



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

SECOND APPEAL NO.35/2021

APPELLANT : Satish Ghewarchand Mohta
Original Plaintiff Aged about 60 years,
On R.A. Occupation : Builder and Promoter,
Prop: Aditya Developers,
R/o Nelson Square, Chhindwara Road, Nagpur.

...VERSUS...

RESPONDENTS : 1. The Oriental Insurance
Original Defendants Company Limited
On R.A. Oriental House, A-25/27, Asaf Ali Road,
New Delhi.

2. The Regional Manager,
Regional Office,
The Oriental Insurance Company Limited
S.K. Tower, 4th Floor, Nelson Square,
Chhindwara Road, Nagpur.

Mr. Anand Jaiswal, Sr. Advocate with Abhishek Kapoor and Radhika Bajaj,
Advocates for appellant
Mrs. Mrunal Naik, Advocate for respondents

CORAM : ROHIT W. JOSHI, J.

Date of reserving the order : 10/11/2025
Date of pronouncing the order : 17 /11/2025

ORDER :

1. Notice was issued in the present second appeal vide order dated 25/06/2021 on the following substantial questions of law :-

(A) Whether the lower Appellate Court was justified in interpreting Clause 23 of the lease deed (Exh.24) ?

(B) Whether the lower Appellate Court erred in arriving at a finding that the term “service tax” was not incorporated in lease-deed (Exh.24) ?

2. The present appellant is the original plaintiff, who had filed suit being Special Civil Suit No.290/2012 for recovery of amount of service tax amounting to Rs.19,30,838/- against the respondents, who are the original defendants. The appellant and respondents in this appeal will be referred to as “plaintiff and defendants” hereinafter. The said suit was decreed by the learned trial Court vide judgment and decree dated 16/11/2016. The learned trial Court directed the defendants to pay the amount of service tax to the plaintiff along with interest @ 12% per annum from the date of decision of the suit till realization of amount. Aggrieved by the aforesaid judgment, the respondents/defendants preferred an appeal being Regular Civil Appeal No.227/2018 which was allowed vide judgment and decree dated 04/09/2019. The present second appeal is preferred against the said judgment and decree passed by the learned first Appellate Court.

3. The appellant had let a property comprising of 4th floor premises in building known and styled as “S.K. Tower”, 742 Nelson Square Chhindwara road, Nagpur to the defendants under the lease-

deed dated 26/11/2008 for a period of 9 years commencing from 01/12/2008 till 30/11/2017. On the date of execution of lease-deed, service tax was not leviable to lease of immovable properties. However, service tax was made applicable to lease of immovable property vide Finance Act of 2010 which was notified on 26/02/2010 with retrospective effect from 01/06/2007.

4. Thus, service tax was leviable on the transaction of lease between plaintiff and defendants. The plaintiff has paid the service tax for the property in question and has thereafter filed suit for recovery of the same against the defendants. The contention of the plaintiff is that although service tax is not specifically referred in the agreement of lease since the same was not payable as on the date of execution of lease agreement, Clause 23 of the lease-deed makes it sufficiently clear that the liability to pay all taxes including service tax would be of the defendants/lessees. As against this, the defence of the defendants/lessees is that Clause 23 of the lease agreement refers to Municipal taxes and not other taxes. It is, therefore, contended that Clause 23 will not be applicable to service tax.

5. The bone of contention between the parties relates to interpretation of Clause 23. The substantial questions of law are also framed with respect to interpretation of Clause 23. It will therefore be

appropriate to reproduce Clause 23 of the lease-deed, which reads as under :-

“23. That the Municipal Taxes as and if levied by the Government in respect of the premises in occupation of the Lessee, as raised by the Municipal Corporation and/or the Government, as the case may be, shall be borne and paid by the Lessee for the occupied portion only. The Municipal water charges shall be borne and paid by the unit Association and such charges shall be treated alongwith maintenance charges of common areas as mentioned in clause 21 above.”

It will be pertinent to state that lease-deed dated 26/11/2008 is an admitted document.

6. Before dealing with interpretation of Clause 23, it must also be stated that Mr. Anand Jaiswal, learned Senior Advocate for the plaintiff/landlord does not dispute that in the absence of any agreement between the parties, service tax is payable by the lessor. The contention of the learned Senior Advocate is that although service tax is payable by the lessor, it is open for the parties i.e. lessor and lessee to enter into a separate agreement whereby liability to make payment of service tax can be fastened on the lessee or landlord may reserve the right to recover the same from the lessee. He has placed reliance on the judgments of the Hon'ble Supreme Court in the matter of ***Rashtriya Ispat Nigam Limited Vs. Dewan Chand Ram Saran***, reported in (2012) 5

SCC 306 and *Union of India and others Vs. Bengal Shrachi Housing Development Limited and another*, reported in *(2018) 1 SCC 311* in support of his contention.

7. Mrs. Naik, learned Advocate for the respondents/lessees does not dispute the said legal proposition that parties can by an agreement arrive at an arrangement where the lessee, who is recipient of service, shall bear the burden of service tax as against the lessor i.e. service provider.

8. In view of the above, Clause 23 of the lease-deed needs to be interpreted. Perusal of Clause 23 of the lease-deed indicates that it only refers to Municipal taxes and no other taxes. However, although reference is made only to Municipal taxes, the said words ‘Municipal taxes’ are qualified by the words, ‘as and if levied by the Government’ in respect of the premises in occupation of lessee, as raised by Municipal Corporation and/or the Government, as the case may be

9. The contention of Mr. Jaiswal, learned Senior Advocate for the appellant is that the agreement specifically refers to taxes that may be imposed by the Government. He contends that service tax is a tax imposed by the Government and as such, it is covered by Clause 23 of the lease-deed. He contends that on a holistic interpretation of the agreement, as a whole, it will be apparent that the liability to make payment of all taxes with respect to the lease was on the

defendants/lessees and not on the plaintiff/lessor. Mr. Jaiswal, learned Senior Advocate therefore contends that the learned first Appellate Court has erred in interpretation of Clause 23 of the lease-deed.

10. Per contra, Mrs. Naik, learned Advocate for the respondents would contend that Clause 23 merely refers to Municipal taxes, which obviously do not include service tax and therefore, the said clause cannot be interpreted to mean that the liability of making payment of service tax is to be borne by the defendants/lessees.

11. Perusal of Clause 23 of the lease-deed makes it is clear that it refers only to Municipal taxes and no other taxes. Perusal of Clause 23 indicates that reference to Municipal Corporation and Government is made as entities that may impose the tax. However, only Municipal tax is referred in the said clause. The said clause does not deal with any tax other than Municipal taxes. It appears that the word “Government” is included in the clause by way of abundant caution.

12. It is the cardinal principle of law that while interpreting the agreement, the Court must not add any words to the agreement, just as it cannot discard any words enumerated in the agreement. If the contention of the appellant is accepted, the words “....and any other tax” will have to be added in Clause 23, which is not permissible. As against this, the words “...as and if levied by the Government ...and/or the Government”, can be interpreted to mean that in cases where

Municipal taxes are levied by the Government, the burden of payment of the same will be on the lessee. The clause cannot be interpreted to mean that any tax other than Municipal taxes will be payable by the lessee. It must be stated that there are provisions under the erstwhile City of Nagpur Corporation Act as also in the Maharashtra Municipal Corporation Act, which provide for supersession of Municipal Corporation and taking over the control of administration thereof by the State Government. It appears that therefore the word “Government” has been incorporated in Clause 23 of the agreement.

13. It will be pertinent to state that Clause 23 specifically refers to only one tax i.e. Municipal tax and thereafter refers to two authorities i.e. the Corporation and the State Government as entities, who may impose the said tax. Clause 23 therefore cannot be interpreted to mean that the taxes other than Municipal taxes are governed by the said clause. The intention to deal with Municipal taxes only is writ large on the face of said clause and reference to Municipal Corporation and the State Government is only made as statutory authorities, who may impose the said tax.

14. In view of the aforesaid, the substantial questions of law framed in the appeal are required to be answered in favour of the respondents/defendants and against the appellant/plaintiff. The second

appeal is therefore liable to be dismissed and is accordingly dismissed with no order as to costs.

(ROHIT W. JOSHI, J.)

Wadkar