

(2018) 11 CAL CK 0014
In the Calcutta High Court
Case No : Civil Order No.215 Of 2018

Kolkata Municipal Corporation

APPELLANT

Vs

Subal Sakha Sen

RESPONDENT

Date of Decision : 16-11-2018

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2018) 11 CAL CK 0014

Hon'ble Judges : Rajasekhar Mantha, J

Bench : Single Bench

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

Final Decision : Disposed Off

Judgement

In view of the orders passed in C. O. 201 of 2018, C. O. 213 of 2018 and C. O. 214 of 2018 in respect of flat units in the same premises, the same

order shall govern the instant revisional application. The order passed in C.O. 213 of 2018 is set out hereinbelow:-

Re : C. O. 215 of 2018

The Kolkata Municipal Corporation is aggrieved by an order dated 3rd December, 2014 passed in M. A. Appeal No. 76 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, strongly 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 assessee, 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 assessee on the principal amount, for a

period of 18 months, meaning thereby that any arrears that may be sought from the assessee pursuant to the decision in M.A. 76 of 2013 shall exclude

a period of 18 months and the assessee 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

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. 215 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.