

GAHC010247072023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Civil)/3313/2023

SALIM AHMED MAZID
S/O LT. DR. ABDUL MAZID, R/O WARD NO., MANGALDAI, DARRANG, PIN-
784125, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, PUBLIC WORKS DEPARTMENT (ROADS), DISPUR, GUWAHATI,
PIN-781003, ASSAM

2:THE GOVT. OF ASSAM
REPRESENTED BY THE CHIEF ENGINEER
PWD
ROADS
ASSAM
CHANDMARI
GUWAHATI-03

3:THE SUPERINTENDING ENGINEER
PWD MANGALDAI ROAD CIRCLE
ASSAM

4:THE EXECUTIVE ENGINEER
PWD
MANGALDAI RURAL ROADS DIVISION
ASSAM

Advocate for the Petitioner : MS TOSHISENLA

Advocate for the Respondent : SC, PWD

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 26-02-2024

Heard Ms. Toshisenla, learned counsel for the applicant.

2. The instant interlocutory application is preferred under Section 152 of the Code of Civil Procedure [CPC], 1908 for the purpose of seeking correction in an Order dated 28.08.2023 passed in the writ petition, W.P.[C] no. 7662/2022.
3. By the Order dated 28.08.2023, this Court after recording the submission of the learned counsel for the petitioner, stated to be on instruction, to the effect that the petitioner wanted to withdraw the writ petition, dismissed the writ petition on withdrawal.
4. The instant interlocutory application is preferred seeking correction in the Order dated 28.08.2023, on the premise that in the said Order, it should have been 'dismissed on withdrawal with liberty to file afresh' instead of 'dismissed on withdrawal'.
5. It is relevant to note that the writ petition was preferred seeking a direction to the respondent authorities impleaded therein to disburse a sum of Rs. 8,50,000/- in connection with completion of a contract-work awarded to the petitioner vide an Work Order no. CS/MRRD/ASRB/2010-11/01/601 dated 09.06.2010.
6. While issuing notices to the respondents, by Order dated 30.11.2022, the Court had, *inter alia*, observed as under :-

It, however, appears that the works were completed sometime in the year 2008 and this writ petition has been filed in the end of 2022. Though the Limitation Act, 1963, per se, is not applicable to a writ proceeding, the spirit, no doubt, is applicable and it is the laches which would play an important role as a writ Court is a Court of Equity. The learned counsel for the petitioner is, accordingly required to file an additional-affidavit

to explain the long and inordinate delay in filing the writ petition. Let 4 [four] weeks time be granted for the same.

It is made clear that if the reasons shown are not sufficient, the writ petition would not be maintainable.

List this case along with the additional affidavit that may be filed by the petitioner.

7. When the writ petition was listed on 23.06.2023, the learned counsel appearing for the petitioner had prayed for 2 [two] weeks' time as a last opportunity to file the additional affidavit in deference to the Order dated 30.11.2022, quoted above.

8. When the writ petition was thereafter, listed on 28.08.2023, the Court dismissed the writ petition on withdrawal as it was submitted that the petitioner wanted to withdraw the writ petition. The petitioner did not file any additional affidavit, as directed by the Court on 30.11.2022. The instant interlocutory application was filed on 31.10.2023, that is, after more than two months from the date of dismissal of the writ petition due to withdrawal. In such fact situation obtaining, this interlocutory application filed stating that the words 'dismissed on withdrawal' appearing in the Order dated 28.08.2022, ought to have been 'dismissed on withdrawal with liberty to file afresh' is not found maintainable. Accordingly, the interlocutory application stands dismissed.

JUDGE

Comparing Assistant