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11-12-2023
(Ct. no.06)
debajyoti

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

FMA 522 of 2020
+
IA NO:CAN/1/2019 (Old No:CAN/10937/2019)

Punjab National Bank
Vs.
The Kolkata Municipal Corporation & Ors.

Mr. Md. Nasiruddin,
Mr. Md. Rahman,
Mr. Md. Janbazuddin
… For the Appellant.

Mr. Biswajit Mukherjee,
Ms. Tanushree Das Gupta
… For Kolkata Municipal Corporation.

Mr. Chayan Gupta,
Mr. Viswarup Acharyya
… For Respondent Nos.4 & 5.

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

A judgment and order dated August 02, 2019, whereby the writ petition of the respondent nos.4 and 5 herein being W.P. No.1879(W) of 2019, was disposed of by a learned Judge of this Court, is the subject matter of challenge in this appeal. The appeal was filed by Oriental Bank of Commerce, which subsequently amalgamated with Punjab National Bank (in short “the Bank”).

The Bank was in occupation of a portion of a building as lessee under the respondent no.4 herein. It appears that Property Tax fell due in respect of the building in question. Kolkata Municipal Corporation (in short “KMC”) issued a notice attaching the rent payable by the Bank to the landlords/owners. Assailing such notice, the respondent nos.4 and 5 herein, as the owners, approached the learned Single Judge.

When the matter was first moved, an order dated January 31, 2019 was passed by a learned Judge, relevant portion whereof reads as follows:-

> “ In such circumstances, the petitioner, bank and corporation authorities will have a joint meeting in which, the respondent no.3 will apportion the respective liability between the petitioner, bank, other occupants if there be any in the building. The petitioner and the bank are at liberty to inform the respondent nos.3 of the occupants of the building, the respective areas of their occupation and the rent/occupation charges such persons pay.
>
> The Court is informed that, apportionment has since been done. This order will not prevent the respondent no.3 to revisit such apportionment afresh or to accept the existing apportionment if it is justified.
>
> There are amounts lying in the suspense account of the corporation. Immediately upon apportionment being completed, corporation will adjust the amount lying in the suspense account with the liability of the respective parties, in accordance with law.
>
> Corporation will also adjust any other amount received by it from any person on account of attachment or otherwise towards property tax. ”

Pursuant to the aforesaid order, the Assessor-Collector (North), KMC, held a joint meeting which was attended by the respondent nos.4 and 5/writ petitioners and the Bank Authorities. An order dated

March 27, 2019 was passed by the Assessor-Collector, the operative portion whereof reads as follows:-

> " So, as per LOI dt.25-03-19, outstanding dues payable by Bank-
>
> Principal Rs.1,57,40,625/- out of Rs.1,82,22,105/-
>
> Interest Rs.2,66,43,864.71 out of Rs.3,03,50,146.54
>
> Penalty Rs.23,61,095.75 out of Rs.27,33,315.75
>
> Total payable amount of Bank is Rs.4,47,45,586/- and that of owner is Rs.65,59,985/-.
>
> After deducting the S/A already deposited by Bank i.e. Rs.1,56,84,108/- in total wef 15-11-2003 upto 05-03-2019 the net payable amount of Bank as on date towards the existing outstanding dues of the premises is Rs.2,90,61,478/- and net payable amount of owner as on date is Rs.65,54,985/- after deducting balance S/A i.e. Rs.5000/- deposit dt.01-09-1983.
>
> In this connection, it is pertinent to mention that as per submission of the Bank authorities, they had paid a sum of Rs.37,03,788/-, through 7 (Seven) paid up receipts (original not submitted) against some specific quarters of bills i.e. wef.2/91-92 to 1/99-00. Since the said payment was made against direct bills which are not reflecting as outstanding dues in the list of arrear (unpaid) bills, there is hardly any scope to give credit of the said payments specifically to the Bank only for calculation of their prorata share of liabilities of property tax. "

Subsequently, when the matter came up for final disposal, another learned Judge passed the impugned judgment and order, the operative portion whereof reads as follows:-

> " Be that as it may, I direct the respondent Bank to make payment of the

> balance amount of Rs.2,90,61,478/- to the suspense account of the Corporation within six weeks from today.
>
> If such amount is paid within the time as indicated above, then the Chief Manager, Revenue (North), Kolkata Municipal Corporation shall give hearing to the respondent, Bank or its authorised representative and will pass a reasoned order within two weeks and thereafter communicate the decision to the parties within one week.
>
> Needless to mention, parties are at liberty to produce all the documents pertaining to the issue in question at the time of hearing.
>
> The Chief Manager, Revenue (North), Kolkata is directed to consider those documents at the time of taking decision.
>
> Further needless to mention, if the Bank fails to deposit the entire balance amount within the stipulated time as indicated above, then the Corporation is at liberty to realise that amount from the respondent Bank in accordance with law. ”

Being aggrieved, the Bank has come up by way of this appeal.

Learned advocate, representing the Bank, says that the Assessor-Collector has imposed substantial penalty and interest on the Bank. The Bank was not at fault at any point of time. Apportionment of Property Tax liability had not been made. Even then, to show its bonafides, the Bank went on depositing moneys in its Suspense Account maintained by KMC. The learned Single Judge should not have directed the Bank to pay the amount of Rs.2,90,61,478/- to KMC as a pre-condition for the Chief Manager, Revenue (North), KMC, granting a hearing to the Bank. However, learned advocate, on instructions, says that the Bank is prepared to deposit 50% of the aforesaid amount, without prejudice to its rights and contentions. Upon such deposit, the Chief Manager, Revenue (North), KMC, should give a hearing to the Bank and revisit the issue of the Bank's share of Property Tax liability.

Mr. Mukherjee, learned advocate for KMC, says that there is no infirmity in the order under appeal. The penalty and interest has been imposed for good reason and in accordance with law. No leniency should be shown to the Bank. It is not that the Bank does not have the money. KMC shall comply with the learned Judge's order if the Bank complies with the order.

Mr. Gupta, learned advocate appearing for the respondent nos.4 and 5 (writ petitioners), says that his clients have availed of a Waiver Scheme introduced by KMC and have paid-off the entire Property Tax dues in respect of the concerned building. Now, the Bank should reimburse the writ petitioners as per agreement between the parties and as per law.

We have considered the respective contentions of the parties. We are not inclined to enter into the claims and counter-claims between the Bank and the owners of the property.

We only modify the order under appeal to the extent that if the Bank deposits 50% of the amount of Rs.2,90,61,478/-, as has been found to be due by the Bank to KMC by the Assessor-Collector (North), KMC, within four weeks from date, the Chief Manager, Revenue (North), KMC, shall give a hearing to the Bank and the writ petitioners or their authorized representatives and will pass a reasoned order within two weeks from the date of hearing. The order shall be communicated to the Bank and the writ petitioners within a week from the date of the order.

We clarify that if the writ petitioners have liquidated the entire Property Tax dues in respect of the concerned building, the money that the Bank will deposit in the Suspense Account of KMC pursuant to this order, shall be adjusted against the future Property Tax in respect of the building in question and to that extent, will enure to the benefit of the writ petitioners.

The Bank says that it will comply with the reasoned order to be passed by the Chief Manager, Revenue (North), KMC.

The appeal and the connected application are, accordingly, disposed of.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(M. V. Muralidaran, J.) **(Arijit Banerjee, J.)**