IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6120 OF 2008

(Arising out of S.L.P.(C) No. 4893/2007)

BENGAL PROPERTIES PVT. LTD. ... APPELLANT(S)

:VERSUS:

FEROZE BELAL AND ORS. ... RESPONDENT(S)

WITH

CIVIL APPEAL NO. 6121 OF 2008

(Arising out of S.L.P.(C) No. 6161/2007)

O R D E R

S.L.P.(C) No. 6161/2007:

Leave granted.

Having heard Mr. Mukherjee, learned counsel appearing on behalf of the appellants and Mr. Tapas Ray, learned senior counsel appearing on behalf of the respondents, we are of the opinion that without going into the respective merits and contentions raised before us, interest of justice would be subserved if the appellants are granted liberty to prefer an appeal before the Appellate Tribunal of the Calcutta Municipal Corporation from the order dated 29.11.2004 passed by the Municipal Commissioner.

The Appellate Tribunal shall consider the question relating to condonation of delay in preferring such appeal in terms of provision of or akin to Section 14 of the Limitation Act, 1963 as the appellants had been pursuing its remedy before the Calcutta High Court and this Court.

The Tribunal is hereby directed to hear out and dispose of the appeal as expeditiously as possible, preferably within a period of six months from the date of preferring the appeal. The appellants must file the memo of appeal within two weeks from date with an appropriate application for condonation of delay.

However, the order of attachment shall continue.

We make it clear that we have not gone into the merit of the matter and all the contentions of the parties shall remain open.

We, however, in exercise of our jurisdiction under Article 142 of the Constitution of India, direct that the Calcutta Municipal Corporation shall appropriate any amount, whether received from the landlord or from the tenant, in respect of the property in question, towards the arrears of the property taxes dues.

The appeal is disposed of accordingly.

<u>S.L.P.(C) No. 4893/2007:</u>

Although a limited notice was issued by us in terms of order dated 26.3.2007, having heard Mr. Mukherjee, learned counsel appearing on behalf of the appellant and Mr. Vishwanathan, learned counsel appearing on behalf of the respondents, we are of the opinion that leave should be granted in respect of all the questions raised by the appellant herein.

Leave granted.

This appeal is directed against the judgment and order dated 15.11.2006 passed by a Division Bench of the Calcutta High Court in A.P.O.T. No. 462/2006 in G.A.No. 2793/2006 whereby and whereunder the appeal preferred by the respondents herein was disposed of inter alia directing:

> **"Considering the facts and circumstances of the case, Smt. Basanti Dutta, a learned Advocate of this Court is appointed Receiver. She shall hold an enquiry as to who are the tenants and what is the rent actually paid by them. She shall diligently collect the arrear dues from the tenant, if any, and shall also collect the monthly rent and shall deposit the same with the Kolkata Municipal Corporation towards the arrear rates and taxes. It is clarified that the defendants shall go on paying the current dues in addition to the aforesaid deposit in pursuance of the order passed by Sen, J by the order dated 24th August, 2005.**
>
> **For the time being, the prayer of the plaintiff to appoint Receiver in respect of the two properties belonging to the defendant is rejected. It will be open to the plaintiff to apply afresh after a year depending upon the outcome of the exercise directed by this order. It is clarified that the Receiver shall be in possession of the property and no change of tenancy shall take place without the leave of the Court.**
>
> **The Receiver shall be entitled to a monthly remuneration of 120 G.M. The receiver shall also be entitled to appoint a clerk of her choice at such reasonable remuneration which she thinks proper. It will also be open to the Receiver to open a Bank Account with the State Bank of India, Main Branch. The Receiver shall be entitled to draw her remuneration including that of the clerk and the costs any from out of the rental income.**
>
> **In the event the defendant are occupying any part or portion of the building in question, they shall contribute at the rate of Rs. 6 per sq. ft.**
>
> **Let the money, to be deposited by the Receiver, be adjusted by the Kolkata Municipal Corporation towards the principal first.**

> **This will not prevent the parties to the suit from challenging the assessment made by the Corporation before the appropriate forum."**
>
> **(Emphasis supplied)**

The basic fact of the matter is not in dispute.

Respondent No.1 herein is a Mutwalli in respect of Pahchi Bibi Wakf Estate. He applied for and was granted permission for a long term lease of a vacant plot of land being situated at 54/1, Rafi Ahmed Kidwai Road. Pursuance to or in furtherance of the directions issued by the High Court in this behalf, admittedly, a lease deed was executed by and between the said Mutwalli and the appellant herein on or about 5.4.1967. In terms of the said deed of lease, the appellant built up a five-storeyed building (superstructure) covering an area of 55,000 sq. ft. It let out the said superstructure, inter alia, to Income Tax Department and the State Bank of India.

The predecessors-in-interest of respondent Nos.1 to 3 filed a suit in 1997, inter alia, for a decree for a sum of Rs. 3.50 crores in respect of the arrears of rates and taxes to be paid by the appellant herein to the Municipal Corporation as also for grant of a decree for recovery of peaceful and vacant possession of the said premises by evicting defendant No.1 and/or tenants therefrom.

In the said suit, a prayer was also made for appointment of a receiver for collecting the municipal dues from the tenants of the suit premises and for payment of the arrears of taxes dues to the Calcutta Municipal Corporation.

Indisputably, by reason of an order dated 24.8.2005, a learned Single Judge of the Calcutta High Court, while declining the prayer of the plaintiffs-respondents for appointment of the receiver, directed:

> **"The respondent No.1 is directed to pay the current dues of the KMC Act in accordance with the bills raised by the KMC. The amount, which is being paid in terms of the direction of the Writ Court, is to be adjusted towards arrears. The payments to be made in terms of this order are without prejudice to the right and contention of the parties both in suit as well as in the pending writ application. In the event, it is ultimately held that the demand raised by the KMC is not correct, then the respondent No.1 shall be given due adjustment in respect of any excess payment made, after taking into account all payments made as on that date. The excess amount so computed shall be reimbursed by the KMC to the respondent No.1 and will not be adjusted towards future rates and taxes to be paid in respect of the suit property."**

Indisputably, the said order was not appealed against. The plaintiffs-respondents, however, filed an application for appointment of a receiver in respect of two other properties owned and possessed by the appellant herein, namely, the properties situate at 4B, Chowringhee Place, Kolkata, and 39, Bentinck Street, Kolkata. By reason of the judgment and order dated 18.7.2006, a learned Single Judge of the Calcutta High Court while declining the said prayer, observed:

> **"I have heard Mr. Bachawat for the plaintiffs, Mr. Das Adhikary for the Municipal Corporation and Mr. Banerjee. the respondent No. 1. It is true that the dues of the corporation are mounting up day by day. The properties which the plaintiffs want receiver to be appointed (illegible) (sic) the matter subject of the present suit. At the same time protect the interest of the parties the order of injunction passed by me on May 3rd, 206 should continue till the disposal of the suit.**

> **I am told that the respondent No.1 has already filed its written statement. Mr. Das Adhikary prays for two (sic) time to file their written statement.**
>
> **The written statement be filed by the corporation within two weeks from date; cross-over for discovery within four weeks thereafter, inspection forthwith, liberty is given to the parties to mention for early hearing of the suit before the appropriate Bench.**
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> **Till the suit is heard and disposed of, the interim order passed on May 3rd, 2006 would continue."**

The plaintiffs-respondents preferred an appeal thereagainst. By reason of the impugned judgment a Division Bench of the Calcutta High Court, while refusing to appoint a receiver in respect of other properties belonging to the appellant, as indicated hereinbefore, passed the impugned order as quoted hereinabove.

Mr. Mukherjee, learned counsel appearing on behalf of the appellant would submit that keeping in view the fact that the plaintiffs-respondents in the second application filed before the learned Single Judge of the High Court, did not make any prayer for appointment of receiver in respect of the properties, the Division Bench of the High Court must be held to have committed an illegality in passing the impugned judgment. The learned counsel, in this connection, has also drawn our attention to Grounds D & I of the special leave petition which read as under:

> **"D. Because the High Court erred in the appeal in directing inter alia that the petitioner shall contribute @ Rs. 6 Per Sq. Ft. for any part or portion of the building being occupied by the petitioners. The said direction is beyond the pleadings and relief claimed in the suit filed by the respondents/plaintiffs being in contravention of the lease agreement between the petitioner and the respondent Nos.1, 2 and 3, under which the said respondent were paid a sum of**

> **Rs.2,30,000/- (Two lacs thirty thousand) and thereafter were to be paid a monthly lease rent of Rs.3,000/- for building upon the vacant land and using the same for 51 years."**
>
> **"I. Because High Court erred in directing the petitioner to pay rent to the Receiver @ Rs.6/- per sq. ft. for any portion of the said building being occupied by them as the same was beyond the clauses of the lease Deed inasmuch as the petitioners are the lessee of the said building and are paying the lease rent @ Rs.3,000/- per month as per the Deed of Lease."**

Mr. Vishwanathan, learned counsel appearing on behalf of the respondents, however, has drawn our attention to the following averments made in the counter affidavit:

> **"In view of the said appointment the Advocate of State Bank of India having their office at the said premises have stated that on or about May 20, 2004 the petitioner had taken a loan for a sum of Rs. 12 lacs against the rent receivable from the said State Bank of India. The said monthly rent of Rs. 42,201/- was converted to EMI against the rent taken by the petitioner. The petitioner has stated in their affidavit in opposition that as on September 1, 2006 they have been receiving Rs. 42,201/- as rent from the State Bank of India. The said rent being converted to an EMI it is clear therefrom that the petitioner could not have deposited the said rent of Rs. 42,201/- from the State Bank of India as stated by the petitioner in the said affidavit."**
>
> **"The petitioner is also required to be directed to make payment of the said dues of the corporation in accordance with the order dated August 24, 2005 which has not been appealed against by the petitioner and which is binding on them. The total dues of the petitioner which they are liable to pay to the respondent No.4 is more than Rs.4 crores and it is necessary that such direction be given by the petitioner to make full payment thereof in view of the violation committed and the mis-conduct of the petitioner as stated therein before. The said payments are also to be given due adjustments in accordance with the order passed in the said writ jurisdiction and/or proceedings arising therefrom as stated in the said order of August 24, 2005. The petitioner also occupies an area of more or less 500 Sq. Ft. on Ground Floor for which they are liable**

> **to make payment of rates and taxes as an occupier in accordance with the said terms and conditions of the lease deed. The petitioner's quarterly rates and taxes imposed on the said building is Rs.5,34,693/- and the rent collected is approximately Rs.3,59,199/-. The whole of the rent collected has been directed to be deposited as rates and taxes by the Hon'ble High Court at Calcutta to liquidate the said dues outstanding in respect of the said premises. The said rent when calculated to per square feet per month comes to approximately Rs.6.53 sq. ft. which has been rounded off by the Hon'ble Judge in the said impugned order to Rs.6 per sq. ft. and has directed the petitioner to make such payment per sq. ft. for the area occupied by them if any in view of their admission that the said rent so collected has been deposited as rates and taxes to the respondent No.4."**

Mr. Vishwanathan on a query made by us, however, very fairly stated before us that the said contentions are raised before us for the first time. We, therefore, are of the opinion that we should not deal with the said issues in this appeal.

Indisputably, the prayer for appointment of receiver for the purpose of collection of rent from the tenants inducted in the premises in question had been refused by the learned Single Judge of the High Court. As the said order has not been appealed against, the same attained finality. It is, furthermore, not in dispute that the other directions issued by the learned Single Judge, including the order of injunction, are being complied with. In fact, a statement has been made before us by Mr. Mukherjee, learned counsel appearing on behalf of the appellant, that out of a sum of Rs. 4,03,98,731/- as demanded by the Calcutta Municipal Corporation up to March 2007, a sum of Rs.3,92,62,600.88 has already been paid. We have, however, been informed that another bill has been issued by the Calcutta Municipal Corporation on

15.9.2008, showing the arrears of taxes as Rs.4,88,62,920/-. The said sum includes the amount of interest and penalty.

However, in view of the fact that the plaintiffs-respondents in their second application for appointment of receiver did not reiterate the prayer made in the first application, namely, that a receiver be appointed in respect of the suit premises in question, we fail to understand as to how the Division Bench of the High Court could issue the impugned direction.

Before the learned Single Judge, the prayer of the plaintiffs-respondents is confined to the appointment of a receiver in respect of the two properties which were not the subject matter of the suit and the said prayer having been rejected, the Division Bench of the High Court should have considered as to whether any interference therewith was warranted or not.

We have noticed hereinbefore that the Division Bench has also rejected the said prayer. In that view of the matter, the Division Bench of the High Court, in our opinion, could not have gone beyond the pleadings of the parties and directed appointment of a receiver for the purposes mentioned heretobefore. The said order, therefore, being wholly unsustainable is set aside.

We would, however, direct that the interim order passed by the learned

Single Judge shall continue. The receiver is discharged. Any report submitted by the receiver before the learned Single Judge shall, however, be kept on record. Any amount realised by the receiver and deposited with the Calcutta Municipal Corporation shall be adjusted towards the arrears of taxes.

Appellant shall continue to deposit the amount of rates and taxes in the office of the Calcutta Municipal Corporation.

The remuneration appropriated by the receiver from the amount of rent in terms of the order passed by the Division Bench, however, need not be refunded.

The appeal is allowed with the aforementioned direction/observation.

The parties may file application or applications as they may deem fit and proper.

We, furthermore, make it clear that the order passed in the connected appeal, i.e. appeal arising out of SLP(C) No. 6161/2007, shall be deemed to have been passed in this appeal also.

..........................J

(S.B. SINHA)

..........................J
(CYRIAC JOSEPH)

NEW DELHI,
OCTOBER 13, 2008.