IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/426/2023
WITH
WPO/110/2023
IA NO:GA/1/2023
GA/2/2023

ASHISH CHOKHANI
VS
STILTON DESIGNS PVT. LTD. AND ORS.

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE
AND
The Hon'ble JUSTICE PRASENJIT BISWAS
Date : December 4, 2023.

Appellant (in person)

Mr. Biswajit Mukherjee, Advocate
Ms. Manisha Nath, Advocate
....for KMC.

THE COURT: **RE : GA/1/2023**

This is an application for condonation of delay in filing the appeal. Causes shown being sufficient, the delay is condoned.

G.A.No.1 of 2023 is disposed of.

APOT/426/2023, GA/2/2023

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

A judgement and order dated January 30, 2023, passed by a learned Judge of this Court in a writ petition of the respondent nos. 1 and 2 herein being WPO/110/2023, is assailed in this appeal.

The appellant was the respondent no.8 in the writ petition. He claims to be one of the co-owners of a flat on the first floor of premises No.127A, Park Street, Kolkata – 700 017, along with the other private-respondents in the writ petition. The flat in question is tenanted. The writ petitioner no.1 is the tenant of the flat.

It appears that property tax fell due in respect of the said flat. Kolkata Municipal Corporation (in short, 'KMC') issued a distress warrant under Section 219(1) of the KMC Act, 1980 in August, 2022 and pursuant thereto put a padlock on the tenanted premises. The tenant, being the present writ petitioners challenged such action of KMC by filing the writ petition before the learned Single Judge. The learned Judge noted that the pending tax is to the tune of Rs.2.32 crores approximately. The writ petitioner submitted that repeated representations had been made before the Municipal Commissioner, but the same did not receive consideration. It was submitted that the writ petitioner no.1 being a tenant, is liable to pay rent only and is primarily not liable to pay property tax in respect of the tenanted premises.

Learned advocate for KMC submitted before the learned Judge that the men and agents of KMC went to the said premises. There was no indication that the writ petitioner no.1 was a tenant of the said premises. KMC, therefore, put padlock on the said premises.

The present appellant appeared before the learned Judge and admitted that property tax is due and payable in respect of the said flat, but he raised an issue as regards the amount mentioned in the bills raised by KMC.

The learned Judge disposed of the writ petition with the following observations and directions:

"Respondent no.8, Mr. Ashish Chokhani, appears in person and admits that there is property tax due and payable but an issue has been raised with regard to the amount mentioned in the distress warrant.

As presently the writ petition filed by the one of the tenants of the subject premises challenging the power and authority of the Corporation to put a padlock on the tenanted premises allegedly for recovery of property tax which is due in respect of the entire property is under consideration before this Court, accordingly, the Court is not concerned with the amount mentioned in the distress warrant. It will be open for the aggrieved person to take appropriate steps in accordance with law to challenge the amount mentioned in the distress warrant.

In Machinnon Machenzie (supra) the Court held that it is absurd to suggest that recovery of tax can be made by attachment of the properties belonging to a person who is not liable therefor and against whom no assessment proceeding has been initiated. Recovery of tax can only be made from a person who has been made liable therefor under the Act and in the manner laid down in the statute.

In the present case, the recovery proceeding was initiated against the predecessor in interest of the private respondents. There is no proceeding against the petitioners. According to the statute, the petitioners being tenants of the subject property are not primarily liable to pay tax.

In view of the above, the action of the Kolkata Municipal Corporation in padlocking the tenanted premises of the petitioner with view to recover the pending property tax, cannot be supported in law.

The Chief Manager-Revenue [South] of the Kolkata Municipal Corporation is accordingly directed to remove the padlock from the tenanted premises of the petitioner no.1 within 48 hours from the date of communication of this order.

It will be open for the Kolkata Municipal Corporation to take steps in accordance with law for recovery of the property tax which is due, including attachment of rent."

Being aggrieved, the respondent no.8 in the writ petition has come up by way of this appeal.

We find that the present appellant had filed an application for review of the order impugned in this appeal. That application being RVWO 9/2023 was disposed of by the learned Judge without passing any order. In effect, the review application was rejected. There is no appeal preferred from the said order of rejection of the review application.

In so far as the present appeal is concerned, we do not find that the learned Judge has issued any direction against the appellant herein. The appellant says that the learned Judge directed attachment of the rent payable by the tenant to the landlords including the appellant. This submission of the appellant is incorrect.

The learned Judge merely observed that it will be open to KMC to recover the unpaid property tax, in accordance with law, including by attachment of rent. We are told that KMC has already issued an order of attaching the rent.

The appellant says that the owners are willing to pay the property tax in respect of the said flat. However, the demand made by KMC is exorbitant and artificially inflated.

We are unable to entertain this grievance in the present proceedings. This point is totally beyond the scope of the present proceedings. If the appellant has any grievance against any action of KMC, he shall be at liberty to approach the appropriate forum in an appropriate proceeding, in accordance with law.

The appeal and the connected application are disposed of.

Since we have not called for affidavits, the allegations made in the application are deemed not to have been admitted by the respondents.

(ARIJIT BANERJEE, J.)

(PRASENJIT BISWAS, J.)

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