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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE
APO 1/2023
WITH
WPO 593/2018
IA GA 1/2023

SMT. TAPATI BOSE & ANR.
VERSUS
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
THE HON'BLE JUSTICE ARIJIT BANERJEE
AND
THE HON'BLE JUSTICE APURBA SINHA RAY
DATE : 6th January, 2023.

APPEARANCE:
Mr. Jishnu Chowdhury,Adv.
Ms. Piyali Sengupta,Adv.
Ms. Sabarni Mukherjee,Adv.

Mr. Ronojit Chatterjee,Adv.
Ms. Manisha Nath,Adv.
Mr. Jayanta Kr. Dhar,Adv.
...for KMC

The Court: This appeal is preferred against an order dated December 1, 2022 whereby the learned Single Judge has allowed the writ petitioners' prayer for amendment of the writ petition. The amendment was sought for to bring on record the assessment order dated September 1, 2017, passed by the Hearing Officer, copy whereof was not available with the writ petitioners on the date of filing of the writ petition. Upon getting a copy of the assessment order, the amendment application was filed. By the order impugned, the application was allowed.

However, the last paragraph of the order impugned reads as follows:

> "Before the next date of hearing the petitioner is directed to deposit a sum of Rs. 12 lakhs with the learned Registrar, Original Side of this Court. In the event such deposit is made, learned Registrar, O.S. shall invest the sum in an interest bearing Fixed Deposit Account with State Bank of India, Kolkata High Court SPB Branch and shall furnish a photo copy of such Fixed Deposit Receipt to the learned Advocate-on-Record for the writ petitioner. Upon such receipt, so furnished, the Registrar, O.S. shall also file a report before this Court on the adjourned date."

Being aggrieved by the aforesaid portion of the impugned order, the writ petitioners have come up by way of the present appeal.

Mr. Chowdhury, learned Advocate appearing for the appellants says that deposit of such a substantial sum of money or of any amount of money cannot be made a pre-condition for hearing out the writ petition, whereby the allegation is that the assessment order was finalized without reasons. He further says that at the stage of amendment of the writ petition, there was no reason for the learned Single Judge to direct the writ petitioners to deposit monies with the Registrar, Original Side of this Court. He says that the property in question is residential in nature and the writ petitioners reside there.

On the other hand, Mr. Chatterjee, learned Advocate for the Kolkata Municipal Corporation, says that there is an outstanding of approximately Rs. 18.50 lakh on account of property tax. The learned Judge committed no error in directing the writ petitioners to deposit the sum of Rs. 12 lakh. In the event the writ petitioners succeed before the learned Single Judge, the amount deposited will be adjusted against the future property taxes as provided in the statute. Mr. Chatterjee has relied on a decision of the Hon'ble Supreme Court in the case of (1984) 2 SCC 436 [Siliguri Municipality and others vs. Amalendu Das and others] for the proposition that mere pendency of a writ petition challenging enhanced assessment will not amount to stay of operation of the enhanced assessment, in the absence of an interim order to that effect.

We are quite conscious of such principle of law. We are aware that mere pendency of a of lis does not operate as a restraint order of any kind. In the present case, no order of injunction or any other kind of restraint order has been passed by the learned Single Judge. Nothing stands in the way of the Corporation to proceed in accordance with law to recover what, according to it, are its legitimate dues from the writ petitioner.

Mr. Chatterjee has also relied on a decision of a learned Judge of this Court in the case of M/s. Murlimal Santram & Co. & Anr. Vs. The Kolkata Municipal Corporation & Ors. rendered on February 26, 2015 in WP No. 45 of 2003. In that case, when the writ petition was admitted, an order of status quo was passed. The writ petitioner, taking advantage of such order and interpreting the order and in an inappropriate manner did not pay property tax even at the old rate during the pendency of the writ petition. This was found by the learned Judge to be in a sharp practice and on that ground the writ petition was dismissed. The facts of that case are completely different from the facts of the present case.

Having heard learned Counsel for the parties, we are of the considered view that at the stage of allowing the amendment, it may not have been proper for the learned Judge to direct the writ petitioners to deposit a sum of Rs. 12 lakh. Further, the order under appeal does not record any reason as to why the deposit was necessary. Mr. Chatterjee, learned Advocate for the Corporation would refer to the earlier order passed by the learned Single Judge on November 16, 2022. However, in our view, some reason, however, brief should have been indicated in the order under appeal for directing deposit of Rs. 12 lakh.

It may be that if the writ petitioners succeed, the deposit made by them will not be lost but will be adjusted against future property tax dues. However, we cannot lose sight of the fact that it may not be easy for any and every citizen to fish out Rs. 12 lakh at random.

We further notice that the learned Judge has directed the amended writ petition to be listed on January 9, 2023, which is two days away. Mr. Chatterjee says that the amended writ petition was served on the learned Advocate-on-Record for the Corporation belatedly. As requested, we extend the time to file affidavit-in-opposition to the amended writ petition till January 16, 2023; reply thereto, if any, be filed by January 24, 2023. The parties may request the learned Single Judge to give some precedence to this matter and the learned Judge may consider such request to the extent the business of the Court may permit.

The appeal and the connected application are, accordingly, disposed of by setting aside the portion of the order impugned directing the writ petitioners to deposit Rs. 12 lakh.

Since we have not called for any affidavits, the allegations in the stay petition are deemed not to be admitted by the respondents.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)

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