

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

ORIGINAL SIDE

APO/7/2023

WITH

WPO/ 557/ 2019

SUDIP KUSARYE AND ANR.

VS

THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE: The Hon'ble JUSTICE ARIJIT BANERJEE

AND

The Hon'ble JUSTICE APURBA SINHA RAY

For Appellants	:	Mr. Arindam Banerjee, Adv. Mr. Hare Krishna Halder, Adv. Mr. Koushik Bhattacharyya, Adv. Mr. Chayan Gupta, Adv.
For Kolkata Municipal Corporation	:	Mr. Alak Kr. Ghosh, Adv. Mr. Biswajit Mukherjee, Adv. Ms. Tanushree Dasgupta, Adv. Mr. Debangshu Mondal, Adv. Mr. Kamal Shaw, Adv. Mr. Gopal Chandra Das, Adv.
For Judgment on	:	22.05.2024

Arijit Banerjee, J. :-

1. This appeal is directed against a judgment and order dated December 14, 2022, whereby the appellants' writ petition being WPO 557 of 2019 was disposed of by a learned Judge of this Court. The appellants/ writ

petitioners had approached the learned Judge seeking cancellation of assessment orders of the Hearing Officer – XIII KMC, dated April 25, 2019, pertaining to premises no. 144A Rashbehari Avenue, Kolkata- 700 029 (hereinafter referred to as the ‘said premises’) for the periods starting from 3rd Qtr. 2001-02, 2nd Qtr. 2007-08, 4th Qtr. 2008-09, and 2nd Qtr. 2013-14. The learned Judge noted that there was an alternative remedy available to the writ petitioners by way of statutory appeal under Section 189 of the Kolkata Municipal Corporation Act, 1980 (in short ‘the KMC’ Act). The operative portion of the order of the learned Judge reads as follows:-

“25. For all the reasons as aforesaid, this Court is not inclined to interfere in this writ petition and the petitioners are left free to approach the appropriate forum strictly in accordance with law. It is, however, made clear that the observations made hereinbefore are only for the purpose of disposal of this writ petition. The appropriate forum shall be free to decide all points raised by the parties in accordance with law if such forum is approached.”

2. The appellants / writ petitioners claim to be the owners of the said premises, which is a three storeyed building. It was their case before the learned Single Judge that part of the said premises is tenanted while the other portion is occupied by them for residential purpose. They received notices containing proposals for enhancement of annual valuation of the said premises in respect of the 4 assessment periods indicated above. Subsequently they received notices of hearing. They filed a written objection against the proposed annual valuations. They attended the hearing through

a learned Advocate. The Hearing Officer passed the orders dated April 25, 2019, confirming the proposed annual valuations for the aforesaid 4 periods.

3. The arguments made by learned Advocate for the appellants/writ petitioners before the learned Single Judge were essentially the same as were advanced before us.

4. The first point argued by Mr. Arindam Banerjee, learned Advocate appearing for the appellants is that the assessments under challenge are void ab initio since both the proposals of KMC and the orders of the Hearing Officer are based on actual rent and not reasonable rent. Mr. Banerjee referred to Section 174 of the KMC Act as it stood before its amendment which would be the provision applicable in the facts of this case. The relevant portion of the unamended provision reads as follows:-

“174. **Determination of annual valuation.**_ (1) Notwithstanding anything contained in the West Bengal Premises Tenancy Act, 1956 (West Ben. Act XII of 1956) or in any other law for the time being in force, for the purpose of assessment to the property tax, the annual value of any land or building shall be deemed to be the gross annual rent including service charges, if any, at which such land or building might at the time of assessment be reasonably expected to let from year to year, less an allowance of ten per cent for the cost of repairs and other expenses necessary to maintain such land or building in a state to command such gross rent:

[Provided that where such land or building or portion thereof is occupied by tenant and is used exclusively for residential purposes, the gross annual rent, may, if opted by the owner or the person liable to pay the property tax, be -

(i) the actual rent including service or other ancillary charges, if any; or

(ii) the rent with a weightage factor to the extent of fifty per cent. on the prevailing reasonable rent.]

[Provided further that] while determining the annual value in the case of any land or building or portion thereof exclusively used by the owner for his residential purposes, the gross annual rent of such land or building or portion, as the case may be, shall be reduced, -

(a) where the gross annual rent does not exceed six hundred rupees, by thirty per cent;

(b) where the gross annual rent exceeds six hundred rupees but does not exceed eighteen thousand rupees, by such percentage of the gross annual rent as is worked out by dividing the gross annual rent by six hundred and subtracting the quotient from thirty-one, the difference being rounded off to the nearest place of decimal:

[Provided also that] no such reduction in gross annual rent shall be made -

(a) in case the total covered area in any land or building under occupation for residential purpose by the owner exceeds one hundred and fifty square metres, or

(b) where a person owns or occupies for residential purpose more than one plot of land or building or portions thereof within the municipal limit of Kolkata.

(2) The annual value of any land which is not built upon shall be fixed at seven per cent of the estimated market value of the land.”

5. Mr. Banerjee submitted that every proposal of assessment must be on the basis of the fictional reasonable renting out value of the concerned premises and can be arrived at after consideration of a number of factors, and not on the basis of the actual rent that the landlord / owner may be receiving from his tenant. According to learned counsel, this was a jurisdictional error committed by the Hearing Officer. In this connection, Mr. Banerjee referred to the judgment of the Hon’ble Supreme Court in the case of **India Automobiles (1960) Ltd. v. Calcutta Municipal Corporation & Anr., reported at (2002) 3 SCC 388 (paras 23-25)** and an unreported judgment of a coordinate bench of this Court in the case of **Commissioner, Kolkata Municipal Corporation & Ors. v. Hastings Property & Ors., in APO No. 213 of 2004; WP No. 1050 of 1996** delivered on 11 February, 2011. On the point of jurisdictional error Mr. Banerjee relied on the decision of the House of Lords in the case of **Anisminic Ltd, v. Foreign Compensation Commission, reported at 1969(1) ER 208** and the

decision of the Hon'ble Supreme Court in the case of ***Union of India v. Tarachand Gupta & Bros, reported at (1971) 1 SCC 486 (para 21).***

6. The second point urged by learned counsel for the appellants is that the impugned assessments are hit by the three-year retrospectivity rule, according to which, KMC cannot make an assessment for any retrospective period exceeding three years backwards from the date of the revising order. In this connection, learned counsel referred to the decision of a Coordinate Bench of this Court in the case of ***Sahujain Charitable Society & Ors. v. The Kolkata Municipal Corporation & Ors., reported at 2018 (3) CHN (Cal) 328***, rendered on April 26, 2018.

7. Learned counsel submitted that the learned Single Judge has not correctly appreciated the precedential value and binding nature of the judgments in ***India Automobiles, Hastings Property*** and ***Sahujain Charitable Society***. The impugned judgment is contrary to binding precedents and thus liable to be set aside. The Hon'ble Supreme Court has held that any order passed in violation of a binding precedent of the Hon'ble Supreme Court is a nullity. In this connection, reliance was placed on the decision of the Hon'ble Supreme Court in the case of the ***Director of Settlements, A.P. & Ors. v. M.R. Apparao & Anr., reported at (2002) 4 SCC 638 (para 7).***

8. As regards availability of the alternative remedy of statutory appeal, learned Counsel submitted that the same is not an efficacious remedy in the instant case. The entire assessment proceedings are void. Reliance was placed on the judgment of the Hon'ble Supreme Court in the case of

Whirpool Corporation v. Registrar of Trade Marks, Mumbai & Ors., reported at (1998) 8 SCC 1 (paras 14 , 15). Learned Counsel also referred to the decision of the Hon'ble Supreme Court in the case of ***Godrej Sara Lee Ltd. v. Excise and Taxation Officer-cum-Assessing Authority and Ors., reported at 2023 SCC OnLine SC 95 (para 8)*** in support of his submission that when questions of law are involved, then it should be decided by the writ court instead of dismissing the writ petition on the ground of availability of an alternative remedy.

Argument of Kolkata Municipal Corporation:-

9. Appearing for KMC, Mr. Biswajit Mukherjee, learned Advocate, argued that before the Hearing Officer, no argument was advanced on behalf of the appellant herein on the basis of the decision in the case of Sahu Jain Charitable Society. In any event, the decision in that case, whereby a Division Bench of this Court read a three years limitation period into Section 179(2) of the KMC Act, 1980, cannot be applied blindly without having reference to the factual matrix of a particular case. A judgment cannot be read as a statute. Interpretation of a judgment must be made in the light of the facts involved therein. It is trite that observations and/or directions of the Courts cannot be read as Euclid's theorem or as provisions of statute. One additional or different fact may make a world of difference between conclusions in two different cases. In this connection, learned Advocate relied on the following decisions:-

(i) BPCL v. N.R. Vairamani, reported at (2004) 8 SCC 579, paragraphs 9 and 12.

(ii) Government of Karnataka v. Gowramma, reported at (2007) 13 SCC 482, paragraph 10;

(iii) Sarva Shramik Sangathan v. State of Maharashtra, reported at (2008) 1 SCC 494, paragraphs 14 to 18.

(iv) Goan Real Estate v. UOI, reported at (2010) 5 SCC 388, paragraphs 31.

10. Learned Advocate, with reference to Section 174 of the KMC Act, submitted that the appellants did not indicate before the Hearing Officer what would be the “reasonable rent” that should be considered by the Hearing Officer. The appellants/assesses never disputed the quantum of rent on the basis of which the Hearing Officer proceeded nor argued that the same did not represent “reasonable rent”. In any event, it is the duty and prerogative of the adjudicating authority to determine as to whether the annual valuation would be based on “actual rent” or “reasonable rent”.

11. It was submitted that the appellant did not file statutory returns as envisaged under Section 182 of the KMC Act, 1980, to enable the Municipal Commissioner to revise the annual valuation in time. Since no such returns were filed, KMC, after getting hold of the documents of tenancy in respect of the said premises, proceeded to determine the annual valuation. The appellant deliberately suppressed facts and figures from KMC to fraudulently depress the annual valuation with the intention of paying lesser property tax.

12. The aforesaid facts are unlike the factual matrix in **Sahu Jain's Case**. The appellants argued that the requirement of filing returns under Section 182 of the KMC Act is directory and not mandatory. None-the-less, the statute enjoins a duty on the assessee to file such returns. If the argument of the appellant relating to the applicability of the decision in **Sahu Jain's Case** is accepted, it would amount to granting a premium on the illegality committed by an erring assessee. It will create a catastrophe and in cases of suppression like the present one, fraud and/or non-compliance of statutory requirements, KMC would be unable to proceed to determine the annual valuation. Surely, this was not the object of the Division Bench while delivering the judgment in **Sahu Jain's Case**.

13. In the instant case, the challenge to jurisdiction of the Hearing Officer is not territorial or pecuniary in nature, but is based on the appellant's interpretation of the judgment in **Sahu Jain's Case**. It is in the fitness of things that the Hearing Officer and thereafter the Assessment Tribunal should be given a chance to consider the applicability or otherwise of the said judgment in the facts and circumstances of the present case. It cannot be argued that it is the end of the road for KMC in all cases where the assessment is sought to be made beyond the three-year limitation period indicated in **Sahu Jain's Case**.

14. Further, in **Sahu Jain's Case**, the Division Bench while reading the concept of limitation into Section 179(2) of the KMC Act, failed to take into consideration the judgment of the coordinate bench in the matter of **Calcutta Municipal Corporation and Ors. v. Abdul Halim Gaznavi**

Molla & Ors., reported at AIR 1998 Cal 345. The relevant observations of the Division Bench in the Judgment in Abdul Halim's case are as follows:-

“.....

There is no doubt that there exists no provision for limitation so far as the recovery proceedings are concerned. Mr. Banerjee, however, has relied upon Section 573 of the said Act which provides for recovery of certain dues and reads thus:--

"Section 573. Recovery of certain dues of Corporation. Save as otherwise provided in this Act or the Rules or the regulations made thereunder, any sum due to the Corporation on account of any charge, cost, expense, fee, rate or rent or on any other account under this Act or the Rules or the Regulations made thereunder shall be recoverable from the person from whom such sum is due as if it were a consolidated rate :

Provided that no proceeding for the recovery of any such sum under this section shall be commenced after the lapse of three years from the date on which such sum becomes due."

Section 573 occurs in Part III Chapter XVI (sic. Part IX chapter XXXV) which deals with power, procedure, offences and penalties. Section 573 on a plain reading cannot have any application as regard payment of recovery of tax, interest or penalty provided for in Chapter XVI of the Act. It is now well settled principles of law that a due of a person reliable from another does not efface nor the claim of such

person stands extinguished even in a case where Limitation Act applies.

.....

A special statute may provide for limitation or may not. In the instant case the proviso appended to Section 537 (sic 573) of the Act only, provides for limitation. Section 537 (sic 573) cannot have any application in relation to taxes inasmuch as by reason thereof a legal fiction has been created. By creating a legal fiction a putative or imaginary state of affairs is treated to be a real state of affairs although it is not. The wordings of a provision particularly the words employed in a provision of restrictive statute should be construed in such a manner so as to enable the Court to give full effect thereto. The proviso appended to Section 573 which makes out an exception provides for a limitation as regard the recovery of imposts stated therein which was to be recovered as a consolidated rate meaning thereby such recoveries, inter alia, could be made in terms of the provision of Section 220. But if any limitation for recovery of any taxes was to be provided for, the same should have been done by using a clear and unequivocal language by the Legislature in Chapter XVI itself. Recovery of tax is also an incidence of taxation. It is now well known that there cannot be any intendment so far as the imposition of tax is concerned and in that view of the matter there cannot be any intendment so far as recovery of tax is concerned nor any presumption can be raised that upon expiry of certain period such

taxes cannot be recovered. A provision for limitation can only be brought about by a statute. Such a statute in certain cases may be statutes of repose but the legislature in its wisdom may not make any provision therefore.”

In view of the aforesaid, the introduction of a concept of limitation in Section 179(2) of the KMC Act in Sahu Jain’s case, becomes inappropriate and *per incurium*.

15. Section 179(2) has since been amended with effect from August 7, 2019 by introducing a concept of 6 years limitation in that section.

16. Learned Advocate finally submitted that otherwise also the present appeal has become academic in view of the fact that the appellant/writ petitioner during the pendency of the appeal, applied under Unit Area Assessment (U.A.A.) System for determination of the annual valuation for the period 1/2007-2018 and accepted the annual valuation of Rs. 21,70,560/- in respect of the premises in question and sought for apportionment of the tax liability. It is stated that the aforesaid valuation under U.A.A. system is based on the last valuation under Annual Rateable Value Method which, in the instant case is for the period starting 2/2013-14 and already determined at Rs. 8,21,660/-.

Appellant’s reply:-

17. In reply, Mr. Banerjee, learned Advocate for the appellant submitted that the three-year rule was read into the provisions of Section 179(2)(b) (2nd proviso) of the KMC Act, to save the said proviso from the vice of

unconstitutionality. Thus, the three-year-rule would have to be taken as part of the said proviso in the statute. Since every statutory provision operates *in rem*, the said three-year rule would also operate *in rem* and not on a case-to-case basis.

18. Learned Advocate then submitted that Section 182 of the KMC Act is not a mandatory but a directory and enabling provision. There is no penal consequence prescribed in the statute for non-compliance of Section 182. The Municipal Commissioner is duty bound to make periodic assessments and revision of assessments, whether or not information under Section 182 is furnished by the assessee. It is now well settled that use of the word 'shall' is not *ipso facto* determinative of the mandatory or directory nature of a provision of law.

19. Mr. Banerjee then submitted that the judgments in ***India Automobiles, (supra) and Hastings Property (supra)*** lay down that under the annual rateable value method under the KMC Act, assessment can be made only on the basis of the reasonable rental value and not on the basis of actual rent. These judgments are binding on KMC, its Hearing Officer, the learned Single Judge and any Division Bench of this Court. The said judgments cast a duty on the Municipal Authority to make assessment in terms of the fictional rental value upon applying mind to diverse parameters as stated therein. It is only when this primary onus is discharged by KMC, that the onus would shift on to the assessee to dispute such reasonable rental value in its written objection. In the instant case, since KMC did not discharge its primary onus and erroneously made its assessment proposals

contrary to the principles enunciated in the **India Automobiles (Supra)** and **Hastings Property (Supra)** judgments, the assessments are *null and void ab initio* even if the assesses did not at all dispute them and irrespective of what they said in their written objection.

20. Learned Advocate finally submitted that the valuation method under the Unit Area Assessment (UAA) system with effect from April 1, 2017, is completely different from the Annual Rateable Value (ARV) system under which the impugned assessments have been made. Under the UAA system, the annual valuation is made on the basis of a statutory formula with several multiplicative factors as laid down in the rules and regulations framed by KMC. This is absolutely different from and unconnected with the expected annual rental basis under the ARV system. As such, subsequent acceptance of the valuation under the UAA system by the appellants, cannot act as an estoppel or bar to challenging the previous assessments made under the ARV system.

Court's View

21. We have given our anxious consideration to the rival contentions of the parties.

22. The appellants/writ petitioners are aggrieved by the general revaluation of the concerned premises for the periods starting from the four quarters mentioned in paragraph 1 of this judgment. It is not in dispute that notices of hearing under Section 184(3)/184(4) read with Section 185 of the KMC Act, all dated February 27, 2019, were served on the appellants. It is

also not in dispute that the appellants, through learned Advocate, attended the hearing. Therefore, there is no question of breach of the principles of natural justice. Prior thereto, the appellants had also filed an objection to the proposed enhanced annual valuation of the said premises. The written objection was a cryptic one and reads as follows:-

“Sub: Objection against Annual Valuation fixed by the KMC with effect from 3/2001-02, 2/2007-08, 4/2008-09 and 2/2013-14 relating to the premises 144A, Rash Behari Avenue, Kolkata: 700029, ASSESSEE No.: 11-090-22-0008-3

With due respect I would like to inform you that Kolkata Municipal Corporation has send four notices U/S. 184(3)/184(4) with Section 185 of the Kolkata Municipal Corporation Act, 1980 for the periods 3/2001-02, 2/2007-08, 4/2008-09 and 2/2013-14 fixing Annual Valuation Rs. 1,21,180/-, Rs. 1,36,190/-, Rs. 8,31,380/- and Rs. 8,36,470/- respectively which are too high, arbitrary and devoid from proper assessment. Accordingly KMC tax is too high and devoid from proper principle of assessment.

We hereby object the above mentioned annual valuations strongly and you are requested to issue hearing notices so that the grounds of objection to be mentioned at the time of hearing.”

23. We have also seen the objection dockets pertaining to the four relevant periods, copies whereof are included in the paper book filed in this appeal.

24. The Hearing Officer confirmed the proposed enhanced valuation of the said premises. The appellants challenge the same on two grounds.

25. Firstly, the appellants say that the Hearing Officer conducted the exercise of enhancing the annual valuation of the said premises for the purpose of calculating property tax, on wrong basis. Learned Counsel for the appellants referred to Section 174 of the KMC Act (as unamended), which has been extracted hereinabove in this judgment. Learned Advocate submitted that the annual valuation in respect of a premises which is tenanted should be made on the basis of reasonable rent that may be expected from the said premises by letting out the same. This is a fictitious figure and has to be arrived at on a consideration of several factors. The Hearing Officer enhanced the valuation of the premises on the basis of actual rent received by the appellants from the tenants. This is completely erroneous, contrary to the provisions of Section 174 of the KMC Act and also contrary to the decision of the Hon'ble Supreme Court in the case of ***India Automobiles (1960) Ltd. v. Calcutta Municipal Corporation & Anr.*** (*Supra*)

26. In the ***India Automobiles case***, the Hon'ble Supreme Court after considering its earlier judgments concerning provisions in Municipal Acts which were in *pari materia* with Section 174 of the KMC Act with which we are presently concerned, came to the following conclusion as recorded in paragraphs 21, 23 and 24 of the reported judgment, which are reproduced hereunder:-

“21. A perusal of various judgments, relied upon by the learned counsel for the parties, clearly shows that this Court has taken a consistent view regarding the determination of annual value of land or building for the purposes of determination of taxes under the Municipal Acts. On the basis of various Statutes relating to the determination of the annual value for the purposes of Municipal Acts, this Court has devised two distinct groups. One such group deals with the municipal laws of some States which do not expressly exclude application of Rent Restrictions Acts in the matter of determination of annual value of a building for the purposes of levying municipal taxes and the other group deals with the municipal laws which expressly exclude application of the Rent Restriction Acts in the matter of determination of annual value of land or building on rental method. Whereas in the first category of cases the determination of annual value has to be made on the basis of fair or standard rent notwithstanding the actual rent, even if it exceeds the statutory limits. In the other group where the restriction in the Rent Acts has been excluded, the determination of annual value of building on rental method is referable to the method provided under the relevant Municipal Act. Whereas the Padma Debi's case, LIC's case, Guntur Town Rate Payer's case, Dewan Daulat Rai's case deal with the first group of municipal laws, the cases in Ratanprabha's case, AGM, Central Bank of India's case, East India Commercial Company's case, Balbir Singh's case, Indian Oil Corporation's case and Srikanth's case deal

with the second group. As already noticed, this Court in LIC's case dealt with the first category as in Section 168 of the Calcutta Municipal Corporation Act, there existed no non-obstante clause. The observations of the Bench of this Court which dealt with the case on 10th October, 2001 cannot be taken in isolation.

23. As already noticed even without specific determination, the standard rent was held to have been statutorily determined under Section 2(10)(b) of the Rent Act. Upon analysis of the various municipal laws and the judgments of this Court it is held that in cases where the municipal laws excludes the applicability of the Rent Acts by incorporating non obstante clause in the taxing statute, the powers of the authorities under the Municipal Acts are not circumscribed by the limits indicated in Padma Debi's case and followed in that group of cases. In cases where the fair rent payable by the tenant has been determined and there is no justification for refusing to accept that fair rent as rental value of the premises, the municipal authorities should generally accept the standard rent fixed, notwithstanding the non-applicability of the Rent Acts because such a view would be reasonable guideline to determine the rate of rent at which such land or building might, at the time of assessment, be reasonably expected to let from year to year. The rent which the tenant is receiving from his sub-tenant is also an important statutory consideration for determining the rent at the time of assessment to which the property might

reasonably be expected to be let from year to year. Such a consideration is also justified on the principles of reasonableness. We cannot agree that in all cases, notwithstanding the non obstante clause the annual rental value cannot be fixed beyond the standard rent determined or determinable under the Rent statute. We also find it difficult to hold that in all cases the rent actually paid by the sub-tenant to the tenant be taken as a sole criterion for determining the annual value on the assumption that such land or building might, at the time of assessment, is reasonably expected to get the aforesaid amount of rent if let from year to year. The argument that the rent actually received by the owner should always be deemed to be reasonable rent in the absence of fraud, collusion and other extraneous considerations is too general and broad proposition of law which cannot be accepted for the purposes of determining the annual value of the property for the purposes of Section 174 of the 1980 Act. In the light of clear and unambiguous provisions of Section 174 of the 1980 Act, it cannot be held that the amount realised by a tenant from a sub-tenant cannot, at all be taken into consideration for the purposes of determining the gross annual rent in the absence of extraneous considerations. There is no substance in the submission of the learned counsel appearing for the appellant that allowing the Municipal Corporations to assess the annual rateable value on the basis of the income of a tenant from the property would be grossly unfair and would have the effect of rendering the rate provisions of

the Act unreasonable, arbitrary and unconstitutional. The Act itself has taken care by making sufficient provision in Sections 193 and 194 regarding the liability to pay the rent and apportionment of such liability when the premises are assessed, let or sub-let. On proof of creation of sub-tenancy, the owner of the building may also be entitled to seek eviction of their tenants under the relevant provisions of the Rent Acts applicable in the State where the land or property is located. We find some substance in the submission of the learned counsel for the appellant that permitting the Municipal Authorities to assess the annual value only on the basis of the rent paid by the sub-tenant to the tenant and fixing its liability on the owner may adversely affect the owners of the buildings who have let their premises at a time when rents were meagre and who under the Rent Control Statutes are deprived of getting possession back of the lands and buildings from their tenants. The 1980 Act, therefore, requires the application of mind by the municipal authorities to determine the rents on the basis of reasonableness by taking into account all relevant circumstances including the actual rent received by the owner, hypothetical Standard rent, the rent being received by the tenant from his sub-tenant and other relevant consideration, such as prevalent rate of rent of lands and building in the vicinity of the property being assessed. Only because the owner of the building is not getting the same rent which the sub-tenant is paying to his lessor, cannot be made a basis to deprive the Corporations from determining the

annual valuation and taxing the land or building on that basis. If such a plea is accepted, it would be against the provisions of the statute which has been enacted to provide civic services in the form of water, drainage, sewerage, collection, removal and disposal of solid waste, fire prevention and fire safety maintenance of street and public places, etc., in the Municipal area when such land or building is situate.

24. We do not find any conflict in the judgments of this Court so far as the determination of annual value of the property under the municipal laws is concerned. Distinction, if any, is based upon the relevant provision of the statute of a State with which this Court was dealing, particularly with respect to such Statutes which contained a non obstante clause. We are of the view that the basis for determination of annual rent value has to be the standard rent where the Rent Control Act is applicable and in all other cases reasonable determination of such rent by the municipal authorities keeping in view various factors as indicated herein earlier, including the rent which the tenant is getting from his sub-tenant. In appropriate cases the owner of the property may be in a position to satisfy the authorities that the gross annual rent of the building of which the annual valuation was being determined cannot be more than the actual rent received by such owner from his tenant. The municipal authorities shall keep in mind the various pronouncements of this Court, the statutory provisions

made in the specified Municipal Acts, keeping in mind the applicability or non-applicability of the Rent Act and the peculiar circumstances of each case, to find out the gross annual rent of the building including service charges, if any, at which such land or building might, at the time of assessment, be reasonably expected to let from year to year in terms of Section 174 of the 1980 Act.”

27. A bare perusal of the aforesaid observations of the Hon’ble Supreme Court would show that the Hon’ble Court did not lay down any law to the effect that under no circumstances the actual rent can represent the reasonable rent that can be expected from the premises in question. Further, the Hon’ble Court clarified that actual rent is one of the factors to be taken into consideration while assessing the annual valuation of a tenanted premises. However, since it is possible that under an old arrangement of tenancy, the actual rent is artificially low and the expected rent would be much higher, the Hon’ble Supreme Court clarified that in such cases so that the Municipal Authorities are not deprived of the fair amount of property tax, the formula in Section 174 of the KMC Act has been devised. The various factors that are to be taken into consideration for determining the reasonably expected rent have been indicated by the Hon’ble Supreme Court in the aforesaid judgment.

28. In so far as the Division Bench decision in ***Commissioner, Kolkata Municipal Corporation & Ors. v. Hastings Property & Ors. (Supra)*** is concerned, the same follows, as it was bound to, the decision of the Hon’ble

Supreme Court in the case of ***India Automobiles, (Supra)*** in reiterating that the annual valuation of a tenanted premises would be assessed in terms of Section 174 (unamended) of the KMC Act on the basis of reasonably expected rent which would depend on the size, situation, locality, condition of the premises and the amenities provided therein. All such relevant factors would have to be evaluated in determining the rateable value on the concerned premises.

29. It may be noted that in the written objection filed by the appellants in response to the hearing notices, the appellants did not indicate what the reasonably expected rent of the concerned premises could be. There was just a bald statement that the revised annual valuation was too high resulting in very high property taxes being imposed on the appellants.

30. Even assuming that the Hearing Officer erred in assessing the revised annual valuation solely on the basis of actual rent that was being received by the appellant, the same, in our opinion, would not be a jurisdictional error, as argued by learned Counsel for the appellants. At the most it could be said that the Hearing Officer failed to take into consideration other factors as indicated in the ***India Automobiles*** judgment and was not justified in basing the revised annual valuation only on the actual rent received by the appellants. That would be at the highest an erroneous order and not an order without jurisdiction. The Hearing Officer is an authority which is clothed with jurisdiction to revise the annual valuation of a premises. If he assesses such annual valuation on the basis of a wrong formula, that would be an error within jurisdiction which would not render

his decision null and void. Such an error in the decision is to be corrected by the appellate authority. Admittedly a statutory appeal is available to an aggrieved assessee in respect of enhanced annual valuation of a premises assessed by the Hearing Officer. The case of **Anisminic Ltd, v. Foreign Compensation Commission, (Supra)** does not come to the aid of the appellants.

31. Since an alternative remedy is provided by the very statute in relation to which dispute has arisen between the appellants and KMC, we are of the view that such avenue should have been first exhausted by the appellants before approaching the writ court by invoking Article 226 of the Constitution of India. It is true that the practice of not exercising the high prerogative writ jurisdiction under Article 226 of the Constitution, is a self-imposed restriction and does not go to the jurisdiction of the writ Court. However, ordinarily the High Court will not exercise jurisdiction under Article 226 in favour of a petitioner who has alternative efficacious remedy available to him. This has been explained and enunciated in countless number of decisions by the Hon'ble Supreme Court and is an established law. One of the latest pronouncements on this subject is in the case of **PHR Invent Educational Society v. UCO Bank & Ors., (Civil Appeal No. 4845 of 2024 Arising out of SLP (C) No. 8867 of 2022) reported at 2024 INSC 297**. That case involved the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (in short 'SARFAESI Act'). The borrower had filed a writ petition challenging an order of Debts Recovery Tribunal. The High Court allowed

the writ petition by setting aside the impugned order and issuing consequential directions. The matter being carried to the Hon'ble Supreme Court, the Hon'ble Court referred to its earlier decisions in ***United Bank of India v. Satyawati Tondon & Ors.*, reported at (2010) 8 SCC 110, Celir LLP v. Bafna Motors (Mumbai) Private Limited & Ors., reported at (2024) 2 SCC 1, *South Indian Bank Limited & Ors. v. Naveen Mathew Philip & Anr.*, reported at (2023) SCC OnLine SC 435, *Agarwal Tracom Private Limited v. Punjab National Bank & Ors.*, reported at (2018) 1 SCC 626, *Authorised Officer, State Bank of Travancore and Anr. v. Mathew K.C.*, reported at (2018) 3 SCC 85, *Phoenix ARC Private Limited v. Vishawa Bharati Vidya Mandir & Ors.*, reported at (2022) 5 SCC 345 and *Varimadugu OBI Reddy v. B. Sreenivasuly & Ors.*, reported at (2023) 2 SCC 168, and held that it is more than a settled legal position of law that the High Court should not entertain a petition under Article 226 when an alternative statutory remedy is available. When a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.**

32. Learned Advocate for the appellants relied on a decision of the Hon'ble Supreme Court in the case of ***Godrej Sara Lee Ltd. v. Excise and Taxation Officer-cum-Assessing Authority and Ors.*, (Supra)**. In particular, learned Advocate relied on the observation of the Hon'ble Supreme Court at paragraph 8 of the reported judgment, to the effect that "where a controversy is a purely legal one and it does not involve disputed questions of fact but only questions of law, then it should be decided by the

High Court instead of dismissing the writ petition on the ground of an alternative remedy being available.” In the present case, the learned Judge has correctly held that mixed questions of fact and law are involved. The appellants admittedly did not file returns under Section 182 of the KMC Act, Section 182 reads as follows:-

“182. Submission of returns for purposes of revision in the annual valuation of lands and buildings.- To enable the Municipal Commissioner to revise the annual value of any land or building governed by any circumstances specified in sub-section (2) of section 180, except in respect of a case under clause (v) thereof, the owner or the person liable to pay the [property tax] [Substituted by section 2 of the Calcutta Municipal Corporation (Amendment) Act. 2001 (West Bengal Act VIII of 2001), w.e.f. 23.3.2001, for the words "consolidate rate".] for such and or building shall furnish to the Municipal Commissioner, not later than the 31st day of March of the year immediately following, a return in such form as may be prescribed.

[xxx] [First and Second provisos omitted by section 12 of the Calcutta Municipal Corporation (Second Amendment) Act, 1984 (West Bengal Act 13 of 1984), w.e.f. 15.5.1984.]

[xxx] [Third proviso omitted by section 13 of the Calcutta Municipal Corporation (Amendment) Act, 1983 (West Bengal Act 32 of 1983), w.e.f. 4.1.1984.]

[Provided that where the owner or the person primarily liable or the person liable to pay the property tax fails to submit the return in the prescribed form then notwithstanding anything contained in this Chapter, the Municipal Commissioner may revise the annual value upon service of notice under Section 184]”

The learned Judge observed whether or not the failure or neglect to file such returns was a deliberate attempt to conceal the actual amount of rent being received by the appellants, with the fraudulent motive of depriving KMC of property tax that it should be receiving, is a mixed question of fact and law. Such a question cannot be decided conveniently by the writ Court. The remedy of statutory appeal is a far more efficacious remedy. The appellate forum can record necessary evidence, examine witnesses and come to a proper finding. We are in complete agreement with the view of the learned Single Judge. The dispute in the present case does not constitute a pure question of law. Therefore, the decision in the case of **Godrej Sara Lee Ltd. v. Excise and Taxation Officer-cum-Assessing Authority and Ors., (Supra)**, would not apply to the facts of the present case.

33. Now let us take up the other ground of challenge urged by learned Advocate for the appellants. He argued that the power conferred on the Municipal Commissioner to revise the annual valuation of land or building under Section 179(2) of the KMC Act cannot be exercised for a period beyond three years going backwards from the date of the revising order. This is because a Division Bench of this Court has held so in the case of

Sahu Jain Charitable Society & Ors., (Supra). In that case, the vires of Section 179(2), second proviso was under challenge. After discussing various authorities, the Division Bench held as follows:-

“25. The power conferred on the Municipal Commissioner to revise the annual valuation of land or building under Section 179(2), second proviso was indeed unlimited in point of time and very wide in its amplitude. Any piece of legislature where unguided or uncanalised power is given to an authority is to that extent invalid. Therefore, the power conferred on the Commissioner in my opinion is indeed so unlimited that it falls foul of Article 14 of the Constitution of India.

26. However, in the Supreme Court cases discussed by me above similar powers were conferred on the authority. In the case of New Delhi Municipal Committee Vs. The Life Insurance Corporation of India reported in 1977 SC 2134 similar power was conferred on the municipal committee under the Punjab Municipal Act to amend the assessment lists. In all these matters including the municipal matter the Supreme Court did not declare the provisions as ultra vires but tried to "read down" the rigours of the provision by implying words into the offending provision so as to make a provision reasonable. It implied the words "within the reasonable time" after the phrase "at any time" to make the section workable.

27. We adopt the same procedure. The commissioner can only have the power to revise valuation within a reasonable period of time. In the case of **Santosh kumar Shivgonda Patil and Ors. v. Balasaheb Tukaram Shevale and Ors. reported in (2009) 9 SCC 352** the Supreme Court computed reasonable time in the subject Act to be three years. In Section 573 of the Kolkata Municipal Corporation Act, 1980, the Corporation has the power to recover any sum by initiating a proceeding within three years from the date, such sum became due and payable. Therefore, on a proper interpretation of the proviso, and upon reading it down to save it from unconstitutionality the period for which valuation of a property can be raised must not be more than three years before the date of the revising order.”

34. There is no doubt that notices were issued by the Hearing Officer informing the appellants of the proposed enhanced valuation in February 2019. Hearing was held and orders were passed by the Hearing Officer in April 2019 confirming the proposed valuation. It is also not in dispute that the valuation was sought to be enhanced/revised for periods of time beyond three years going backwards from 2019. According to the learned Advocate for the appellants, **Sahujain’s** case stands in the way of doing so. The Municipal Commissioner cannot revise annual valuation of a property retrospectively beyond three years.

35. Before the learned Single Judge, learned Advocate for the writ petitioners had relied on the decision in **Raza Textiles Ltd. v. Income Tax**

Officer, Rampur reported at (1973) 1 SCC 633, in support of his argument that the Hearing Officer had clutched on to jurisdiction by deciding the jurisdictional facts erroneously. It was argued that the present case falls within the exception carved out by the Hon'ble Supreme Court in the case of **Whirpool Corporation v. Registrar of Trade Marks, Mumbai & Ors reported at (1998) 8 SCC 1** and the existence of alternative statutory remedy cannot be a bar to invoking the jurisdiction of the High Court under Article 226 of the Constitution. On the aforesaid issues, the learned Judge held as follows

“13. The sheet anchor of the case of the petitioners is the decision in Sahu Jain (supra) wherein the vires of second proviso to Section 179 (2) (d) of the Act as well as the assessment made by the authority was challenged. The Hon'ble Division Bench after noticing the provision laid down under Section 573 observed that under second proviso to Section 179(2), the proviso to Section 573 would be rendered otiose by giving the Commissioner the power to collect unlimited tax by unrestricted revision of the annual valuation of the premises for an unlimited period of time. The Hon'ble Division Bench, accordingly read down the proviso to the effect that the period for which valuation of a property can be revised must not be more than 3 years before the date of revising order.

14. The effect of breach of obligation under Section 182 by the assessee vis-à-vis the power of the authority to revise the Annual

Valuation does not appear to be in issue in Sahu Jain (supra). Therefore, Sahu Jain (supra) cannot be said to be an authority for the proposition that even in case of breach of statutory obligation under Section 182 of the Act by the assessee, the authority would be denuded of its power to revise Annual Valuation within a reasonable period of time after discovering the materials and/or information relevant for revision of Annual Valuation. However, in case of fraud, the date of discovery of fraud may be a relevant consideration for deciding the issue of limitation in view of the decision of the Hon'ble Supreme Court in D. Narsing Rao (supra).

15. A coordinate bench in the case of Kanak Projects (supra), after noticing the decision of Sahu Jain (supra), observed that several factual aspects are to be considered before arriving at a finding on the jurisdictional issue. The coordinate bench further observed that in case the writ petitioners therein were found to have acted in breach of the statutory obligations under Section 182, then its impact on the annual valuation is also to be assessed.

16. Upon reading the impugned orders, it does not appear to this Court that the aforesaid jurisdictional issue was raised before the Hearing Officer. In view of the observations made hereinbefore, this Court holds that the issue of limitation in the case on hand, is a mixed question of law and fact which cannot be decided by this Court in this writ petition. It does not appear to this Court at this stage that the Hearing Officer clutched on to the jurisdiction by

proceeding to revise the annual valuation for the periods in question by deciding the issue of limitation erroneously, as contended by the petitioners. Therefore, the decision in the case of Raza Textiles (supra) is of no assistance to the petitioners.

36. We are in complete agreement with the observations and conclusion of the learned Single Judge. A judgment cannot be read as a statute or as *Euclid's Theorem*. In this connection, one may profitably refer to the observations of the Hon'ble Supreme Court in the case of ***Bharat Petroleum Corpn. Ltd. & Anr. v. N.R. Vairamani & Anr., reported at (2004) 8 SCC 579***, paragraphs 9 to 12, which read as follows:-

“9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. V.*

Horton (1951 AC 737 at p.761), Lord Mac Dermot observed: (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissimavertra of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

10. In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said, "Lord Atkin's speech.....is not to be treated as if it was a statute definition it will require qualification in new circumstances." Megarry, J in (1971) 1 WLR 1062 observed: "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said: (All ER p. 761C)

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

11. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

12. The following words of Lord Denning in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT, AIR 1962 SC 680, p. 688, para 19)

"19... Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

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"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.".

37. We have may also refer to the observations of the Hon'ble Supreme Court at paragraphs 14, 15 and 16 of the reported judgment in the case of ***Sarva Shramik Sangathana (KV), Mumbai v. State of Maharashtra & Ors., reported at (2008) 1 SCC 494***, which read as follows:-

"14. On the subject of precedents Lord Halsbury, L.C., said in Quinn v. Leathem, 1901 AC 495:

"Now before discussing the case of *Allen v. Flood* (1898) AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all."

We entirely agree with the above observations.

15. In *Ambica Quarry Works vs. State of Gujarat & others* (1987) 1 SCC 213 (vide paragraph 18) this Court observed:-

"18. The ratio of any decision must be understood in the background of the facts of that case. It has been said a long time ago that a case is only an authority for what it actually decides, and not what logically follows from it."

16. In *Bhavnagar University vs. Palitana Sugar Mills Pvt. Ltd* (2003) 2 SCC 111 (vide paragraph 59), this Court observed:-

"59..... It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."

38. As held by the learned Single Judge and rightly in our opinion, the effect of breach of the statutory duty of an assessee imposed on him/her by Section 182 of the KMC Act, was not in issue before the Division Bench which decided **Sahujain's case**. Learned Advocate for the appellants argued that the provisions of Section 182 of the KMC Act are not mandatory but only directory. No penal consequences have been stipulated for failure on the part of the assessee to comply with the said provisions. Therefore, KMC cannot try to gain any leverage out of the non-filing of returns by the appellants under Section 182 of the KMC Act. The said Section itself envisages that even if the assessee fails to file such returns, the Municipal Commissioner may proceed to revise the annual valuation of the concerned premises.

It is not necessary for us to decide whether the provisions of Section 182 of the KMC Act are directory or mandatory. What is clear is that the section imposes an obligation on an assessee to file returns. This section obviously was incorporated so that the KMC is kept abreast of the current status of the particular property, e.g., whether or not it is tenanted, whether the rent has increased, whether or not a property is commercially exploited, etc. This would enable the authorities to decide whether a revaluation of the concerned property for the purpose of computing property tax is necessary.

The returns would also help the authorities to correctly, to the extent possible, revise the annual valuation of the concerned property.

39. It is not inconceivable that an unscrupulous assessee deliberately fails to file returns as contemplated in Section 182 of the KMC Act only with the fraudulent motive of not informing the KMC authorities of the changed status of his property or of any higher benefit that he may be deriving out of such property. It would be difficult for the authorities to find out on their own about any changed status of a property. In Such cases where an assessee with a view to defrauding the Municipal Authorities purposely does not file returns under Section 182, the application of the ratio in **Sahujain's** case must stand relaxed. After all, fraud unravels everything. A statutory authority should be allowed a reasonable time period to exercise a statutory power after discovering fraudulent concealment of material facts, even if in the meantime, the time period prescribed for exercise of such statutory power has expired. If the law is otherwise, it will put a premium on fraud practiced by a dishonest assessee. It may also amount to a fraud on the statute. This aspect was not placed for consideration before the Division Bench which decided **Sahujain's case**.

40. We are not suggesting or coming to a finding that the appellants have fraudulently concealed the relevant information from the KMC Authorities by not filing returns under Section 182 of the KMC Act. However, whether or not there was such fraudulent motive on the part of the appellants is a question of fact which the writ court cannot decide. If the appellants approach the appellate forum prescribed by the KMC Act, such a forum

would be better equipped to go into that question. Since such a disputed question of fact arises in the present case, it is all the more desirable that the writ court declines to exercise jurisdiction and relegates the appellants to the statutory remedy by way of appeal before the Municipal Assessment Tribunal.

41. In so far as the decision of a Coordinate Bench in ***Calcutta Municipal Corporation and Ors. v. Abdul Halim Gaznavi Molla & Ors., (Supra)***, is concerned, the same was not concerned with Section 179(2) of the KMC Act, 1980. What that decision laid down is that Section 573 of the KMC Act cannot have any application as regards recovery of tax, interest or penalty provided for in Chapter XVI of the KMC Act. Section 573 of the Act is to the following effect:-

“573. Recovery of certain dues of Corporation. - Save as otherwise provided in this Act or the rules or the regulations made thereunder, any sum due to the Corporation on account of any charge, cost, expense, fee, rate or rent or on any other account under this Act or the rules or the regulations made thereunder shall be recoverable from the person from whom such sum is due as if it were a [property tax] [Substituted by section 2 of the Calcutta Municipal Corporation (Amendment) Act, 2001 (West Bengal Act VIII of 2001), w.e.f. 23.3.2001, for the words "consolidated rate."]:

Provided that no proceeding for the recovery of any such sum under this section shall be commenced after the lapse of three years from the date on which such sum becomes due.”

The Issue of revising the annual valuation of a property and consequently the property tax payable thereon and the issue of recovery of such tax may be different. However, we need not delve into the said issue in the present judgment. Hence we make no observation as to whether or not the decision in **Sahujain’s case** is *per incuriam* not having considered the earlier Division Bench decision in the case of **Calcutta Municipal Corporation and Ors. v. Abdul Halim Gaznavi Molla & Ors, (supra)**.

42. In view of the aforesaid we find no reason to interfere with the order of the learned Single Judge. We find no such infirmity in the order under appeal as would persuade us to interfere with the order. We must also keep in mind that in an intra court appeal, just because the Appellate Court has an opinion different from that of the learned Single Judge, the same is not ground enough to interfere so long as the view of the learned Single Judge is a plausible one. The Appeal Court will only interfere when the judgment and order impugned before it is clearly wrong or perverse.

43. In **Gujarat Steel Tubes Ltd. & Ors. v. Gujarat Steel Tubes Mazdoor Sabha & Ors., reported at (1980) 2 SCC 593**, at paragraph 73 of the reported judgment, the Hon’ble Supreme Court observed that an Appellate Court interferes “not when the order appealed is not right but only when it is clearly wrong. The difference is real, though fine.”

44. In ***Wander Ltd. & Anr. v. Antox India P. Ltd., reported at 1990 (Supp) SCC 727***, at paragraph 14 of the reported judgment, a three Judge Bench of the Hon'ble Supreme Court observed as follows:-

“14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. The Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in *Printers (Mysore) Private Ltd. v. Pothan Joseph* reported at AIR 1960 SC 1156:

“... These principles are well established, but as has been observed by **Viscount Simon in *Charles Oseption & Co. v. Johnston* reported at 1942 AC 130** ‘... the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case.

The appellate judgment does not seem to defer to this principle.”

We do not find any palpable error or illegality or arbitrariness or perversity in the judgment and order impugned before us. On the contrary, in our opinion, the judgment and order under challenge is eminently sensible and logical and the view of the learned Judge is definitely a plausible one.

45. Accordingly, this appeal fails and is dismissed. There will be no orders as to costs.

46. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(ARIJIT BANERJEE, J.)

I agree.

(APURBA SINHA RAY, J.)

LATER:-

After the judgment is pronounced in Court, learned Advocate for the appellants says that his clients should be permitted to approach the appellate forum prescribed statutorily, if so advised. We do not think any leave is required from us. If the appellants are still entitled to approach the statutory forum with an appeal, they will be at liberty to do so.

If the Municipal Tribunal is approached with an appeal, along with the prayer for condonation of delay, the same shall be considered by the learned Tribunal in accordance with law and in the light of the provisions of the Limitation Act including Section 14 thereof.

(ARIJIT BANERJEE, J.)

I agree.

(APURBA SINHA RAY, J.)