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IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

G.A. NO. 1 OF 2024
RVWO NO. 14 OF 2024
In connection with G.A. No. 3 of 2023
E.C. No. 287 of 2011
C.S. No. 270 of 2006

CANARA BANK
Vs.
MPMC Pvt. Ltd.

BEFORE:
The Hon'ble Justice APURBA SINHA RAY
Date : 22.05.2024

APPEARANCE:
Mr. Mainak Bose, Adv.
Mr. Farhan Gaffar, Adv.
Mrs. Swati Bhattacharyya, Adv.
...for the decree-holder

Mr. Debmalya Ghosal, Adv.
Mr. Tanmoy Sett, Adv.
Ms. Aparajita Ghosh, Adv.
Mr. Souvik Ghosh, Adv.
...for the judgment-debtor

The Court :- The learned Counsel appearing for the applicant seeking for review of the order dated February 27, 2024 has submitted that the said order suffers from error apparent on the face of the record as it fails to consider the order dated December 20, 2016 and January 8, 2020 passed by the Hon'ble Division Bench of the Hon'ble High Court at Calcutta. The learned counsel has further submitted that though the order dated December 20, 2016 the Hon'ble

Court in GA No. 1404 of 2013 has used the word 'reimbursement' but such word alone cannot have any impact on the understanding of the parties in as much by way of subsequent order dated January 8, 2020 presided over by the same Hon'ble Judge, the parties were directed to apply before the corporation to determine its proportionate share of the municipal tax and rates and with a further direction upon the defendant/judgment-debtor to pay 50% of such amount as would be determined. Furthermore, the order dated February 27, 2024 did not consider the provisions of Order 21 Rule 1 & 2 of the Code of Civil Procedure, 1908 which empowers the judgment-debtor to make payment by any other mode wherein payment is evident in writing. It is further contended that the Hon'ble Court passed the order dated February 27, 2024 without taking into consideration that the executing court cannot determine or adjudicate the rights and conduct of the parties and it can only assist the parties under Order 21 of the Code of Civil Procedure, 1908 for complete satisfaction of a decree.

1. The learned Counsel of the judgment-debtor has referred three case laws in support of its contention reported at **(2007) 15 SCC 513 (para 6) (Rajender Kumar & Ors. Vs. Rambhai & Ors.)**, **(1993) Supp (4) SCC 595 (paras 18 and 19) (S. Nagaraj & Ors. Vs. State of Karnataka & Anr.)** and **(2016) 13 SCC 135 (paras 8, 12, 13 and 17) (Chairman and Managing Director, Central**

Bank of India & Ors. Vs. Central Bank of India Scheduled Castes/Scheduled Tribes Employees Welfare Association & Ors.).

2. Mr. Bose, the learned Counsel appearing for the decree-holder has submitted that there is no error apparent on the face of the record so far as the order dated February 27, 2024 is concerned. The learned Counsel has further argued that the case laws particularly the case law reported in **Chairman and Managing Director, Central Bank of India & Ors. (supra)** cited by the judgment-debtor, in fact, supports the case of the decree-holder. However, he has submitted a case law reported at **(2008) 2 SCC 439 (Deva Metal Powders (P) Ltd. Vs. Commissioner Trade Tax, Uttar Pradesh)**.

3. During hearing, Mr. Ghoshal, the learned Counsel appearing for the applicant has extensively argued by drawing the attention of this Court to the order passed by the Hon'ble Division Bench presided over by Hon'ble Justice Sanjib Banerjee on January 8, 2020. Furthermore, the learned counsel has drawn the attention of this court to paragraph no. 10 of the judgment dated February 27, 2024. The relevant paragraph is quoted herein below:-

“From the above and other materials on record, it is pertinent to know how much amount the decree-holder actually paid on account of municipal taxes and surcharges on behalf of the judgment-debtor for the relevant period and this would certainly

assist the court to take the instant proceeding to a logical end.”

4. The learned counsel has pointed out that when the Hon’ble Division Bench by its order dated January 8, 2020 considered the amount of municipal taxes and surcharges paid by the decree-holder on behalf of the judgment-debtor for the relevant period, can the executing court again ask the decree-holder to submit the particulars of payment on account of municipal taxes and surcharges paid by the decree-holder on behalf of the judgment-debtor.

Decision with reasons:-

5. I have considered the above submissions of the learned counsels of the parties and it is transpired that the grounds taken in this review application are no less than grounds of probable appeal against the order dated 27th February, 2024. A bare glance on the grounds of review discloses that the judgment-debtor wants to re-agitate its case in the garb of review application.

6. So far as regards the contention that this court directing the decree-holder to inform the court about the actual amount of municipal taxes and surcharges paid by the decree-holder on behalf of the judgment-debtor has essentially contradicted the observation of the Hon’ble Division Bench’s order dated 8th January, 2020, I would like to quote the excerpts from the said order dated 8th January, 2020 which are herein below:-

“It is evident from the records that the amount claimed to be due in the tabular statement filed by the respondent herein was not supported by the requisite calculations in the affidavit accompanying the tabular statement. A supplementary affidavit claimed to be filed by the respondent in January 2017 which indicated a different basis. A further supplementary affidavit was filed by the respondent in March, 2017 and such further supplementary affidavit gave another figure as the amount due and owing from the appellant herein to the respondent on account of the municipal taxes and surcharge. For completeness, it is also necessary to record that the executing court appointed a special referee and objections were taken to the special referee’s methodology of calculating the quantum payable by the appellant on account of the municipal taxes and surcharge. Ultimately, both the court and the parties ignored the special referee’s report and proceeded on the basis of calculations furnished by the respondent and the response thereto by the appellant herein.”

7. From the above, it is transpired that the Hon’ble Division Bench held that the amount, which was claimed to be due in tabular statement filed by the decree-holder, was not supported by any requisite calculations. The Hon’ble Division Bench has further went on holding that there were several conflicting

calculations on the record and different steps were taken at the instance of the court.

8. Needless to mention, the judgment-debtor time and again in different stages of the proceeding had taken the plea that the bank was unable to pay the requisite amount as the decree-holder failed to inform the bank regarding the particulars of payment made by the decree-holder on behalf of the judgment-debtor. During hearing the similar stands were taken by the learned counsel of the judgment-debtor. The judgment under review in its paragraph 3 has recorded the submission of the learned counsel of the judgment-debtor as follows:-

“The learned counsel appearing on behalf of the judgment debtor- bank has vehemently objected to the submissions of the learned counsel of the decree-holder. According to the learned counsel of the bank the service tax issues have already been resolved as the bank has already paid Rs. 32,00,000/- approximately on account of the service tax and there was no allegation till date that service tax was not paid from the side of the bank. As the decree-holder could not provide any receipt showing that they have paid the amount of municipal taxes and surcharges, it was very much difficult for the bank to know the exact amount of municipal taxes and surcharges which are required to be paid from the side of the bank. Moreover, the consent decree does not specify to whom such

amount of municipal taxes, surcharges are to be paid and further the consent decree has disclosed only the percentage of municipal taxes and surcharges to be paid by the judgment-debtor bank. The decree-holder itself quantified the amount of municipal taxes and surcharges and it appears that the decree-holder claimed more than 2/3rd shares of municipal taxes and surcharges which they were not actually entitled to as per consent decree. As the KMC was directed by the Hon'ble Court to prepare a report for the amount of municipal taxes and surcharges including service taxes and after submission of such report before the court, the judgment debtor found that the relevant amount is its statutory dues and the bank paid the relevant amount in its wisdom to protect its rights and interest. There is no condition of reimbursement mentioned in the consent decree nor was there any condition including to whom such municipal taxes and surcharges are to be paid. As the amount was not crystallized even after the calculation of the decree-holder, the judgment-debtor has paid the amount to get rid of legal complications.”

9. So, from the above it appears that the judgment-debtor again raised the relevant issue that they were unable to pay the relevant amount as the bank was not made aware from the part of the decree-holder regarding the exact amount of municipal taxes and surcharges which are required to be paid from

the side of the bank. If that be so, it is obvious that this court should know what was the alleged actual amount which was paid by the decree-holder on account of municipal taxes and surcharges on behalf of the judgment-debtor for the relevant period pursuant to the consent decree and for that reason the decree-holder was directed to inform such particulars to this court by order dated 27th February, 2024. The order dated January 8, 2020, however, was silent about the actual amount paid by the decree-holder in respect of the judgment-debtor's occupied portion. The parties were given liberty to take the assistance from the Kolkata Municipal Corporation in that regard. The report of Corporation dated 15.09.2021 shows the total liability of Canara Bank's occupied portion was Rs. 1,51,05,383/- as per terms of settlement. Nowhere it has recorded what was the actual payment made by the decree-holder for Canara Bank's occupied portion. Therefore, I do not find any wrong in asking the decree-holder to assist the court by providing the details of such alleged payment.

10. The plea that there is no question of reimbursement as taken by the learned counsel of the judgment-debtor has also been discussed in the judgment under review. In paragraph 5 of the said judgment by referring to the order dated 20th September, 2016 **(which should be read as 20th December, 2016)** and order dated 8th January, 2022 **(which should be read as 8th January, 2020)**, this Court recorded that the said orders of the Hon'ble Division Bench have made it clear that there is no ambiguity in terms of

statement, and the proposed payment of municipal taxes and surcharges on behalf of the judgment-debtor is in the nature of reimbursement of the payment already made by the decree-holder on behalf of the bank. Such observations of the Hon'ble Division Bench have reached finality and therefore the position, thus, is that the decree-holder can claim the relevant amount from the concerned bank on showing that payment of municipal taxes and surcharges have been made by the decree-holder on behalf of the judgment-debtor bank in respect of the property for the relevant period that is from September, 2006 to August, 2011. Therefore, the order dated December 20, 2016 and order dated January 8, 2020 which disclose that the proposed payment of municipal taxes etc. is in the nature of reimbursement of the payment already made by the decree-holder on behalf of the bank, have been accepted by the judgment-debtor by not challenging the same. The judgment-debtor wants to agitate the said issue once again in a review application which can only be done in an appellate forum and not by filing a review application. This is not at all an error apparent on the face of the record. All the judicial decisions referred to by the learned counsels of the parties deal with error apparent on the face of record. The alleged error as submitted by the learned counsel of the judgment-debtor does not come under the ambit of error apparent on face of the record.

10.1. Furthermore, Rule 1, Order XXI of the Code of Civil Procedure, 1908 also enjoins if the options under sub-rules (1)(a) & (b) are not applied, the mode

of paying decretal dues would be as per direction of the court which passed the decree. In this case there is no direction that the amount of decretal due can be deposited with the corporation. The orders dated 20.12.2016 and 08.01.2020 have uniformly held that the same should be reimbursed to the decree-holder. As the ground of reimbursement of municipal taxes and surcharges in favour of the decree-holder has become so sound, there was no scope for the judgment-debtor to opt out for any mode of payment excepting payment to the decree-holder through reimbursement. The plea of the judgment-debtor in this regard is not convincing.

11. Therefore, I do not find any merit in the review application, and hence the review application stands dismissed on contest with a cost of Rs. 50,000/- (fifty thousand) only to be payable by the judgment-debtor Bank to the fund of High Court Mediation and Conciliation Committee, High Court, Calcutta within seven days from date. The instant Review Application being No. 14 of 2024 is, thus, disposed of on contest.

12. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(APURBA SINHA RAY, J.)

Later

13. Learned counsel for the judgment-debtor has prayed for stay of operation of the order.

The said prayer is considered and rejected.

(APURBA SINHA RAY, J.)