

4.
03-08-2022
debajyoti
(Ct. no.06)

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
Appellate Side**

FMA 469 of 2021

+

IA NO:CAN/1/2020 (Old No:CAN/765/2020)

Sangita Shaw

Vs.

The Chairman, Bhatpara Municipality & Ors.

Mr. Rameshwar Sinha

... For the Appellant.

Mr. Dibyendu Chatterjee,
Mr. Pritam Majumdar

... For Bhatpara Municipality.

Mr. Lalit Mohan Mahata,
Ms. Jhuma Chakraborty

... For the State.

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

The appellant has apparently done some work for development of certain areas under Bhatpara Municipality. Being aggrieved by non-payment of her alleged dues and non-refund of Security Deposit, in spite of having completed the work to the satisfaction of the Municipality, she approached the learned Single Judge by filing W.P. No.16074(W) of 2019. By the impugned order, the learned Judge held that the dispute in question is purely contractual in nature and may also involve disputed questions of fact. Accordingly, the writ petition was dismissed.

After this appeal was admitted, a coordinate Bench had called for an affidavit from the then Chairman of the Bhatpara Municipality. The affidavit that was filed was defective and hence, the same was directed to be

returned. An opportunity was given to the Chairman of the Municipality to file a fresh affidavit. By an order dated March 16, 2020, the coordinate Bench recorded as follows:

“ Since a writ petition had been taken out prima facie for payment of dues, which were barred by limitation had this claim gone to a civil court, as it ought to have, and since only because of an admission being made by the learned advocate for the Municipality in the appellate stage, the appellant/writ petitioner once again had something to say in the matter of an affidavit, this affidavit was prepared as if by way of ritual harakiri on behalf of the respondent/Municipality had to be drawn with more care.

Accordingly, we direct that the said affidavit filed today be taken off the record and not read in Court. We give a further opportunity to the municipality to reconsider its position and file a fresh affidavit.

The said affidavit, which must be in form and compliant with all principles of drafting of affidavits under Part-II Chapter-IV of the Rules of this Court must also state very clearly whether or not the Municipality and its Chairman are admitting the time-barred claim of the writ petitioner, which would cause financial loss to the Municipality.

If the Municipality and its Chairman despite this leave choose to do so and cause financial damage to the Municipality, they will, of course, at liberty to do so. ”

A fresh affidavit has been filed by the Chairman. At paragraphs 20 and 21 of such affidavit, it is stated as follows:

“20. I submit that the Bhatpara Municipality had already paid a sum of Rs.1,42,00,000 during the pendency of this instant appeal to

the instant appellant as a proportionate installment from the fund granted by the Governmental authority and shall endeavor to clear the entire dues from the grants that shall be issued by the state government on proportionate basis.

21. I submit that if this Hon'ble court thinks fit that the balance due amount should be given to the appellant after receiving the grants/funds from the government forthwith for utilization of the sanctioned fund for specific purpose of development scheme towards the appellant herein. The Bhatpara Municipality can make every endeavor to comply with the court's direction if this Hon'ble Court thinks fit and proper."

In view of the fact that the Municipality is admitting the claim of the appellant/writ petitioner and, in fact, has paid a substantial part of the appellant's dues during the pendency of the appeal, we do not deem it necessary to dilate on the issues any further. The Municipality shall make all endeavours to mobilize funds and pay off the balance dues to the appellant as early as possible and preferably, within a period of six months from date.

The appeal and the connected application are, accordingly, disposed of.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Rai Chattopadhyay, J.)

(Arijit Banerjee, J.)