

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.71 OF 2006

WITH

CIVIL APPLICATION NO.92 OF 2006

M/s.Anand Cinema & Ors. ..Appellants.

V/s.

Thane Municipal Corpn. & Ors. ..Respondents.

Ms.Nita Mandhyani i/b S.M.Associates for appellants.

Mr.R.S.Apte for Respondent Nos. 1 and 2.

CORAM: A.M.KHANWILKAR,J

DATE : JANUARY 31, 2006.

P.C. :

1. Heard counsel for the parties.

2. The principal grievance of the appellants seems to be that after the demand notice was issued by the respondent corporation, the appellants have filed complaint/representation before the appropriate authority. However, as that complaint/representation remained undisposed and instead the Corporation precipitated the matter on the basis of demand notice, the appellants had no option but to invoke remedy of suit being City Civil Suit No.262 of 2004. According to the counsel for the appellants, the entire controversy can be resolved if the appropriate

authorities were to decide the complaint/representation filed by the appellants before it. In case, the representation was to be decided against the appellants, the appellants can take recourse to remedy of statutory appeal.

3. Counsel for the appellants fairly accepts that in that case appellants will have to abide by the statutory requirement of predeposit to pursue their remedy of appeal. If such course is adopted, nothing survives for consideration in the suit and appellants will require to withdraw the suit as filed before the lower court.

4. Having considered rival submissions, I find substance in the stand taken by the appellants. In the circumstances, the respondents are directed to ensure that the complaint/representation filed before the appropriate authority pursuant to demand notice received by them be decided expeditiously, preferably within four weeks from today.

5. Counsel appearing for the respondent corporation assures that this direction will be complied within time.

6. In case, the representation is decided against the appellants, the appellants may take recourse to remedy of appeal subject to complying with the requirement of pre-deposit and any other obligations as per the statute to enable them to pursue the remedy of appeal.

7. For the time being, the respondent shall not take any precipitative steps against the appellants for a period of six weeks from today.

8. The court has also accepted the assurance given by the appellants that the appellants will take steps to withdraw the suit pending before the lower court as they have chosen to pursue the remedy of complaint and later on statutory appeal against the demand notice. That assurance is accepted.

9. If the appellants do not take initiative to withdraw the suit, it will be open to the respondent to bring to the notice of the trial court the contents of this order for passing necessary order after giving notice to the appellants.

10. Appeal as well as civil application disposed of on the above observations.