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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CS(OS) 1900/2015

MANIKA MADAN ..... Plaintiff

Through: Ms.Payal Jain, Adv.

versus

MAMTA NAGPAL & ANR ..... Defendants

Through: Mr.Vikram Singh Dahiya, Adv. for D-1.
Ms.Mansi Gupta, Adv.for D-2.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

<u>O R D E R</u>

% 28.04.2023

<u>I.A. 8238/2023</u>

1. This application has been filed by the defendant no.2 praying for the following directions:

> *"a. In compliance to the directions issued vide order dt 11.01.2023 in CS(OS)1900/2015, kindly issue direction to release the amount of Rs.2,51,653 (Two lakhs fifty one thousand six hundred and fifty three only) in the name of Baruna Madan, Defendant no 2, from the amount held in the Hon'ble High Court of Delhi."*

2. In the order dated 11.01.2023, the statement of the learned counsels for the parties was recorded as under:

> *"4. It is further agreed between the parties that thereafter, 2/3rd of the amounts paid by the defendant no.1 and 2 respectively as Municipal Taxes in the above terms, shall be released in favour of the defendant no. 1 and 2 respectively from the amount which is lying deposited with this Court. If any balance is still remaining, the shame shall be released unconditionally to the three parties in the ratio of 1/3rd each.*
>
> *5. The present application is disposed of binding the parties to the statements made today. The Registry is directed to release the*

amount lying deposited in this Court, along with interest accrued thereon, in accordance with above.”

3. The defendant no.2 by the present application states that the defendant no.2 has paid the Property Tax for the Mayapuri property for the year 2020-21 of Rs.78,771/-; for the year 2021-2022 of Rs.71,946/-; and for the year 2022-2023 of Rs.90,003/-. The defendant no.2 further claims that on the instructions of the MCD, the defendant no.2 took services of an MCD empanelled Architect for carrying out the measurement of the property, for which a fee of Rs.8,000/- was paid to the Architect. The defendant no.2 has also paid a sum of Rs.2,933/-as Property Tax for the Hari Nagar property for the period 2020-2023, thereby making a total sum of Rs.2,51,653/-, which is claimed by the defendant no.2 in the present application.

4. The learned counsel for the plaintiff, who appears on an advance notice, does not oppose this application.

5. The application is, however, opposed by the learned counsel for the defendant no.1, who, drawing my reference to the order dated 19.03.2020 of this Court, submits that the defendant no.2 was to pay the entire outstanding Property Tax for the Mayapuri and the Hari Nagar properties on or before 31.03.2020. The defendant no.1 was to pay the Property Tax with respect to the West Patel Nagar property. Similar direction was issued to the defendant no. 1. However, a further direction against the defendant no. 1 to the effect that in case it is found that the Property Tax was not paid or paid belatedly, whereby the rebate available is lost, the burden of the excess amount, if any, payable towards tax, interest or penalty will be borne entirely by the defendant no.1. He submits that the same principle should also apply to the defendant no.2 inasmuch as the defendant no.2 admittedly delayed making the payment of the Property Tax for which now interest and penalty may be levied by the MCD. In any case, the rebate

will be lost. He further submits that there is no direction for the release of payment to the Architect purportedly engaged by the defendant no.2 at the instance of the MCD.

6. I have considered the objections of the defendant no.1.

7. The order dated 11.01.2023 recorded the statement of the learned counsels for the parties, which is unconditional in nature and clearly states that *inter-alia* that the defendant no.2 shall deposit the taxes and shall be entitled to the release of 2/3rd amount so deposited. It further clearly records that any balance that remains outstanding, after the taxes deposited by the defendant nos.1 and 2 has been released to them in the ratio of 2/3rd thereof, the same shall be divided amongst the parties in the ratio of 1/3rd each.

8. On the said date, there was no condition put by the defendant no.1 that in case any interest or penalty is levied by the MCD, or that because of late deposit of tax benefit if rebate is lost, the same has to be borne by the defendant no.2 solely.

9. The order dated 11.01.2023, which remains unchallenged, needs to be enforced.

10. Accordingly, it is directed that the Registry shall release the amount of the 2/3rd of the taxes deposited by the defendant no.2 with the MCD, for which the receipts are stated to have been filed by the defendant no.2 vide Diary no.685321 on 21.04.2023, however, the same are not on record, to the defendant no. 2.

11. It is made clear that presently only 2/3rd of the taxes, as have been deposited by the defendant no.2, shall be released in favour of the defendant no.2. The claim for the amount paid to the Architect shall be considered at a later stage.

12. Equally, the claim of the defendant no.1 towards interest and penalty that may be levied by the MCD, or any rebate that may have been lost because of the supposed delay by the defendant no.2, shall

be considered at a later stage.

13. I may herein also note that the learned counsel for the defendant no.1 submits that for the West Patel Nagar property, the defendant no.1 has deposited the Property Tax and he shall be filing the receipts thereof.

14. The defendant no.2 shall also place on record the report of the Architect that has been purportedly obtained by him.

15. The application is disposed of in the above terms.

NAVIN CHAWLA, J

APRIL 28, 2023/Arya