March 29, 2023
(13) ARDR

C.O. No. 643 of 2019
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CAN 1 of 2019 (Old CAN 4296 of 2019)
(CAN not in file)

Kolkata Municipal Corporation
Vs.
KMDA (Licensor)

Adv. Alok Kumar Ghosh,
Adv. Fazlul Haqu,
...for the KMC/petitioner.
Adv. Raghunath Chakraborty,
Adv. M. Ahmed,
...for the KMDA/O.P.

Both the parties are represented through the learned Advocates.

Heard both sides at length.

In this revisional application as filed under Article 227 of the Constitution of India, the order dated September 11, 2017 as passed by the learned 2nd Bench, Municipal Assessment Tribunal, the Kolkata Municipal Corporation in MA Appeal no.1419 of 2013 has been assailed. By the impugned judgment the said tribunal while setting aside the order of the Hearing Officer - I of the Kolkata Municipal Corporation dated 6/3/2013 allowed the said appeal and thereby fixed the annual valuation for the covered area at the rate of Rs.1.45 paise per square per month feet and Rs.0.73 paise per square feet per month for car parking area in respect of premises No. 759, Anandapur, Kolkata 700107 with effect from 4th quarter of 2009-2010. The Kolkata Municipal Corporation felt aggrieved with the quantum of assessment and thus preferred the instant revisional application.

In support of the instant revisional application, Mr. Ghosh, learned advocate for the revisionist/Kolkata Municipal Corporation (hereinafter referred to as ‘the Corporation’ in short), at the very outset, draws the attention of this Court to the certified copy of the impugned judgment as passed by the said Tribunal. It is contended by Mr. Ghosh that while passing the impugned judgment learned Tribunal has practically assigned no reason whatsoever as to how it has calculated the annual valuation of the premises in question. It is argued further that being a judicial authority the Tribunal is supposed to assign reason in the impugned judgment and in not doing so, a serious miscarriage of justice has been occurred for which the interference of this court under the provision of Article 227 of the Constitution of India has been sought for.

Per contra, Mr. Chakraborty, learned advocate for the opposite party/assessee, at the very outset, submits before this Court that the present revisional application is hopelessly barred by Law of limitation. Drawing attention to the certified copy of the impugned judgment vis-à-vis to the paragraphs 16 and 17 of the instant revisional application, it has been contended that though there is no time limit for filing revisional application under Article 227 of the Constitution of India before this Court, but for the instant case the petitioner/corporation is duty bound to explain the delay in filing the instant revisional application and according to Mr. Chakraborty in the instant revisional application the Corporation has miserably failed to explain such delay for which the application should be considered as barred by the laws of limitation in view of the two reported decisions, namely, (I) ***The Kolkata Municipal Corporation vs. Smt. Shibani Mukherjee*** reported ***in 2017 (3) CLJ (Cal) 593*** and (II) ***Kolkata Municipal Corporation vs. Sri Rama Prasanna Mitra*** reported in ***(2016) 4 WBLR (Cal) 621***.

It is argued by Mr. Chakraborty on behalf of the assessee/opposite party that the reported decisions as cited by him duly match with the facts and circumstances as involved in this revisional application. It is further argued by him that since the Corporation has miserably failed to file the instant revisional application within the reasonable time as enunciated in the aforesaid two reported decisions (supra), the present application may be dismissed by holding that the same is barred by the Law of limitation.

While supporting the impugned judgment, Mr. Chakraborty, learned advocate for the assessee/opposite party further submits before this Court that before the tribunal the opposite party paces its reliance upon the judgment as passed by the self same Tribunal in MAA no. 3164 of 2001 in respect of premises no.473, Anandapur, Kolkata-700107 which is situated in the vicinity of the premises in question. It is further argued by Mr. Chakraborty that the respondent/Corporation before the Tribunal on the contrary has failed to place any document with regard to the assessed rent near the vicinity of the said premises in question and, therefore, the learned Tribunal is very much justified in passing the impugned judgment by accepting the judgment as passed in MAA no.3164 of 2001 as a precedent. Mr. Chakraborty thus submits that it is a fit case for dismissal of the instant revisional.

This Court has meticulously perused the entire materials as placed before this Court. This Court has also given due consideration over the submissions of the learned advocates for both the sides.

So far as the point of limitation is concerned as raised on behalf of the assessee/opposite party herein, it appears to this Court that in paragraphs 16 and 17 of the instant application for revision, the Corporation has given sufficient explanation as to how and in what manner the impugned order of the Tribunal has come to their knowledge and as to when they have applied for the certified copy of the same and thereafter following the proper procedure they have preferred the instant revisional application. In considered view of this Court the explanation as offered by the revisionist/Corporation is sufficient and, therefore, this Court holds that the instant revisional application cannot be said to be barred by the Law of limitation.

Coming to the merits of the instant revisional application, it reveals that at the time of hearing of the MAA no.1419 of 2013, the annual valuation in respect of premises no. 759, Anandapur, Kolkata – 700 107 with effect from 4th quarter of 2009-2010 as assessed by the Hearing Officer-I of the Corporation has been seriously challenged and at the time of hearing the assessee/opposite party herein being the appellant of the said appeal placed its reliance upon the annual valuation as assessed in respect of premises no. 473, Anandapur, Kolkata – 700107 by the self same Tribunal in MAA no.3164 of 2001. It reveals further that before the said Tribunal the revisionist/ Corporation however, placed no document with regard to the assessment of any property near the vicinity of premises in question i.e. premises no.759, Anandapur, Kolkata-700107. As rightly pointed out by Mr. Chakraborty that the present revisionist/Corporation being the custodian of the records of the all the premises under its jurisdiction more specifically, in the vicinity of Anandapur area could have filed documents relating to assessment of annual valuation, but for the reasons best known to them they have chosen not to do so.

In view of such, this Court finds no illegality and/or irregularity on the part of the learned Tribunal in treating the judgment of MAA no.3164 of 2001 as a precedent while assessing the annual valuation of premises no. 759, Anandapur, Kolkata-700 107 for the 4th quarter of 2009-2010.

In view of the discussions made hereinabove, this Court thus, finds no merit in the instant revisional application and accordingly, the instant revisional application is dismissed.

The impugned judgment dated September 11, 2017 as passed by the Learned 2nd Bench, Municipal Assessment Tribunal, Kolkata Municipal Corporation in MA Appeal no. 1419 of 2013 is hereby affirmed.

There shall however, be no order as to costs.

The department is hereby directed to forward a copy of this judgment to the Kolkata Municipal Corporation for its information and record.

Urgent certified copy of this order, if applied for, be given to the parties on usual undertakings.

(Partha Sarathi Sen, J.)