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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 1213/2020 and CM APPL. Nos.4054-55/2020, CAV.
100/2020

SOUTH DELHI MUNICIPAL CORPORATION..... Petitioner

Through Ms.Madhu Tewatia and Mr.Adhirath
Singh, Advs.

versus

DELHI CARGO SERVICE CENTRE PVT. LTD..... Respondent

Through Mr.Sudhir Nandrajog, Sr. Adv. with
Mr.Hardik Luthra, Mr.Navin Raheja and
Mr.Abhishek Shukla, Advs.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **31.01.2020**

1. This writ petition is filed by the petitioner seeking to impugn the order dated 21.01.2020 passed by the Municipal Taxation Tribunal.
2. The respondent pursuant to an assessment order dated 04.12.2019 filed an appeal before the said Municipal Taxation Tribunal on 10.01.2020. The appeal was listed on 23.01.2020. The respondent thereafter on 17.01.2020 filed an application for early hearing/interim orders. This application was listed on 20.01.20. Notice was issued to the petitioner for 21.01.2020. On 21.01.2020, as none appeared for the petitioner despite service, a direction was issued to the petitioner not to take any coercive action including action on the Distress Warrant dated 20.01.2020. The following directions were also passed by the Tribunal:-

“Ld.counsel for the Appellant inform that they have filed reply to the show-cause notice and the SDMC has yet to decide their

reply. Ld.Counsel, also inform that a Distress Warrant issued by the Respondent/SDMC has been received by the Appellant today around 12.30 P.M.

It is apparent that none has appeared for the respondent today despite due service of notice, as the intention is to attach the account of the appellant, despite having the knowledge that the appeal has been filed before this Tribunal. The malafides on the part of the respondent/SDMC are crystal clear.”

3. I have heard learned counsel for the petitioner and learned senior counsel for the respondent.

4. Learned counsel for the petitioner Ms.Madhu Tewatia has urged that in this case, the petitioner had no knowledge of the appeal having being filed by the respondent when Warrant of Distress was issued on 20.01.2020. It is accepted that the notice was received on 21.01.2020 of the application filed by the respondent. However, it is pleaded that the procedure in the office of the petitioner being such that the concerned Department received the copy of the notice of the application only late in the evening after the hearing on 21.01.2020 had already been completed. It is pleaded that the petitioner were not aware about the hearing on 21.01.2020 when the matter was taken up by the court. It is stated that the conclusion in the said order that the petitioner have acted malafidely is unfair inasmuch as it has been passed without the petitioner being informed of the said hearing.

5. Ms.Madhu Tewatia, learned counsel for the petitioner further submits that even otherwise, the Tribunal could not have passed the interim order staying the Distress Warrants in view of the judgment of the Supreme Court in the case of *Shyam Kisore & Ors. vs. Municipal Corporation of Delhi* , (1993) 1 SCC 22 and other judgments.

6. As far as the second plea is concerned, the matter is fixed before the Tribunal on 18.02.2020. It is agreed by the learned counsel for the petitioner and learned senior counsel for the respondent that neither of the parties would seek an adjournment before the Tribunal on that date. The Tribunal is requested to look into the issues raised by the parties expeditiously.

7. As far as the first plea of the learned counsel for the petitioner is concerned, namely, attribution of malafides on the petitioner, in my opinion, it is appropriate that such observations and conclusions are recorded only after an appropriate hearing.

8. As the petitioner has given justifiable reason for their absence on 21.01.2020, it would be in the interest of justice that the conclusion of malafide on the part of the petitioner as stated in the impugned order is deleted from the said order. Accordingly, the said conclusion of the order stands deleted.

9. This order is passed without prejudice to the rights and contentions of the parties.

10. The petition stands disposed of. Pending applications also stand disposed of.

JAYANT NATH, J

JANUARY 31, 2020

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