank is liable to pay the additional amount toward taxes, which the Corporation determines, the bank is not averse to make the payment. However, in the absence of any contractual or statutory liability, the bank cannot be compelled to pay the taxes. Mr. Pakale would urge that, the primary liability to pay the taxes was that of defendant No.1. It was further submitted

that the conditions necessary to invoke the provisions contained in Section 209 of the Mumbai Municipal Corporation Act, 1888 (MMC Act, 1888), empowering the Commissioner to levy the taxes on the occupier were not fulfilled.

11. Mr. Lalan, the learned Counsel for the Plaintiffs, stoutly resisted the submissions on behalf of the Defendant Nos.1 and 2. It was urged that the defence of the bank that it was not called upon to pay the outstanding tax amount is not bonafide. Attention of the Court was invited to the communication dated 24 October 2002 addressed by the BMC to the Branch Manager, SBI (Defendant No.2) that the taxes were due from 1 April 2000 and the subject premises stood attached with effect from 18 September 2002 for non-payment of the taxes, and, thus, the bank was requested to remit a sum of Rs.18,32,550/- to avoid auction sale of the subject premises.

12. Mr. Lalan submitted that the Municipal Corporation has also furnished the bifurcation of the amounts which were recoverable from Defendant Nos.1 and 2 along with the communication dated 17 April 2025 (Annexure B to the additional Affidavit dated 21 April 2025). Mr. Lalan laid emphasis on the fact that a substantial portion of the taxes was attributable to the occupation of the premises by the bank. Therefore, no interference is warranted in the impugned order, lest the Respondents – Plaintiffs would suffer grave consequence of being divested of the ownership of the subject premises by

the auction sale for no fault on their part.

13. I have given careful consideration to the rival submissions canvassed across the bar. Before adverting to appreciate the material on record in regard to the core controversy, it may be apposite to consider the provisions which cast liability to pay the municipal taxes. Under Section 146(1) of the MMC Act, 1888, the primary responsibility to pay the property taxes shall be on the actual occupier of the premises, upon which the said taxes are assessed if such occupier holds the said premises immediately from the Government or from the Corporation or from a fazendar. In other cases, as per sub-section (2), the property taxes shall be primarily leviable on the following persons :

(2) Otherwise the said taxes shall be primarily leviable as follows, namely : -

- (a) if the premises are let, from the lessor;
- (b) if the premises are sublet, from the superior lessor;
- (c) if the premises are unlet, from the person in whom the right to let the same vests;
- (d) if the premises are held or occupied by a person who is not the owner and the whereabouts of the owner of the premises cannot be ascertained, from the holder or occupier; and
- (e) if the premises are held or developed by a developer or an attorney or any person in whatever capacity, such person may be holding the premises and in each of

whom the right to sell the same exists or is acquired, from such holder, developer, attorney or person, as the case may be :

Provided that, such holder, developer, attorney or person shall be liable until the actual sale is effected.”

14. Section 147 which deals with the apportionment of responsibility for property tax when the premises assessed are let or sublet reads as under :

“147. Apportionment of responsibility for property tax when the premises assessed are let or sublet :

(1) If any premises assessed to any property tax are let, and their rateable value [or the amount of property tax levied on the basis of capital value, as the case may be, exceeds the amount of rent payable in respect thereof to the person from whom, under the provisions of the last preceding section, the said tax is leviable, the said person shall be entitled to receive from his tenant the difference between the amount of the property tax levied from him, and the amount which would be leviable from him if the said tax were calculated on the amount of rent payable to him.

(2) If the premises are sublet and their rateable value [or the amount of property tax levied on the basis of capital value, as the case may be, exceeds the amount of rent payable in respect thereof to the tenant by his sub-tenant, or the amount of rent payable in respect thereof to a sub-tenant by the person holding under him, the said tenant shall be entitled to receive from his sub-tenant or the said sub-tenant shall be entitled to receive from the person holding under him, as the case may be, the difference between any sum recovered under this section from such tenant or sub-tenant and the amount of property tax

which would be leviable in respect of the said premises if the rateable value [or the amount of property tax levied on the basis of capital value, as the case may be, thereof were equal to the difference between the amount of rent which such tenant or sub-tenant receives and the amount of rent which he pays.

(3) Any person entitled to receive any sum under this section shall have, for the recovery thereof, the same rights and remedies as if such sum were rent payable to him by the person from whom he is entitled to receive the same.”

15. A plain reading of the aforesaid provisions would indicate that if the landlord is called upon to pay the taxes in excess of the rent he receives from the tenant, the landlord shall be entitled to receive from his tenant the difference between the amount of property tax levied from him and the amount which would be leviable from him after the said tax is calculated on the amount of rent payable to him. Under sub-section (3) of Section 147, any person entitled to receive any sum under the said section shall have, for the recovery thereof, the same rights and remedies as if such sum were rent payable to him by the person from whom he is entitled to receive the same.

16. Section 209 of the MMC Act, 1888 provides the conditions under which the occupiers may be held liable for payment of the property taxes. Section 209 falls under the sub-heading “Collection of Taxes”. Sub-section (1) of Section 209 provides that if the bill has been raised on the person primarily liable for the payment taxes, but that person does not happen to be an

occupier of the premises in respect of which the tax has fallen due, the Commissioner can serve a bill on the occupier and, thereupon, the occupier is liable to pay it. It is imperative to note that sub-section (4) of Section 209 provides that if any sum is paid by, or recovered from an occupier under the said Section, he shall be entitled to credit therefor in account with the person primarily liable for the payment of the same.

17. Keeping in view the aforesaid provisions, reverting to the facts of the case, first and foremost, it is necessary to note, what were the terms of the Indenture of Lease between the Plaintiffs – landlord and the Defendant No.1. In the Indenture of Lease dated 15 February 1973, it was, inter alia, provided that the rent was to be Rs.2,550/- from 31 March 1973 till the completion of 10 years thereof, and, thereafter, at the rate of Rs.3,550/- p.m. The said monthly rent was to be inclusive of taxes and out ongoing as also the ground rent of the said property. The agreement dated 15 February 1973, by which the said Indenture of Lease was modified, provided that if the Municipal Corporation claims or recovers from the landlord more taxes or charges than what would be payable by the landlord to such authorities or bodies on the basis of the rent provided in the said Indenture of Lease, then and, in that case, such excess shall be payable by the tenants either to landlord or to such authorities, provided the landlord shall give forthwith to the tenants intimation in writing about such claim having been made by the said authorities and an

opportunity to the tenant to dispute the same. The said agreement which modified the Indenture of Lease was executed on the day the Indenture of Lease was executed and it was in the contemplation of the parties that the lessee had already negotiated with the bank for giving the subject premises on sub-lease to the bank, and, thus, the increase in the taxes was imminent.

18. At this juncture, it is necessary to note the terms of the lease executed between the Defendant Nos.1 and 2. In the first Indenture of Lease dated 9 October 1973, in addition to the rent of Rs.6,507/- and the compensation of Rs.4,338/- p.m., the bank agreed to pay any increase in the taxes or new taxes which may be levied by the BMC, provided such increase or new taxes were specifically declared by the Municipal Corporation as being recoverable by the landlords from their tenants. The second Indenture of Lease dated 9 February 1986, categorically records that the Defendant No.2 agreed to take subject premises on lease at the rent of Rs.27,445/- p.m., **excluding rates and taxes**. The covenant that the bank will pay any increase in the rates or any new taxes which may be levied by the Municipal Corporation, also found incorporated in the said Indenture of Lease. The last Indenture of lease dated 1 February 1992 again makes the position beyond the cavil. By the said Indenture, the bank agreed to take the premises on lease for the rent of Rs.79,840/- **excluding rates and taxes**. The liability of the bank to pay any increase in the rates or new taxes was again specifically incorporated in the

lease deed.

19. In the face of these documents, the contention of the bank that the rent was inclusive of taxes is plainly against the weight of the material on record. Indisputably, Defendant No.2 was carrying on banking operations from the subject premises. Evidently, the taxes, which were originally levied in respect of the subject premises, increased substantially after the Defendant No.2 started to carry on banking business in the subject premises.

20. I find substance in the submission of Mr. Lalan that the contention of the bank that it was never called upon to pay the taxes is not bonafide. The communication dated 24 October 2002 (page 66 of the compilation of documents filed on behalf of Defendant No.1) clearly records that the bank was called upon to pay the arrears of taxes since 1 February 2002 aggregating to Rs.18,32,550/- to avoid the auction sale of the subject premises. This communication dated 24 October 2002, the receipt of which was duly acknowledged by the bank on 25 October 2002, evidences the fact that the bank – defendant No.2 was called upon to pay the taxes in its capacity as occupier of the subject premises under Section 209 of the MMC Act, 1888.

21. It would be contextually relevant to note that the bill-wise outstanding report (pages 119 to 121 of WP No.4123 of 2025) gives a complete bifurcation of the building tax and the bank tax and the penalty levied on those different

components. The bank tax far outweighs the building tax.

22. As a dispute was sought to be raised by the bank that it had already paid the rent along with the taxes, to satisfy the conscience of the Court, the Defendant No.1 was directed to place on record the documents to evidence the collection of rent from the bank and the rent receipts issued by the landlord. The receipt dated 26 February 2005 (Exh.B to the additional affidavit filed on behalf of the Petitioner in WP No.4123 of 2025) indicates that for the months of 1 April 2004 to 31 March 2005, compensation was paid @ Rs.79,840/- plus rates and taxes @ Rs.1679.94 p.m. For the corresponding period, in the bill-wise outstanding report, referred to above, the bank tax was Rs.1,00,647/- each, for the first part and second part of the financial year. In stark contrast, the bank had paid taxes at the rate of Rs.1680/- per month only.

23. As the occupier of the subject premises, the bank was, therefore, liable to pay the property tax under the terms of the contract as well as in law. Evidently, under Section 10 of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947, where the landlord was required to pay any fresh rate, cess, charges, tax or increase in rate, cess, charges, tax on the lands and building, notwithstanding anything contained in any other provisions of the said Act, but save as otherwise expressly provided in any other law for the time being in force, the landlord was entitled to make increase in the rent of

such premises, provided that the increase in rent should not exceed the amount of any such rate, cess, charges, tax.

24. A useful reference in this context can be made to a judgment of the Supreme Court in the case of **M/s. Hotel Kings and Ors. V/s. Sara Farhan Lukmani and Ors.**¹ wherein the Supreme Court held that the 'permitted increase' served as a yardstick for the landlord to increase the rent on account of payment of rates and taxes by the landlord.

25. Thus, looked at from any perspective, the primary responsibility, in the facts of the case, to pay the taxes was that of the bank. Therefore, the impugned order to the extent it makes the Defendant No.1 jointly and severally liable to pay the taxes till the period the bank was in the occupation of the premises, deserves to be interfered with. The Defendant No.2 - bank would, however, be free to enforce its remedies, against the Defendant No.1 as provided under Sections 147(3) and 209(4) of the MMC Act, 1888, if permissible in law.

26. The upshot of aforesaid discussion is that WP No.4123 of 2025 deserves to be partly allowed and WP (ST) No.16410 of 2025 deserves to be dismissed and the impugned order is required to be modified.

27. Hence, the following order :

1 (2007) 1 SCC 202

ORDER

(i) Writ Petition (St) No.16410 of 2025 stands dismissed.

(ii) Writ Petition No.4123 of 2025 stands partly allowed.

(iii) The impugned judgment and order stands modified as under :

(a) The Defendant No.2 – bank (SBI) shall deposit an amount of Rs.3,26,45,316/- with the Court of Small Causes towards the arrears of municipal taxes and penalty for the period 1 April 2000 to 31 March 2021, within a period of one month from today.

(b) It is clarified that the liability of the Defendant No.2 – bank to pay the taxes shall be co-terminus with the date of the delivery of the possession of the suit premises by the Defendant No.2 - bank to the Defendant No.1.

(c) In the event, the amount is deposited, the Plaintiff shall be entitled to withdraw the same and deposit the said amount with the BMC and furnish receipt of payment of taxes to the Court of Small Causes, Mumbai.

(d) Upon deposit of the said amount, Defendant No.2 – bank shall be entitled to institute an appropriate proceeding to recover such amount as the Defendant No.1 was liable to pay towards the taxes as provided under Sections 147(3) and 209(4) of the MMC Act,

1888.

(e) Needless to clarify that, in the event such a proceeding is instituted, it shall be decided on its own merits and in accordance with law. All contentions of all the parties shall remain open for consideration, and the observations in this order may not be construed as an expression of opinion on the said aspect of the matter.

(f) No costs.

(g) Rule made absolute to the aforesaid extent.

(N.J.JAMADAR, J.)