03. 06.09.2022
Ct. No.6
Tanmoy

M.A.T. 308 of 2020

The Kolkata Municipal Corporation & Ors.
-Versus-
Smt. Snehalata Khag & Ors.

With
IA No: C.A.N. 1 of 2021
With
IA No: C.A.N. 2 of 2021

Mr. Biswajit Mukherjee, Adv.,
Mr. Fazlul Haque, Adv.

...for the appellants.

Mr. Pralay Kar, Adv.,
Ms. Debasree Dhamali, Adv.,
Ms. Riya Ghosh, Adv.

...for the respondent Bank.

In Re: IA No: C.A.N. 1 of 2021

This is an application for condonation of delay of one (1) day in filing the appeal, as noted by the Stamp Reporter. Causes shown being sufficient, the delay is condoned. The application being IA No: C.A.N. 1 of 2021 in M.A.T. 308 of 2020 is disposed of.

In Re: M.A.T. 308 of 2020
With
IA No: C.A.N. 2 of 2021

By consent of the parties, the appeal and the connected application are taken up together for hearing.

This appeal is directed against a judgment and order dated January 7, 2020, whereby W.P. No. 4961(W) of 2019 was disposed of by a learned Single Judge.

During pendency of the appeal, the respondent no.1, writ petitioner, has passed away. Learned Advocate for the appellant Kolkata Municipal Corporation (K.M.C.) says that repeated efforts have been made to gather the particulars of the legal heirs of the respondent no.1/writ petitioner so that such persons can be brought on record in the place and stead of the deceased respondent no.1. However, the efforts have failed. Notices sent to the last known address of the respondent no.1, have not been responded to.

We have gone through the order under appeal. It may not be necessary to bring on record the legal heirs of the respondent no.1 since we are not inclined to interfere with the order under appeal for the reasons stated hereafter.

The respondent no.1/writ petitioner had approached the learned Single Judge challenging a demand for arrear property tax. An amount of approximately Rs.61 lakhs was claimed by K.M.C.

The learned Judge noticed that a Receiver has been appointed by a civil Court in respect of the concerned property and there was a legal question as to whether or not K.M.C. could attach the rent from the property without obtaining leave from the civil Court. However, the learned Judge observed that, that legal question need not be gone into. The demand notice on the face of it is devoid of necessary particulars and is vague. It also appears that the writ petitioner was not granted an opportunity of putting her case before the Competent Authority in the Corporation. The learned Judge finally held as follows:-

> *"However, it is not necessary to decide whether the Corporation can enforce its notice of attachment of rent without having obtained leave from the Court, which appointed receiver over the property, in respect of which there are arrear rates and taxes due to it. Impugned notice does not even mention the quarters, in respect of which the outstanding is claimed at in excess of Rs.61 lakhs. Court in good conscience cannot sustain such a notice in view of aforesaid disclosures regarding payment of taxes up to December, 2009 and receipt produced for payment of rate and tax against 4th quarter 2017-2018. As such, impugned notice for attachment of rent is set aside. The Corporation is at liberty to move in accordance with law, to recover its arrear rates and taxes. Court has noticed absence of respondent / bank. Court adversely presumes against said respondent as having caused this situation of rates and taxes having accumulated in arrears, if at all. Petitioner will obtain and serve a copy of this on respondent / bank who is directed to forthwith make upto date payment on rents etc. to petitioner, acting in capacity of receiver, to enable her to ascertain from the Corporation, its outstanding and liquidate the same, under protest or without prejudice, if need be."*

We have heard learned Counsel for the parties. We see no apparent infirmity in the order under challenge. It is not that the demand of the Corporation has been nullified by the learned Single Judge. Being of the opinion, that the demand notice is not sufficiently specific and does not contain necessary particulars, the learned Judge quashed the notice, reserving liberty to the Corporation to proceed in accordance with law for recovery of arrear property tax, if any. We see no reason to interfere with the order under appeal. The same is affirmed.

The appeal being M.A.T. 308 of 2020 and the connected application being IA No: C.A.N. 2 of 2021 are accordingly dismissed.

Let urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with all necessary formalities.

(Apurba Sinha Ray, J.) **(Arijit Banerjee, J.)**