

APOT/63/2021
IA No. GA/1/2021, GA/2/2021

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

M/s. RADHAKISHAN JHUNJHUNWALLA INVESTMENT PVT. LTD. &
ANR.
VERSUS
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE :

THE HON'BLE JUSTICE SUBRATA TALUKDAR

And

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : 27th April, 2021

(Via Video Conference)

Appearance:-

Mr. Rajendra Chaturvedi, Adv.
... for Appellants

Mr. Alak Kumar Ghosh, Adv.
Mr. Gopal Chandra Das, Adv.
... for Respondents

The Court : Mr. Chaturvedi, learned Counsel, appears in support of GA No. 1 of 2021, which is an application for condonation of delay under Section 5 of the Limitation Act.

The respondents/Kolkata Municipal Corporation (KMC) is represented by Mr. Alak Kumar Ghosh, learned Counsel, appearing with Mr. Gopal Chandra Das, learned Advocate.

We have heard the parties in connection with the application for condonation of delay being GA No. 1 of 2021 and considered their submissions.

Cause shown in the application is found to be sufficient.

Delay stands accordingly condoned.

GA No. 1 of 2021 is thus **disposed of**.

The appeal, being APOT 63 of 2021 with its connected stay application, being GA 2 of 2021, stand now formally admitted to the board.

Next, Mr. Chaturvedi, learned Counsel, appears in support of the appeal and the connected application, being APOT 63 of 2021 and GA 2 of 2021 and submits on merits. It is submitted that the order impugned in the appeal dated 14th January, 2021 of the Hon'ble Single Bench suffers from inherent infirmity inasmuch as the impugned order of dismissal of the writ petition on merits could not have been issued under the law *ex parte* against the appellants/writ petitioners.

The attention of this Court is also drawn to the earlier orders passed in the writ petition dated 19th December, 2019 and 6th February, 2021.

On the first date, that is 19th December, 2019, the writ petition appeared before the Hon'ble Single Bench as an 'Old Matter' belonging to the year 2009. Since none appeared on behalf of the respondents/KMC, Mr. Alak Kumar Ghosh, learned Counsel, also

appearing today for the respondents/KMC in the appeal, was requested by the Hon'ble Single Bench to appear on behalf of the respondents.

On 19th December, 2012, the Hon'ble Single Bench was pleased to further observe that notwithstanding the direction in the writ petition for exchange of affidavits, no affidavit-in-opposition had been filed by the respondents/KMC till date. Accordingly, the Hon'ble Single Bench was pleased to extend the time to file the affidavit-in-opposition for three weeks and, reply thereto within one week.

The matter was next listed before the Hon'ble Single Bench on 6th February, 2020, whereupon on the prayer of the respondents/KMC time to file the affidavit-in-opposition was further extended by three weeks and the reply thereto one week thereafter. The next date for listing of the matter was fixed on 18th March, 2020.

It is submitted that in view of the onset of the pandemic the matter could not be taken up for consideration in presence of the parties on 18th March, 2020. The matter thereafter appeared before the Hon'ble Single Bench on 14th January, 2021, i.e. on completion of nearly one year.

On 14th January, 2021, the Hon'ble Single Bench was pleased to consider the submissions on merits advanced on behalf of the respondents/KMC and held that with the passage of time the cause-of-action espoused through the writ petition had come to a logical conclusion. The Hon'ble Single Bench held that in view of the final

order passed in the proceedings before the respondents/KMC *qua* the Assessee/the writ petitioners, a logical conclusion had been reached and, for all practical purposes, the writ petition had become infructuous.

Mr. Alak Kumar Ghosh, learned Counsel for the respondents/KMC, however, submits that the Hon'ble Single Bench could not have arrived at a different conclusion considering the present status of facts.

Having heard the parties and considering the materials placed, assuming that the Hon'ble Single Bench could not have come to a different conclusion on the basis of the current facts placed by the respondents/KMC, the procedure envisaged by law guiding the conduct of Civil proceedings, including writ petitions, do not provide for the dismissal of the writ petition on merits in the absence of representation on behalf of the petitioner.

Furthermore, this Court does not fail to notice that by the earlier orders dated 19th December, 2019 and 6th February, 2020, the Hon'ble Single Bench had permitted the parties to place their facts on the merits of the issue on affidavits and the respondents/KMC were granted an extension of time to use an affidavit-in-opposition.

It needs no reiteration that the matter could not be taken up on the date assigned to it for being taken up next in terms of the order of the Hon'ble Single Bench dated 6th February, 2020(*supra*) and, was taken up in January 2021 when, in view of prevailing pandemic

situation, the learned Counsel for the appellants/writ petitioners could have reasonable reasons for not being represented by their learned counsel.

Purely for the above reasons and, not touching on the merits of the issue, the order impugned dated 14th January, 2021 ought not stand.

Let the matter appear under the same heading **“Old Matters”** before the Hon’ble Single Bench having jurisdiction to hear Municipal matters in the **Monthly Combined List of June, 2021**.

The Hon’ble Single Bench shall be then free to take appropriate steps in law, in the event the writ petitioners/present appellants are not still represented at the hearing inspite of being granted reasonable notice and opportunity of being heard.

APOT 63 of 2021 and **GA 2 of 2021** stand thus **disposed of**.

In view of the discussion as above, affidavits to the application are not invited and therefore the other allegations made therein shall be deemed to be denied and disputed.

Parties are to act on a server copy of this order.

(HIRANMAY BHATTACHARYYA, J.)

(SUBRATA TALUKDAR, J.)