

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.**ORDINARY ORIGINAL CIVIL JURISDICTION****WRIT PETITION LODGING NO.2418 OF 2012**

Kishore Bhanji Somaiya ..Petitioner

Versus

1.The Chief Secretary to the
Government of Maharashtra & Ors....Respondents.

Mr. Mathews J. Nedumpara with Ms. Rohini M. Amin for the
Petitioner.

Mr. P.G. Lad, AGP for State.

Ms. Sharmila Modle for B.M.C.

**CORAM: MOHIT S. SHAH, C.J. &
N.M. JAMDAR, J.**

DATE : 06 November 2012.

P.C.

Leave to replace Exhibit "A" by legible annexure.

2. The learned counsel for the petitioner states that Advocate's notice of this writ petition has been served upon all the respondents, but respondent No.4 has refused to accept the service of the said notice. All other respondents have accepted service. Learned counsel further states that the affidavit of service will be filed in the course of the day.

2. The petitioner's grievance is that the petitioner's tenant (respondent No.4 herein) is paying standard rent of Rs.,184.92 paise per month and is recovering the monthly rent of Rs.2,32,122/- from the sub-tenant i.e. Mahanagar Cooperative Bank Ltd.(respondent No.5 herein). The Municipal Corporation of Greater Mumbai has been raising bills for property taxes for the premises in question. In

spite of the liability to pay the municipal taxes the tenant is not paying the municipal taxes and, therefore, the Municipal Corporation has resorted to coercive recovery by putting the property to auction. Our attention is invited to the orders passed by the Small Causes Court, Mumbai in the proceedings between the Writ Petitioner and the tenant. In R.A.N. Application No.20/SR of 2004 by order dated 29 July 2011 the Small Causes Court has fixed the standard rent of the premises in question at Rs.184.02 paise per month and also the tenant has been directed to pay the writ petitioner-landlord the amount of property tax and repair cess payable to the Municipal Corporation of Greater Mumbai (Exhibit "G" pages 102-103). Our attention is also invited to the order dated 13 December 2011 of the Small Causes Court below Exhibit 94 in the suit filed by the writ petitioner being R.A.E. 953/1652/2001 wherein the Small Causes Court has directed the defendant No.1-Prabhakar Narayan Kawad (i.e. the tenant respondent No.4 herein) to pay the property tax and repair cess collectively Rs.60,84,312/- for the period between April 2005 to September 2011. The learned counsel for the petitioner states that in spite of the above directions the tenant has not paid any property tax either to the writ petitioner or to the Municipal Corporation and, therefore, the Municipal Corporation is proceeding to make coercive recovery by auctioning the property in question.

3. Having considered the above submissions, the following order is passed:-

- (i) Notice to the respondents, returnable on 10 December 2012.
- (ii) Mr.Lad, learned AGP waives service of notice for respondent No.1 and Ms. Sharmila Modle waives service of notice for respondent Nos.2 and 3.

- (iii) Respondent Nos.5 to 7 are directed to pay the monthly rent payable by them in respect of the premises at Ground Floor, Kasturi Building, 9/11, Hormusji Street, Colaba, Mumbai-400 005 admeasuring about 800 sq.ft. otherwise payable by them to respondent No.4- Prabhakar Narayan Kawad directly to the Municipal Corporation. The amount which the respondent No.5 bank will be paying, shall be adjusted by the Municipal Corporation against the arrears of the property tax and repair cess, till further orders.
- (iv) In view of the above direction there shall be ad-interim stay against the auction of the above property by the Municipal Corporation.

CHIEF JUSTICE

(N.M. JAMDAR, J.)