

BRIHANUMUMBAI MAHANAGAR PALIKA & ANR. A

v.

AKUTI NIRMAN PVT. LTD. & ANR.

(Civil Appeal No. 620 of 2008)

JANUARY 23, 2008 B

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Mumbai Municipal Corporation Act, 1888 – s. 217 – First appeal – Allowed by High Court – On appeal, held: Order of High Court was non-reasoned – Such disposal of first appeal is not permissible – Hence matter remitted to High Court. C

Appellant refused to entertain the complaint of the respondents and to confirm rateable value. Respondent filed appeal u/s 217 of Mumbai Municipal Corporation Act, 1888. The appeal was allowed by High Court. D

In appeal to this court, appellant questioned the judgment of High Court on the ground that it was non-reasoned.

Allowing the appeal and remitting the matter to High Court, the Court E

HELD: Various contentious pleas were raised in the appeal under Mumbai Municipal Corporation Act, 1888. The High Court ought to have analysed the factual position in the background of principles of law involved and then to decide the appeal. That has not been done. After making detailed reference to the arguments and contentions raised, abrupt conclusions were arrived at by the High Court. That is not a proper way to dispose of the first appeal. Hence the matter is remitted to High Court for fresh consideration on merit in accordance with law. F
[Paras 5, 6 and 7] [1119-G, H; 1120-A-B] G

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 620 of 2008.

A From the final Judgment and Order dated 11.4.2005 of the High Court of Judicature at Bombay in First Appeal No. 1095 of 2000.

Shweta Mazmudar, Atul Y. Chitale and Mrs. Suchitra Atul Chitale for the Appellants.

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Indu Malhotra, Shashi M. Kapila and Vikas Mehta for the Respondents.

The Judgment of the Court was delivered by

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Dr. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the order passed by a learned Single Judge of the Bombay High Court allowing the appeal filed by the respondents. The appeal was filed by the respondents challenging the order passed by learned Additional

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Chief Judge of Small Causes Court dated 31.3.2000 in Municipal Appeal No. 19 of 2000 under Section 217 of the Mumbai Municipal Corporation Act, 1888 (in short the 'Act'). In the appeal, the order of assessment passed by the present appellants was under challenge. The order of the appellants

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related to refusal to entertain the complaint of the respondents and confirmation of rateable value.

3. Though many points were urged in support of the appeal, the main plank of the argument of learned counsel for the appellants was that the High Court has not applied its mind to various points urged and after noting the submissions came to abrupt conclusions. In other words it is submitted the judgment is practically non-reasoned.

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4. Learned counsel for the respondents on the other hand said that though elaborate analysis have not been made, yet the conclusions have been arrived at after noting the submissions.

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5. It is to be noted that various contentious pleas were raised in the appeal. The High Court ought to have analysed the factual position in the background of principles of law involved

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and then to decide the appeal. That has not been done. A

6. It is to be noted that after making detailed reference to the arguments and contentions raised, abrupt conclusions were arrived at by the High Court. That is not a proper way to dispose of the first appeal. B

7. In the circumstances without expressing any opinion on the merits of the case, we set aside the impugned judgment of the High Court and remit the matter to it for fresh consideration on merit in accordance with law. C

8. The appeal is allowed to the aforesaid extent without any order as to costs. C

K.K.T.

Appeal allowed.