

24.12.2021
Item No.46.
Court No.6.
S. De

Through Video Conference

**M.A.T. 1307 of 2021
I.A. No. CAN/1/2021
I.A. No. CAN/2/2021**

The State of West Bengal & Ors.

Vs

Sk. Sahadat Ali.

Mr. A. Banerjee,
Md. T.M. Siddiqui,
Mr. N. Chatterjee,
...for the appellants.
Ms. Santi Das,
...for the respondent.

In re: I.A. No. CAN /1/2021

This is an application for condonation of delay of 396 days in filing the appeal. Causes shown being sufficient, the delay is condoned.

I.A. No. CAN/1/2021 is disposed of.

In re: I.A. No.CAN/2/2021

By consent of the parties, the appeal and the application are taken up for hearing together.

The writ petitioner is in the business of extracting minor minerals. For that purpose, he obtains leases from the Government. He was successful in an e-tender and a Letter of Intent was

issued in his favour upon he depositing the requisite sum of Rs.58,19,985/- which was one third of the bid amount. The entire bid amount was deposited by December 27, 2017. The lease was, however, not executed in favour of the writ petitioner. In September 2018, the National Green Tribunal passed an order by reason whereof execution of the proposed lease in favour of the writ petitioner became prohibited.

The writ petitioner says that time and again he requested the relevant department to refund his money since he could not carry out any mining activity and no lease was executed in his favour. Such requests were in vain. Accordingly, he approached the learned Single Judge in July 2020. The learned Single Judge disposed of the writ petition by an order dated September 18, 2020, the operative portion whereof reads as follows :-

“Accordingly, the instant writ petition is disposed of by directing the District Magistrate and Chairman, District Committee for Competitive Bidding, Paschim Medinipur, the respondent No.3 herein to process the prayer of the petitioner for refund of the entire amount along with the statutory interest. Steps shall be taken by the said respondent to release the principal along with interest within a period of ten weeks from the date of

communication of a copy of this order.”

The State filed an application for review of the said order of the learned Single Judge being RVW 112 of 2020. By an order dated August 12, 2021, the review application was dismissed. The learned Single Judge further directed that if interest was not paid to the writ petitioner in terms of the order dated September 18, 2020 i.e. the order impugned in this appeal, within sixty days, the writ petitioner will be entitled to receive additional interest at the rate of 2% per annum over and above the statutory interest for the unpaid dues after the expiry of sixty days.

The State had preferred an appeal against the order dismissing the review application. However, we dismissed such appeal as not maintainable in view of the provisions of the Code of Civil Procedure. Accordingly, the present appeal has been filed against the parent order dated September 18, 2020.

We have heard learned Counsel for the parties. Mr. Siddiqui, learned Advocate appearing for the Appellants/State submits, on instructions that the State was not at fault. The State was bound to suspend the operation of the lease in view of the order of the National Green Tribunal. The State tried to get the order vacated and/or modified. Such efforts did not succeed. The State did not earn interest on the

money received from the writ petitioner. Such money was not invested in any interest bearing account but is kept in the State Exchequer. Hence, the State should not be burdened with interest. In any event, no statutory interest is prescribed in any relevant Act.

We have considered the facts and circumstances of the case. The fact remains that a substantial sum of money was paid by the writ petitioner to the State as consideration for the proposed lease of five years. The lease was never executed in favour of the writ petitioner. He could not carry out any mining activity. Hence, in our opinion, the writ petitioner is entitled to refund of the money. We are told that the State has already refunded the principal amount to the writ petitioner in terms of the order of the learned Single Judge. The only question that remains is whether the State should pay some amount of interest to the writ petitioner.

We are of the view that some amount of interest should be paid to the writ petitioner. He was in no way responsible for non-execution of the mining lease. Ideally, the State should have refunded the principal amount soon after it became impossible for the State to execute the mining lease. The same was not done. The writ petitioner has been deprived of user of his money.

The State says that it was also not at fault. Learned counsel relies on the principle of *actus curiae neminem gravabit* – an act of God cannot prejudice anyone. We are of the view that such principle is not applicable in the present case.

On an overall consideration of the facts and circumstances of the case, we are of the view that ends of justice will be served if the State pays interest @ 5% per annum on the principal sum for the period from January 1, 2018, till the date of payment. Such payment is to be made within a month from the date of communication of this order. In the event such payment is not made within the aforesaid period of one month from the date of communication of this order by the writ petitioner/respondent to the concerned Officer, the applicable interest rate from January 1, 2018 would be 8% per annum till the date of payment.

The order impugned stands modified to the above extent.

Since we have not called for affidavits, the allegations in the stay petition are deemed not to be admitted by the respondents.

The appeal being M.A.T. 1307 of 2021 is disposed of along with the connected application being I.A. No. CAN/2/2021.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as

expeditiously as possible on compliance with all the necessary formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)