IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

RVWO / 2/2024
WITH
APOT/426/2023
WPO/110/2023
IA NO:GA/1/2024

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

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE
AND
The Hon'ble JUSTICE PRASENJIT BISWAS
Date : February 28, 2024.

Mr. Ashish Chokhani,
Review applicant in person

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

THE COURT: This application has been taken out by the appellant for review of a judgement and order dated December 4, 2023, whereby we had disposed of APOT/426/2023.

Admittedly, the sum of approximately Rs.2.32 crores as per bills raised by Kolkata Municipal Corporation (in short, 'KMC') on account of property tax in respect of premises No.127A, Park Street, Kolkata-700017, is in arrear. In view of the pending property tax, KMC issued a distress warrant under Section 219(1) of the KMC Act, 1980 and put a padlock on a particular flat at the said premises which was under the occupation of one Stilton Designs Private Limited as tenant. Stilton approached the learned Single Judge by way of the present writ petition challenging the aforesaid action on the part of 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."

The present review applicant, who was the respondent no.8 in the writ petition, was aggrieved by the order of the learned Single Judge and accordingly, preferred a review application. That application was disposed of by an order dated April 11, 2023.

Thereafter, the present review applicant preferred an appeal against the parent order of the learned Judge being APOT/46/2023. The appeal was disposed of by the judgement and order of which the present applicant seeks review.

We have gone through the stay petition, the grounds for review and we have also heard Mr. Chokhani, the applicant appearing in person. Almost all the points sought to be raised in the review application pertain to the merits of the case. If we enter into these points, the effect would be that we would be rehearing the appeal, which was disposed of on merits after hearing all the parties. That is not the purpose of a review application.

A review application cannot be allowed to become an appeal in disguise. Only glaring errors on the face of the record can be corrected in exercise of review jurisdiction. Long drawn arguments are not permitted in a review application.

We do not find any error apparent on the face of the record in so far as the order under review is concerned. Hence, we do not entertain this review application.

However, there is an observation in the order under review that the present applicant "claims to be co-owner of the concerned flat". The applicant says that such an observation may cast a doubt over his undisputed co-ownership right in respect of not only the concerned flat but also the entire premises No.127A, Park Street, Kolkata. We clarify that we have not cast any aspersion or doubt on the co-ownership of the present applicant in respect of the concerned property.

The applicant further says that KMC, in violation of the order of the learned Judge, is collecting rent from the tenants of the premises in question which KMC is not entitled to do.

Mr. Mukherjee, learned advocate representing KMC, vehemently disputes such submission and says that it is a statutory right that KMC is exercising.

If the present applicant is aggrieved by any alleged violation of the learned Judge's order on the part of KMC, the applicant would be at liberty to take appropriate action, in accordance with law.

The review application and the connection application are, accordingly, disposed of.

(ARIJIT BANERJEE, J.)

(PRASENJIT BISWAS, J.)

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