

Sl. No. 17 & 18

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

***M.A.T. 1307 of 2023
(CAN 1 of 2023)
with
COT 90 of 2023***

***Saila Ghosh
-Vs-
State of West Bengal & Ors.***

For the Appellant	:	Mr. Sandip Ghosh, Adv., Mr. Partha Sarkar, Adv.
For the State	:	Mr. Amal Kr. Sen, Id. AGP, Lalmohan Basu, Adv.
For the Howrah Municipal Corporation	:	Mr. Sandipan Banerjee, Adv., Mr. Ankit Sureka, Adv., Mr. Sobhan Majumder, Adv.
For the Bally Municipality	:	Mr. Ayan Banerjee, Adv., Ms. Debarsree Dhamali, Adv.
Heard on	:	14.06.2024
Judgment on	:	14.06.2024

Joymalya Bagchi, J. :-

1. Appellant as well as Bally Municipality have assailed the order dated 18th May, 2023 whereby the learned Single Judge modified the

notice of demand dated 5th April, 2014 raised by the Municipality towards payment of arrear property tax for the years 2011-2012, 2012-2013 and 2013-2014 and current dues till the 4th quarter of 2014-2015 with surcharge and interest by directing waiver of 50% of the interest amount. Factual matrix leading to the dispute is as follows:-

2. Appellant is one of the owners of premises No.1, Kailash Chandra Singha Lane, Bally, Howrah. In 1998 the property tax of the premises was fixed at Rs.165/- per quarter. Appellant contends he has been regularly paying the property tax at the said rate. In 2004-2005 the property tax was enhanced to Rs.1115/- per quarter and it is the appellant's case that he had paid the tax regularly. Notwithstanding such fact, by the impugned notice of demand arrear tax for the years 2011-2012, 2012-2013 and 2013-2014 and current tax upto 4th quarter of 2014-2015 with surcharge and interest was raised upon him. He made representations before the Municipal authorities to permit him to pay the arrear tax in instalments. Municipality having declined such prayer, he moved before the learned Single Judge.

3. Upon considering the submissions of the appellant, learned Single Judge while upholding the notice of demand waived 50% of the interest demanded from the appellant. This order has been assailed by the appellant as well as by the Municipality.

4. Mr. Sandip Ghosh for the appellant contends no bills with regard to the enhanced property tax was raised upon his client for the years

2010-2011, 2011-2012 and 2013-2014 In view of the aforesaid, interest cannot be demanded on the arrear amount. He is ready and willing to pay the outstanding arrears in instalments.

5. In response Mr. Banerjee for the Municipality submits appellant has made out a new case in appeal. Neither in the representation before the Municipality nor in the writ petition did the appellant contend bills had not been raised upon him for the arrear period. On the other hand, he pleaded that he would pay the arrear tax in installments. Mr. Banerjee also contends municipality does not have any scheme to waive interest on property tax. Hence, the impugned order to the extent it waives 50% of interest liable to be set aside.

6. We have considered the materials on record. Appellant claims no bill was raised upon him claiming enhanced property tax for the arrear period namely 2010-2011, 2011-2012, 2012-2013 and 2013-2014. But neither in the representation nor in the pleadings in the writ petition did the appellant make out such a case.

7. On query Mr. Banerjee submits that the bills were raised more than a decade ago. At no stage appellant had raised a plea that the bills had not been served on him. As per law municipality is required to maintain records for three years. The relevant bills presently are not available.

8. It appears that the appellant has raised the issue of non-service of bills belatedly at the appellate stage to avoid his liability. He cannot be permitted to do so.

9. On the other hand, in his representation before the municipality the appellant did not whisper that the bills had not been served upon him. His only prayer was to pay the arrear tax by way of instalments due to financial stringency.

10. In view of the aforesaid facts we are of the opinion the plea that the bills claiming enhanced property tax had not been raised during the arrear period is wholly unfounded and appellant ought not to be permitted to raise it at the appellate stage.

11. With regard to the prayer of the Municipality that the learned single judge was unjustified in waiving 50% of the interest demanded on the arrear dues, we note that the interest had been charged at the highest rate and as per law the Board of Councillors had discretion to reduce the amount. We are informed, Board of Councillors has been supervened by an administrator.

12. In such circumstances waiver of 50% of interest demanded by the learned single judge does not call for interference. Impugned order is upheld.

13. Accordingly, appeal, connected application and cross appeal are dismissed.

14. There shall be no order as to costs.

15. Municipality shall raise a notice of demand upon the appellant to pay an amount fixed by the learned single judge within seven days from date and the appellant shall pay the same within a fortnight thereof

failing which the amount shall carry an interest of 10% till the amount is realized.

16. Photostat certified copy of this judgment, if applied for, be given to the parties on compliance of all formalities.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

as/tkm