(2018) 11 CAL CK 0012

In the Calcutta High Court

Case No : Civil Order No.202 Of 2018

Kolkata Municipal Corporation	APPELLANT
Vs	
Achintya Kumar Ghosh	RESPONDENT

Date of Decision : 16-11-2018

Acts Referred:
Constitution of India, 1950 — Article 227

Citation : (2018) 11 CAL CK 0012

Hon'ble Judges : Rajasekhar Mantha, J

Bench : Single Bench

Advocate : Aloke Kumar Ghosh, Swapan Kumar Debnath, Probal Mukherjee, Bratin Kumar Dey

Final Decision : Disposed Off

Judgement

The Kolkata Municipal Corporation is aggrieved by an order dated 21st January, 2015 passed in M. A. Appeal No. 73 of 2013 whereby and under the

original assessment made by the Assessing Officer came to be reduced by the Tribunal based on a annual valuation of another flat in the same

premises that was the subject-matter of one M. A. 87 of 2013 before the same Tribunal.

The K.M.C contends that the order is totally devoid of reasons and the assessment by the Assessing Officer was taken strictly in accordance with

law and could not have been interfered with by the Tribunal.

While there is a partial semblance of a reason being set out in the impugned order, this Court finds that the Tribunal could and should definitely have

given more reasons for interference with an order of the Assessing Officer.

Counsel for the opposite party, stongly urged the question of delay of four years in filing the instant revisional application. He relies upon a decision of the Supreme Court in the case of Bithika Mazumdar and anr. â?"versus- Sagar Pal and others reported in (2017) 2 Supreme Court Cases 748,

particularly paragraph 4. There are no two views to the fact that an application under Article 227 of the Constitution must be filed within reasonable

period of time and a delay of four years is definitely not reasonable. However, I find that the decision of Bithika Mazumder(Supra) was rendered in

the context of a private dispute. What weighs with this court for interfering the application under 227 of the Constitution is loss of revenue to a

â??Stateâ?? authority.

Be that as it may, one cannot also equally lose sight of the prejudice that may be caused to the opposite party assesse, which could easily claim that

the Corporation was not aggrieved by the impugned order for a substantial period of time and rights may have accrued as regards the finality of the

impugned order. Rights have to be balanced in the instant case. This Court, therefore, orders as follows :-

The impugned order shall stand set aside. Since the same order was passed in respect of Flat No.3A on the 3rd floor in the same building and that too

based on a judgement of the Tribunal in M.A 87 of 2013, the Tribunal shall proceed to rehear the appeal and the challenge to the assessment made by

the Assessing Officer uninfluenced by the Judgement of the Tribunal in M.A. No. 87 of 2013. However, it is made clear that if the Tribunal wishes to

uphold the assessment or vary the impugned order in any form, the same shall not cause any liability on the assesses on the principal amount, for a

period of 18 months, meaning thereby that any arrears only that may be sought from the assesses pursuant to the decision in M.A. 73 of 2013 shall

exclude a period of 18 months and the assesses shall not be liable to the Corporation to pay arrears only for such period. However, the question of

interest for the said period of 18 months may be decided by the Tribunal. This is necessary to balance the rival interest of the parties.

It is ordered that the Tribunal shall hear and dispose of the appeal on remand preferably within a period of two months from the date of the

communication of a copy of this order.

No unnecessary adjournment shall be granted to either of the parties. Both parties shall be entitled to file suitable additional pleadings if they so desire.

With the above observation, C. O. 202 of 2018 is disposed of.

There will be no order as to costs.

Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.