(2008) 09 GUJ CK 0064

In the Gujarat High Court

Case No : First Appeal No. 129 of 2008

AMC APPELLANT

Vs

Maxwealth Share Brocking P. Ltd. RESPONDENT

Date of Decision : 29-09-2008

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 406(2)

Citation : (2008) 09 GUJ CK 0064

Hon'ble Judges : K.M. Thaker, J;C.K. Buch, J

Bench : Division Bench

Advocate : Jirga D. Jhaveri, for the Appellant; Dharmesh V. Shah, for the Respondent

Final Decision : Allowed

Judgement

C.K. Buch, J.—We have heard Ms. Jirga D. Jhaveri, learned advocate for the appellant and Mr. Dharmesh V. Shah, learned advocate for the respondent-assessee.

2. Ahmedabad Municipal Corporation, being aggrieved and dissatisfied with the judgment and orders dated 10.10.2007 and 3.11.2007 passed below application Exs.7 and 25 respectively by the learned Presiding Judge, Small Causes Court No. 11, Ahmedabad, has filed the present First Appeal mainly on the ground that the respondent of the present appeal (assessee) was put to advantage by passing the impugned orders. The learned Presiding Judge of the Small Causes Court, Ahmedabad, permitted the assessee to continue with the appeal on depositing Rs. 60,000/- and this amount was paid by the assessee by installments seeking extension from the Presiding Judge of the Small Causes Court.

3. Grievance of the appellant-Ahmedabad Municipal Corporation before this Court is that the orders passed by the Presiding Judge of the Small Causes Court are against the statute and the learned Judge had no jurisdiction to make any

reduction in the amount otherwise payable before preferring appeal challenging the bill of tax assessed. The amount of Rs. 60,000/- ordered to be despited by the assessee with the present appellant-Municipal Corporation was much less than the amount required to be paid as per the scheme of the statute.

4. When the appellant Municipal Corporation approached this Court and prayed for stay of the orders under challenge by preferring Civil Application No. 216 of 2008, this Court passed the following order on 9.1.2008, which, accordingly to us, is relevant for disposal of the present appeal:

Learned Counsel for the appellant submits that the total outstanding is Rs. 3,47,220/- against which respondent has deposited only Rs. 60,000/-. Counsel for the appellant further submits that proviso contained under clause (e) Sub-section (2) of Section 406 of the Bombay Provincial Municipal Corporations Act, 1949 requires that the authority concerned in appeal should not dispense with the required deposit more than 25% of the total dues, and here in the appeal, the amount is more than that.

5. Indisputably, 75% of the total outstanding amount was required to be deposited by the assessee and, according to Mr. Dharmesh V. Shah, only Rs. 80,000/- have been deposited by the assessee in the Small Causes Court, which is much less than the amount required to be deposited by the assessee as per the statute.

6. Having considered the submissions made by the learned Counsel appearing for the parties, we are in agreement with the say of the appellant Municipal Corporation that the orders passed by the learned Presiding Judge of the Small Causes Court directing the assessee to deposit Rs. 60,000/- towards tax due is bad. It also appears that there was no need or authority to reduce the amount payable by the assessee- respondent herein for challenging the bill of tax assessed. Therefore the appeal is required to be allowed at the admission stage by quashing and setting aside the impugned orders.

7. The appeal is accordingly allowed with no order as to costs. The orders dated 10.10.2007 and 3.11.2007 passed by the learned Judge, Small Causes Court No. 11, Ahmedabad, below application Exhs.7 and 25 respectively in Municipal Valuation Appeal No. 135 of 2007 which are under challenge in this appeal are quashed and set aside.

8. However, while parting with the order, we may observe that if the respondent-assessee deposits 75% of the total outstanding amount, then, after giving reasonable opportunity to the respondent- assessee, the Small Causes Court may hear and decide the appeal on merit. If the amount, as aforesaid, is not deposited within 30 days from the receipt of the writ of this Court, the learned Presiding Judge of the Small Causes Court, Ahmedabad, before whom the appeal is pending, may pass appropriate orders as to disposal of the appeal.

