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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
AN APPEAL FROM ORDER PASSED IN ITS
ORDINARY ORIGINAL CIVIL JURUSDICTION
ORIGINAL SIDE

APO/106/ 2024
WITH EC/287/2011

CANARA BANK
Versus
MPMC PVT. LTD.

Present :
The Hon'ble Justice Debangsu Basak
-And-
The Hon'ble Justice Md. Shabbar Rashidi

For the Appellant : *Mr. Sakya Sen, Sr. Adv.*
Mr. Debmalya Ghosal, Adv.
Mr. Tanmoy Sett, Adv.
Ms. Aparajita Ghosh, Adv.
Mr. Souvik Ghosh, Adv.

For the Respondent : *Mr. Mainak Bose, Sr. Adv.*
Mr. Farhan Ghaffar, Adv.
Mr. Zafar Zillana, Adv.
Ms. Swati Bhattacharyya, Adv.

HEARD ON : 07.11.2025
DELIVERED ON : 07.11.2025

DEBANGSU BASAK, J.:-

1. Appeal is at the behest of the judgment-debtor and directed against the order dated May 22, 2024 passed in IA No.GA/3/2023 EC/287/2011.

2. By the impugned order, learned Single Judge held that the appellant before us is liable to pay the decree-holder a sum of Rs.67,50,000/- without interest within seven days from the date of the order.

3. Learned senior advocate appearing for the appellant submits that, in a suit for eviction, a terms of settlement was entered into between the parties to the suit. He draws the attention of the Court to the relevant clause of the terms of settlement. He submits that, under the terms of settlement the appellant was required to bear 50% of the municipal taxes of the tenanted portion for the period from April, 2006 till September, 2011. He contends that, the entire liability for such period was discharged by the appellant. The appellant paid the apportioned amount of the municipal taxes as determined by the Kolkata Municipal Corporation (KMC) to KMC itself.

4. Learned senior advocate appellant for the appellant submits that, on the appellant discharging such liability to the Corporation, nothing remained due and payable by the appellant to the respondent herein as the decree-holder. Consequently, according to him, learned Single Judge erred in directing the appellant to pay the sum of Rs.67,50,000/- by the order under appeal.

5. Learned senior advocate appearing for the respondent draws the attention of the Court to the terms of settlement. He refers to the letter dated August 27, 2010 of the decree-holder. He submits that, prior to the terms of settlement, the respondent paid the portion of the municipal taxes to the Corporation. In this regard he draws the attention of the Court to page 165 of the paper book which tabulates the demand raised by the Corporation and the payments made by his client.

6. Learned senior advocate appearing for the respondent draws the attention of the Court to several orders passed from time to time in the execution proceedings both before the executing Court as also in appeal. He also refers to orders passed in the writ petition filed with regard to the immovable property concerned.

7. Learned senior advocate appearing for the respondent submits that, since the respondent paid the entire amount to the KMC, it is just and proper that the appellant, as the judgment-debtor reimburses the respondent with regard to the same.

8. We find from the records that the terms of settlement dated August 4, 2010 was entered into between the parties in an appeal preferred against the decree passed in suit for eviction.

9. Relevant clause of the terms of settlement is as follows:

> *"3. The appellant bank shall pay rent @Rs.50/- per sq.ft. inclusive of maintenance charges but exclusive of municipal taxes, surcharge and electricity supply charges for the period of 1st April, 2009 to 31st March, 2010. For the above period the liability of the appellant bank shall pay 50% of municipal taxes and 100% of the surcharge. The appellant bank shall pay the municipal taxes, surcharge and electricity supply charges only in respect of the tenanted portion."*

10. In our understanding clause 3 of the terms of settlement requires the appellant before us to pay 50% municipal tax and 100% of the surcharge for the period from April 1, 2009 to March 31, 2010.

11. Documents disclosed before us establish that the KMC authorities apportioned the municipal tax liability of the appellant for such period. KMC authorities also quantified the surcharge payable. There is no claim on account of surcharge.

12. Documents produced before us also establish that, appellant paid 50% of the municipal tax for such period to KMC authorities. At the same time documents also establish that respondents before us as the decree-holder also paid KMC for such period.

13. Apparently, payment by the decree-holder/respondent was prior in point of time than the payment made by the appellant.

14. However, there is an order passed by the writ Court in WPO/2235/2022 dated June 30, 2022 which permitted the appellant before us to pay 50% of the municipal tax and 100% of the surcharge for the period from April 1, 2009 to March 31, 2010. This order dated June 30, 2022 was passed in presence of the parties before us. We are informed that such writ petition is yet to be finally decided.

15. Be that as it may, since the appellant paid KMC authorities the municipal tax and surcharge in terms of the terms of settlement, we are of the view that, on the date when the order impugned was passed there was no liability on the part of the appellant to the respondent to be discharged and for the executing Court to pass the order impugned. In our understanding, clause 3 of the terms of settlement although foist the liability of the municipal tax and surcharge on the appellant before us, for the period from April 1, 2009 to March 31, 2010, it does not provide that such payment is to be made by the appellant to the respondent in the first place and that, the respondent can claim reimbursement from the appellant.

16. Again, subsequent to the terms of settlement there is an order passed by the writ Court dated June 30, 2022 in presence of both the parties which permitted the appellant before us to pay municipal tax and surcharge to KMC authorities directly.

17. Appellant before us having paid the KMC the municipal tax and surcharge, we are of the view that interest of justice would be subserved by setting aside the order impugned and permitting the respondent before us to seek reimbursement of the sum of Rs.67,50,000/- from the KMC authorities.

18. APO/106/2024 along with all pending applications are disposed of without any order as to costs.

19. Since we disposed of the appeal, the interim order requiring the appellant to keep a sum of Rs.67,50,000/- in a fixed deposit, stands vacated. Needless to say that the appellant is at liberty to encash the fixed deposit.

(DEBANGSU BASAK, J.)

20. I agree.

(MD. SHABBAR RASHIDI, J.)

A/s.