2.
09-08-2023
debajyoti
(Ct. no.06)

MAT 1315 of 2023
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IA NO:CAN/1/2023

Singha Singh Roy & Associates Private Limited & Anr.
Vs.
The Kolkata Municipal Corporation & Ors.

Mr. Kallol Basu,
Mr. Santanu Singha,
Mr. Nilanjan Pal,
Mr. Samik Sarkar,
Mr. Amit Roy
… For the Appellants.

Mr. Biswajit Mukherjee,
Mr. Gurudas Mitra,
Ms. Debangana Dey Nayak
… For K.M.C.

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

An order dated June 28, 2023, passed by a learned Single Judge in WPA 15011 of 2023, being a writ petition filed by the appellants herein, is under challenge in this appeal. The order is interim in nature in the sense that the writ petition is pending before the learned Single Judge.

It appears that Property Tax has fallen due to the Corporation from the persons claiming to be owners of 46/31/1, Lila Roy Sarani (formerly, Gariahat Road), Kolkata. The demand raised by the Corporation is in the region of Rs.1.22 crore, comprising of approximately Rs.69.20 lakh on account of principal and the rest on account of interest and penalty.

Upon the failure on the part of the appellants to pay any portion of the demanded amount, the Corporation issued Distress Warrant dated June 07, 2023, under Section 219(1) of the Kolkata Municipal Corporation Act, 1980. Learned advocate for the Corporation says that prior to taking recourse to Section 219, the Corporation tried to attach the rent payable by the tenant of the concerned premises to the landlords. For one month, the tenant paid the rent to the Corporation, and thereafter, stopped payment. Under those circumstances, Section 219 of the KMC Act was pressed into service.

The Corporation found a padlock on the entry door to the premises in question. Hence, the Corporation could not lay its hands on the movables inside the premises. To secure the movables which the Corporation were entitled to attach, remove and sell in aid of recovery of its Property Tax dues, the Corporation put its seal over the padlock that was found on the entry door to the premises in question.

Aggrieved by the aforesaid action on the part of the Corporation, the appellants herein approached the learned Single Judge.

The learned Judge passed the impugned order, the relevant portion whereof reads as follows:

> " Subject to payment of Rs.35,00,000/- only within 14th July, 2023, the men and agents of the Corporation will open the padlock of the subject premises.
>
> At the time of opening the padlock a proper inventory shall be made by the officers of the Corporation in the presence of the petitioners, the person from whom the possession was taken by the Corporation and the local police.

> The Officer-in-Charge of the concerned police station shall remain present at the time of opening the padlock and making the inventory.
>
> In the event there is any dispute with regard to opening the padlock or handing over the possession of the premises in question or the movable goods, then the Corporation will put the padlock once again and bring the same to the notice of this Court.
>
> The Corporation is directed to issue a notice upon Arya Infotech provided the aforesaid amount of Rs.35,00,000/- is deposited by the petitioners within the time as specified hereinabove.
>
> The said payment shall be made without prejudice to the rights and contention of either of the parties in the instant writ proceeding. ”

Being aggrieved, the writ petitioners have come up by way of this appeal.

Learned advocate for the appellants says that under Section 219 of the KMC Act, the Corporation has no power to seal any immovable property. Hence, the Corporation must forthwith remove its seal from the entry door to the premises in question.

Learned advocate for the Corporation says that since the Corporation could not enter the premises in question to execute the Distress Warrant that was issued under Section 219 of the KMC Act, to ensure that the movables inside are not secreted or moved elsewhere, the Corporation had no choice but to put its seal on the entry door of the premises.

We are of the view that the appellants must show their bona fides by immediately depositing a reasonable sum of money. After all, the claim on account of Property Tax is in the region of rupees 70 lakh on account of principal and approximately rupees 1.22 crore, including interest and penalty. The appellants say that they dispute the said amount and will take appropriate legal steps in that regard.

Be that as it may, for the time being, some amount of money has to be deposited by the appellants. Mr. Basu, learned advocate, appearing for the appellants, on instructions, says that his clients will put in Rs.15,00,000/- within seven working days from date with the Corporation, without prejudice to their rights and contentions in the pending proceedings.

In the facts and circumstances of the case and on a *prima facie* reading of Sections 219 and 220 of the KMC Act, we are of the view that Rs.15,00,000/- may be a reasonable amount for the time being.

Accordingly, we modify the order under appeal only to the extent that the sum of Rs.35,00,000/- will be substituted by Rs.15,00,000/-. We find the other portions of the order to be entirely reasonable and we do not touch any other portion of the order impugned. Upon deposit of Rs.15,00,000/- by the appellants, the other portions of the order under challenge will be carried out. However, we clarify that if the lock on the entry door that was found by the Corporation, is opened by the key produced by the appellants, then *prima facie* it would appear that the appellants are in possession of the premises. In that event, after removing the movables of the appellants from the said premises, the same padlock will be again put on the entry door to the premises in question and the keys will be returned to the appellants, who will hold the same, subject to further directions by the learned Single Judge.

The appellants shall deposit with the Corporation Rs.15,00,000/- within seven working days. Subject to making the aforesaid deposit, the appellants will be at liberty to file their Affidavit-in-Reply in connection with the writ petition within a fortnight from date. We are told that the Corporation has already served a copy of its Affidavit-in-Opposition on the appellants/writ petitioners.

We have not gone into the merits of the case. We request the learned Single Judge to carry the writ petition to its logical conclusion upon completion of affidavits.

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

Affidavits not having been called for, the allegations in the stay application shall be deemed not to have been admitted by the respondents.

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.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)