

OD-1

ORDER SHEET

APOT/83/2021  
IA NO. GA/1/2021

IN THE HIGH COURT AT CALCUTTA  
Civil Appellate Jurisdiction  
ORIGINAL SIDE

RICHA JALAN  
Versus  
SMT. VINTY KHEMANI AND ORS.

BEFORE:  
The Hon'ble JUSTICE SUBRATA TALUKDAR  
AND  
The Hon'ble JUSTICE KAUSIK CHANDA  
Date : 7<sup>th</sup> June, 2021.

(Via Video Conference)

Appearance:  
*Mr. Biswaroop Bhattacharya, Adv.*  
*Mr. Dipayan Kundu, Adv.*  
*Mr. Prabhat Kr. Srivastava, Adv.*

*Mr. Arif Ali, Adv.*

*Mr. Nilay Sengupta, Adv.*  
*Mr. Shaunak Ghosh, Adv.*  
*Mr. Sujit Banerjee, Adv.*  
*Mr. Sourav Mondal, Adv.*

**The Court:** Sufficient cause has been shown for not preferring the appeal within the period of limitation. We are satisfied with the explanation given and the delay in preferring the appeal is condoned.

In this appeal, the appellant has challenged an order dated January 13, 2020, passed by the learned Single Judge directing the Kolkata Municipal Corporation (Corporation in short) to initiate demolition proceedings in respect of the impugned constructions in the common passage of the premises no.44A and 44B, Rafi Ahmed Kidwai Road, Kolkata-700016.

A report was called for by the learned Single Judge from the Corporation and in compliance of the said order, a report had been filed upon consideration of which the learned Judge passed the following order:-

*“The Corporation will initiate demolition proceeding in respect of two toilets and entrance lobby constructed in the property. Petitioner and private respondents will be notified. The Corporation must have necessary documents in respect of the building, including entries in their Inspection Book. In event toilets and entrance lobby being ‘renovated and repaired’ are not found to be existing as per documents to be seen at the hearing, there must be order made for demolition, as this is not a situation of deviation from a sanctioned plan, for regularisation. The Corporation will conclude the proceeding on hearing given, within six weeks from date of communication of this order.*

*The writ petition is disposed of.”*

Mr. Biswaroop Bhattacharya, learned Advocate appearing for the appellant, submits that order of the learned Single Judge is contrary to the report filed by the Corporation. He submits that it is apparent from the report itself that no illegal construction was carried out at the behest of his

client and as such the order passed by the learned Single Judge was uncalled for.

Mr. Nilay Sengupta, learned Advocate appearing for the writ petitioner/ respondent no.1, submits that the order impugned was passed on January 13, 2020. The appeal has been preferred belatedly. He further submits that in compliance with the order passed by the learned Single Judge, the appellant participated in the hearing before the relevant officer of the Corporation. As the appellant has failed to produce the sanctioned plan for the impugned constructions before the relevant officer, apprehending that an order may be passed against them, she has filed the present appeal in a speculative manner.

It appears from the order impugned before us that there is no direction by the learned Single Judge to demolish the impugned constructions. The learned Judge has only directed to initiate the demolition proceeding which may or may not result in an order for demolition of the impugned constructions. It also appears that pursuant to the order of the learned Judge, the parties have appeared before the relevant officer and the hearing is in progress. At this stage, we do not think that any interference is called for. If the petitioner is aggrieved by the order of the Corporation, needless to mention, her remedy to challenge the order in accordance with the law remains. We clarify that the learned Single Judge did not observe anything touching the merits of the case and left the matter open to the concerned

officer to decide the matter independently upon consideration of relevant documents.

**APOT 83 of 2021** and **IA No.GA/1/2021** stand **dismissed**.

Parties are to act on a server copy of this order downloaded from the official website of the Court.

(KAUSIK CHANDA, J.)

(SUBRATA TALUKDAR, J.)