

**IN THE COURT OF SMALL CAUSES, MUMBAI**

**ORDER BELOW EXHIBIT NO.54**

**IN**

**L.C. SUIT NO. 210/249 OF 2013**

New India Assurance Company Limited ]...Plaintiff.

V/s.

Edelweiss Financial Services Limited ]  
(Formerly known as Edelweiss Capital Limited) ]... Defendant.

Navdeep Vora & Associates, Ld. Advocate for the Plaintiff.  
DUA Associates, Advocate for Defendant.

**Coram :- Shri S. A. Gawai, Judge**

**C. R. No.20**

**Date : 03/03/2022**

**ORAL ORDER**

This is an application for staying the suit till the final disposal of the SLP. The application was strongly opposed by the plaintiff by filing reply (Ex.64). Read the application and the reply. Went through the record of the reply. Heard the Ld. Advocates for the respective parties at sufficient length.

2. The defendant contends that, the plaintiff has made claim for the property taxes for the period of 2007 to 2012. The notices issued by the Mumbai Municipal Corporation (for short 'the MMC') for fixing the rateable value of the suit premises were not communicated to the defendants by the plaintiff. Therefore, they could not lodge objection as regards to the taxes before the MMC.

3. The plaintiff has admitted that, they did not contest the process of fixing rateable value and even after fixation of the same did it not challenge before the competent court. Subsequently, objections raised by the defendant was rejected by the MMC. Therefore, it filed Writ Petition (WP) before the Hon'ble High Court. The said WP was disposed off by the order dated 13/06/2012 and the matter was remanded for fresh consideration to the Assistant Assessor and Collector u/s.217 of the MMC Act. The MMC has filed appeal to the Hon'ble Supreme Court against the order. It was dismissed in the year 2013.

4. In spite of the directions of the Hon'ble High Court, the municipal council did not give hearing and finalized the rateable value of the suit premises. The said order was challenged by defendants in the Municipal Appeal and the same is pending for disposal. In view of the disposal of the complaint in the year 2020, the rateable value of the suit premises had not been crystallized for the period of 2008 to 2010. The system of fixation of rateable value was substituted to capital value system for levy and collection of property taxes w.e.f. 01/04/2010. The said system was brought in to effect in year 2012.

5. After implementation of the capital value rules 2010 the municipal corporation issued notices to the rate payers along with property taxes payable. However, the plaintiffs did not intimate about the same to the defendants. The tax payers filed several WPs and challenged the rules of capital value. Those WPs were disposed of in

the year 2019. The said order challenged by the municipal corporation before the Hon'ble Supreme Court. Thus, the claim made by the plaintiff as to assessment of the dues cannot be said to be final and the plaintiff's claim can not be decided till the disposal of the SLP pending before the Hon'ble Apex Court. Therefore, it prayed to stay to the further proceeding.

6. On the other hand, the plaintiff contends that, it had to substitute its three witnesses as they retired from the service. The defendant wants to delay the disposal of the present suit. Therefore, it filed several applications. The liability to pay the property taxes arose out of the agreement of leave and license dated 31/12/2007. The plaintiff being the owner is bound to pay the municipal taxes of the suit property. It made representations to the MMC and got some rebate in the property taxes. The defendant being a temporary licensee has no right to contest the property taxes and it cannot dictate the terms to the plaintiff in relation to the payment of taxes. It is bound to pay the payment of the taxes as per the terms of the agreement.

7. The plaintiff contends that, the defendant is liable for the payment of the property taxes under the contract. The plaintiff already paid the municipal taxes of the suit premises with interest for the license period. The same can be considered by this court while passing the decree. According to the plaintiff, the defendant has no case for staying the suit. Therefore, it prayed to reject the application.

8. Having heard, I went through record of the case. The present suit was filed by the plaintiff for recovery of unpaid arrears of the municipal taxes of the suit property from the defendant. The defendant being the licensee was bound to pay the property taxes regarding the suit property. Whereas, according to the defendant, the system of rateable value was changed to capital value and the assessment of the taxes for the suit property are under challenged in the SLP. Therefore, according to him, the present matter needs to be stayed.

9. It is not in dispute that, the defendant was the licensee in the suit property and as per the agreement it was bound to pay the municipal taxes for the license period. The suit is filed for recovery of the amount of the said taxes from the defendant. The suit old one and is pending since long for evidence. If the defendant succeeds in getting the relief from the Hon'ble Apex Court and amount payable by him is reduced, he can claim refund of the same from the plaintiff. In the circumstances, I do not find substance in the application and it is liable to be rejected. Hence, I pass the following order;

**ORDER**

1. The application is rejected.
2. Costs in cause.

Sd/-

Mumbai  
Date : 03/03/2022

(S. A. Gawai)  
Judge, C. R. No.20