

21.01.2021
D/L-11,
Ct-1
(AD/Sbiswas)

(Via Video Conference)

MAT 85 of 2018
With
IA No.:CAN 1 of 2018 (Old No.:CAN 621 of 2018)

Ratan Sikdar & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Malay Bhattacharyya
Mr. Subhrajyoti Ghosh
... for the appellants.

This appeal is directed against an order dated September 11, 2017 whereby W.P. 21655(W) of 2017 was disposed of. The order was passed *ex parte* since nobody appeared for the writ petitioners. The learned Judge noted the contents of the writ petition and was of the opinion that there are serious inconsistencies between the averments made in and the prayer portion of the writ petition. After considering the submission made on behalf of the Union of India, the learned Judge disposed of the writ petition.

We are of the view that this is a case where the writ petitioners should have approached the learned Judge with an application under Order 9 Rule 13 of the Code of Civil Procedure for recalling of the *ex parte* order, explaining why the petitioners could not be represented on the date the matter was disposed of *ex parte*. We are not inclined to go into the merits of the matter.

Accordingly, we dispose of the appeal and the connected application by granting liberty to the writ petitioners/appellants to approach the learned Single Judge with appropriate application for recalling of the order impugned in this appeal.

If such application is filed within three weeks from date, we request the learned Single Judge to consider the same on merits without going into the question of limitation.

(Thottathil B. Radhakrishnan, CJ.)

(Arijit Banerjee, J.)