

16.11.2021

Ct. no.04
rpan /05

WPLRT 49 of 2021

Sri Jiban Krishna Roy

– Versus –

The State of West Bengal & Others

Mr. Salil Kumar Maiti,

Mr. Pinaki Saha

... for the petitioner.

Mr. A. Roy, Ld. G.P.,

Mr. T. M. Siddique,

Mr. N. Chatterjee

... for the respondent.

Affidavit of service filed by the petitioner be kept on record.

The present writ petition has been preferred challenging an order dated 19th February, 2021 passed by the learned West Bengal Land Reforms and Tenancy Tribunal, First Bench in O.A.-1427 of 2012 (LRTT).

Mr. Maiti, learned advocate appearing for the petitioner submits that the original application, being OA-1427 of 2012 was preferred in the year 2012 along with an application for condonation of delay, being M.A.454 of 2012. The subject-matter of challenge in the original application was an order dated 4th January, 2012 passed by the respondent no.2 herein.

He argues that upon contested hearing, the original application was entertained upon condonation of delay observing *inter alia* that there is merit in the case and the said application was fixed for final hearing on

19th February, 2014, as would be explicit from the order dated 3rd September, 2013 passed by the learned Tribunal.

According to Mr. Maiti, after entertaining the original application upon condonation of delay and upon fixing the matter for final hearing, the learned Tribunal ought not to have rejected the original application on the ground that the petitioner did not pursue the remedial measures as provided under the specified Act.

Per contra, Mr. Siddique, learned advocate appearing for the State submits that by the order dated 3rd September, 2013 only the application for condonation of delay was allowed. There is no irregularity in the order dated 19th February, 2021 and it was rightly held that the original application is not maintainable since the petitioner did not avail the alternative remedy as provided under the specified Act.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

It is well settled that the learned Tribunal cannot reject the original application by adopting a straitjacket formula to direct a litigant to avail of the remedial measures before approaching the learned Tribunal. A composite reading of the contents of the order dated 3rd September, 2013 would reveal that the learned Tribunal was of the opinion that a *prima facie* case has been made

out and that there is merit in the case. Accordingly, the delay was condoned and the matter was fixed for hearing. The issue of alternative remedy was also not urged by the respondents at the time of such hearing before the learned Tribunal. In view of the observations made in the order dated 3rd September, 2013, the learned Tribunal, in our opinion, ought not to have rejected the application on the ground of availability of alternative remedy under the specified Act.

In view thereof, the order impugned in the present writ petition is set aside and the learned Tribunal is directed to consider the matter on merits and to dispose of the same as expeditiously as possible, without granting unnecessary adjournment to either of the parties.

With the above observations and directions the writ petition, being WPLRT 49 of 2021 is disposed of.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties upon compliance of all necessary formalities.

(Sugato Majumdar, J.) (Tapabrata Chakraborty, J.)