

10.02.2025
SL No.12-13
Court No.24
Ali

FMA 1334 of 2007
With
IA No: CAN/3/2023
+
CAN/4/2024
+
CAN/5/2024

The Deputy Chief Engineer K.M.C. & Anr.
Versus
Tapan Dey
With

COT 2322 of 2007
+
IA No: CAN/1/2020 (Old No. CAN/5468/2020)
+
CAN/2/2020 (Old No. CAN/5470/2020)

Tapan Dey
Versus
Deputy Chief Engineer K.M.C. & Anr.

Mr. Atis Kumar Biswas
...for the KMC/appellant.

Mr. Sanjay Mukherjee
...for the respondent.

In Re. CAN 3 of 2023

This is an application for seeking permission to withdraw the money deposited by the appellants/defendants with the Registrar General, Appellate Side, High Court, Calcutta in terms of direction of this Court.

Heard the learned counsel for the parties.
It appears that one suit was filed before the jurisdictional Civil Court being Title Suit No. 93/97 by the present petition/plaintiff against the Deputy

Chief Engineer i.e. the present appellant. The said suit was decreed ex parte. Against the said ex parte decree appellant has preferred a miscellaneous case being Misc. Case No. 54 of 2001 before the learned Civil Judge (Sr. Divn.), 7th Court, Alipure. Vide order dated 20th November, 2006 the said Misc. Case was dismissed on contest. Against the said order of dismissal the appellant preferred this appeal. During the admission of the appeal this court vide order dated 18th July, 2007 has directed the appellant to deposit the decretal amount of Rs.3,70,683/-in Bank Draft in the name of the learned Registrar General of this Court.

In pursuance to the direction of this Court, the appellant has deposited the same amount vide OD Challan No. 2029 dated 15th October, 2007 which was invested by the concerned office with UBI, High Court Branch. Thereafter, the appeal was disposed finally on 30th of August, 2019. Thereby, this Court has dismissed the appeal for default and respondent was directed to proceed with execution case. The appellant herein without preferring any application for setting aside the said order of dismissal, they have preferred an application before the Court that a Single Bench cannot hear out the instant appeal. The said

petition was also disposed of against the appellant by the order of this Court dated 11th of September, 2024.

Learned counsel appearing for appellant submits that they shall proceed before the upper forum against the order dated 11th September, 2024; he seeks accommodation for two weeks.

Learned counsel for the appellants further submits that since the decretal money has already been secured some necessary time for preferring appeal against the order of this Court be accorded in favour of the appellant.

Learned counsel for the respondent raised strong objection and submitted that the litigants suffering due to conduct of the appellants.

Having heard the learned counsel for the parties, it appears to me that this court vide order dated 11th September, 2024 has come to an opinion that the order passed by this Court for dismissal of the appeal was within the jurisdiction of the Single Bench.

Whether the proposition of law of this Court in passing order dated 11th September, 2024 is correct or not, cannot be decided by this Court. However, the appellant has not proceeded before any upper forum against the order till date. They

have also not applied for certified copy of the order.

At this juncture, it appears to me that the decretal amount which was deposited with the office of the learned Registrar General, High Court, Calcutta is required to be disbursed of in favour of respondent/decreed holder herein.

It appears that learned Registrar General, High Court, Calcutta has also invested the amount with the Bank and it has accrued some interest. The decree holder/respondent is also entitled to the accrued interest.

Considering the same, the application being CAN 3 of 2023 is disposed of with a direction to the learned Registrar General, High Court, Calcutta to disburse the decretal amount deposited by the appellant vide OD Challan No. 2029 dated 15th October, 2007 amounting to Rs.3,70,683/- alongwith accrued interest in favour of the respondent within six weeks from the date of passing of this order.

Right and contention of the appellant in respect of the decretal amount is kept open.

Execution proceeding, if any, shall be disposed of with full satisfaction after receipt of decretal amount by the Decree holder/respondent.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)