IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

RVW 8 of 2024

IA No: CAN/1/2024

In

MAT 1315 of 2023

Singha Singh Roy & Associates Private Limited & Anr.

Vs.

The Kolkata Municipal Corporation & Ors.

Before: **The Hon'ble Justice Arijit Banerjee**

&

The Hon'ble Justice Apurba Sinha Ray

For the review applicants	:	Mr. Debasish Mitra, Adv.
		Mr. Kallol Basu, Adv.
		Mr. Samik Sarkar, Adv.
		Mr. Nilanjan Pal, Adv.
		Ms. Sreejita Sen, Adv
For KMC	:	Mr. Biswajit Mukherjee, Adv.
		Ms. Debangana Dey Nayak, Adv.
CAV on	:	13.02.2025
Judgment on	:	25.02.2025

Arijit Banerjee, J.:-

1. This review application is directed against a judgment and order dated August 9, 2023, whereby MAT 1315 of 2023 was disposed of.

2. The relevant facts of the case briefly stated, are that property tax has fallen due to Kolkata Municipal Corporation (in short 'KMC') from the persons claiming to be the owners of premises no. 46/31/1, Lila Roy Sarani (formerly, Gariahat Road), Kolkata. KMC raised a demand in the region of Rs. 1.22 crore comprising of approximately Rs. 69.20 Lakh on account of principal and the rest on account of interest and penalty.

3. The appellants/review applicants failed to pay the demanded sum or any portion thereof. KMC issued distress warrant for recovery of arrear property tax in exercise of power under Section 219 of the KMC Act, 1980.

4. When KMC officials went to the premises in question to take possession of the movables in execution of the distress warrant, they found a padlock on the entry door to the premises in question. Having been denied entry, to secure the movables inside the premises which KMC was entitled to attach, remove and sell in aid of recovery of its property tax dues, KMC put its seal over the said padlock.

5. Being aggrieved by the aforesaid action on the part of KMC, the appellants/review applicants approached a learned Single Judge of this Court by filing a writ application being WPA 15011 of 2023. An order dated June 28, 2023, was passed by the learned Single Judge, the relevant portion whereof reads as follows:-

> "Subject to payment of Rs.35,00,000/- only within 14th July, 2023, the men and agents of the Corporation will open the padlock of the subject premises.
>
> At the time of opening the padlock a proper inventory shall be made by the officers of the Corporation in the presence of the petitioners, the person from whom the possession was taken by the Corporation and the local police.
>
> The Officer-in-Charge of the concerned police station shall remain present at the time of opening the padlock and making the inventory.
>
> In the event there is any dispute with regard to opening the padlock or handing over the possession of the premises in question or the movable goods, then the Corporation will put the padlock once again and bring the same to the notice of this Court.
>
> The Corporation is directed to issue a notice upon Arya Infotech provided the aforesaid amount of Rs.35,00,000/- is deposited by the petitioners within the time as specified hereinabove.
>
> The said payment shall be made without prejudice to the rights and contention of either of the parties in the instant writ proceeding. "

6. The writ petitioners challenged that order by filing MAT 1315 of 2023. That appeal was disposed of by the judgment and order under review, the relevant portion whereof reads as follows:-

> "Be that as it may, for the time being, some amount of money has to be deposited by the appellants. Mr. Basu, learned Advocate,

appearing for the appellants, on instructions, says that his clients will put in Rs.15,00,000/- within seven working days from date with the Corporation, without prejudice to their rights and contentions in the pending proceedings.

In the facts and circumstances of the case and on a *prima facie* reading of Sections 219 and 220 of the KMC Act, we are of the view that Rs.15,00,000/- may be a reasonable amount for the time being.

Accordingly, we modify the order under appeal only to the extent that the sum of Rs.35,00,000/- will be substituted by Rs.15,00,000/-. We find the other portions of the order to be entirely reasonable and we do not touch any other portion of the order impugned. Upon deposit of Rs.15,00,000/- by the appellants, the other portions of the order under challenge will be carried out. However, we clarify that if the lock on the entry door that was found by the Corporation, is opened by the key produced by the appellants, then *prima facie* it would appear that the appellants are in possession of the premises. In that event, after removing the movables of the appellants from the said premises, the same padlock will be again put on the entry door to the premises in question and the keys will be returned to the appellants, who will hold the same, subject to further directions by the learned Single Judge.

The appellants shall deposit with the Corporation Rs.15,00,000/- within seven working days. Subject to making the aforesaid deposit, the appellants will be at liberty to file their Affidavit-in-Reply in connection with the writ petition within a fortnight from date. We are told that the Corporation has already served a copy of its Affidavit-in-Opposition on the appellants/writ petitioners."

7. Appearing for the review applicants, Mr. Debasish Mitra, learned Advocate, argued that although this application is registered as a review application, it is really in the nature of an application for modification of the judgment and order dated August 9, 2023. He said that the review applicants deposited with KMC on account a sum of Rs. 10 lakh which is lying in its suspense account. Therefore, we should modify our judgment and order to the extent of directing the review applicants to deposit Rs. 5 lakhs instead of Rs. 15 lakh after giving credit to the sum of Rs. 10 lakh that is lying in the suspense account.

8. We do not appreciate the stand of the review applicants. The judgment and order in question was passed on August 9, 2023. The review applicants were offered to deposit of Rs. 15 lakh with KMC within 7 working days from the date of the order. On the basis of such offer, we had passed the order in question directing them to deposit such amount with KMC within 7 working days. They did not do so. 5 months later, they present this review application in the department on January 10, 2024. Thereafter they kept completely silent till November 25, 2024 when they filed an application for stay of operation of the order dated August 9, 2023 being CAN 1 of 2024.

9. The aforesaid conduct of the review applicants amounts to sharp practice, verging on dishonesty. As noted above, a huge sum, in the region

of Rs. 1.20 crore appears to be due to KMC on account of property tax in respect of the premises of which the review applicants claims to be the owners. The amount of Rs. 10 lakh that the review applicants claim to have deposited with KMC and which is lying in KMC suspense account, is liable to be adjusted against KMC's dues on account of property tax. Having offered, through their learned Counsel, to deposit of Rs. 15 lakh within 7 working days, with full knowledge that a sum of Rs. 10 lakh is lying deposited by KMC. The review applicants are now retracting from such stand. Lack of *bona fides* on their part would also be evident from the fact that the review application was filed more than 5 months after the order in question was passed. The stay application in connection with the review application was filed more than 1 year 3 months after the order was passed.

10. We see no reason to review the judgment and order dated August 9, 2023. In fact, in all fairness to learned Counsel for the review applicants, he candidly submitted that he was not pressing for review of the judgment and order in question.

11. We also do not find any reason for modifying the order in question. Given the huge outstanding to KMC on account of arrear property tax, in our opinion, the review applicants cannot claim that the sum of Rs. 10 lakh that they allegedly deposited with KMC and presently lying in its suspense account, be adjusted against the sum of Rs. 15 lakh that we directed the review applicants to deposit with KMC.

12. RVW 8 of 2024 is according dismissed along with the connected application being CAN 1 of 2024. There will be no order as to costs.

13. Urgent certified photocopy of this judgment and order, if applied for, be given to the parties upon compliance of necessary formalities.

I agree.

(**Apurba Sinha Ray, J.**) (**Arijit Banerjee, J.**)