

APOT/41/2024
with
WPO/1713/2022
GA/2/2024
IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

THE KOLKATA MUNICIPAL CORPORATION (KMC) & ORS.
VS.
ROHAN JHAWAR AND ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE
AND

The Hon'ble JUSTICE M. V. MURALIDARAN

Date : February 19, 2024.

Appearance:

Mr. Alak Kumar Ghosh, Advocate
Mr. Atish Kr. Biswas, Advocate
....for Appellants/ KMC

Mr. Raghunath Chakraborty, Advocate
Mr. A. De, Advocate
...for Respondents

The Court: Read order dated February 7, 2024.

Since we propose to dispose of the appeal and the application today by consent of the parties, we reproduce herein the order dated February 7, 2024 passed in GA/2/2024, for the sake of completeness.

“RE: GA/2/2024, APOT/41/2024

This is an appeal against a judgement and order dated October 16, 2023, the relevant portion whereof reads as follows:

“The petitioner seeks refund of the amount that is lying with the Corporation consequent to the order of adjustment issued by the Assessment Collection Department of the Corporation.

The Chief Manager Revenue (South), Kolkata Municipal Corporation is directed to refund the amount lying in the suspense account of the Corporation in accordance with the law laid down by the Hon’ble Division Bench of this Court on 13th October, 2023 in APOT No. 222 of 2023, IA No. GA/2/2023, WPO/3374/2022 in the matter of The Kolkata Municipal Corporation & Ors. Vs. Abas Nibas Pvt. Ltd. & Ors.

The refund shall be made at the earliest but positively within a period of twelve weeks from the date of communication of this order subject to compliance of all necessary formalities.

Learned advocate for the petitioner is directed to forward copy of the representation dated 26th June, 2023, the suspense detailed report by the Assessment Collection Department of the Corporation and the legal representation dated 6th October, 2023 to the aforesaid respondent at the time of communicating the order of Court.”

Learned advocate for the respondents/writ petitioners draws our attention to an order dated January 29, 2024 passed by the Hon’ble Supreme Court disposing of the Special Leave Petition preferred against the judgement and order dated October 13, 2023 in

APOT No. 222/2023 (The Kolkata Municipal Corporation & Ors. vs. Abas Nibas Pvt. Ltd. & Ors.), directing the Kolkata Municipal Corporation to refund the amount in question within a stipulated time period. In other words, the Hon'ble Supreme Court has not interfered with the Division Bench order in the case of Abas Nibas Pvt. Ltd. & Ors., which had affirmed the order of the learned Single Judge.

The point involved in the present appeal is identical. In view of the fact that the Division Bench judgement in the case of Abas Nibas Pvt. Ltd. & Ors. will hold fort, Mr. Ghosh, learned senior counsel for Kolkata Municipal Corporation seeks a week's time to obtain proper instruction.

List the matter once again on February 16, 2024.

Pendency of this appeal will not prevent KMC from complying with the order of the learned Single Judge.”

Since the issue involved in this appeal is identical with the issue that was involved in APOT No. 222 of 2023 [The Kolkata Municipal Corporation & Ors. vs. Abas Nibas Pvt. Ltd. & Ors], we are bound by the decision in that case rendered by a co-ordinate Bench.

We notice that the Hon'ble Supreme Court in its order dated January 29, 2024 has been pleased to observe that '*the question of law, if any, which arises in this petition is kept open.*'

Since the principle of stare decisis requires us to follow the decision in the case of Abas Bibas Pvt. Ltd., the present appeal and the application stand dismissed. The order impugned is affirmed.

The refund is to be made by KMC to the respondents, in terms of the single Judge's order within 4 weeks from date.

(ARIJIT BANERJEE, J.)

(M. V. MURALIDARAN, J.)

dg/