

September 28, 2022
AD 9
Court No.1
SG

MAT 242 of 2022
with
CAN 1 of 2022
CAN 2 of 2022
CAN 3 of 2022

Saburali Seikh and others
vs.
State of West Bengal and others

Mr. Soumyadeep Biswas, Advocate
... for the appellants.

Mr. Subhabrata Datta,
Mr. Debashis Sarkar, Advocates
... for the State.

Mr. Shamit Sanyal,
Ms. Priyakshi Banerjee, Advocates
... for the respondent Nos.6 & 7.

CAN 2 of 2022 has been filed by the applicants seeking leave to file an appeal against the order of learned Single Judge dated 19.03.2021 passed in WPA 3157 of 2021.

Having regard to the fact that the applicants are affected by the order of learned Single Judge and they were not made parties in the writ petition, we are of the opinion that the prayer for grant of leave deserves to be allowed. Accordingly, CAN 2 of 2022 is allowed and leave is granted to file an appeal.

Also heard CAN 1 of 2022 being the application for condonation of delay of 310 days in filing the appeal.

Learned counsel for the appellants has pointed out that since the appellants were not parties before the writ

Court, they were not aware of the order passed by learned Single Judge and they came to know about it for the first time only on 01.02.2022 and thereafter they had taken steps to gather the information and after necessary preparation the appeal has been filed on 23.02.2022.

Considering the submission of learned counsel for the appellants and the grounds furnished in the application for condonation of delay, we are of the opinion that the appellants were prevented from filing the appeal within time due to bona fide reasons therefore a case for condonation of delay is made out. Accordingly, CAN 1 of 2022 is allowed and delay in filing the appeal is condoned.

The appeal is heard with consent of the parties.

By this appeal the order of learned Single Judge dated 19.03.2021 passed in WPA 3157 of 2021 has been challenged whereby learned Single Judge has issued a direction to the police authorities in respect of the complaints of the private respondent No.1/complainant (writ petitioner).

The record reflects that the private respondent No.1 had filed the writ petition with the plea that the land in question was purchased by the private respondent No.1 as also his nephew and other persons. The writ petitioners had claimed that they were owners of the land in question and had started construction but there was an obstruction raised by the local persons. Therefore writ

petitioners had lodged complaint to the police authorities which was not acted upon. In the writ petition, a prayer was made to issue a direction to the officer-in-charge of the concerned police station to allow the writ petitioners to carry the construction on the land in question.

Learned Single Judge by the order under appeal has directed that the letters of the writ petitioner dated 04.11.2020 and 27.11.2020 be treated as complaints and necessary general diary entries or FIRs depending upon the nature of offence disclosed therein be registered by the concerned officer-in-charge of the police station and thereafter the said officer-in-charge will take such steps as may be required in accordance with law.

Submission of learned counsel for the appellants is that the appellants are the owners of the said property on the basis of the final partition decree and the suit for recovery of possession in respect of the same property is pending and this fact was suppressed by the private respondents in the writ petition. Therefore, the impugned direction could not be issued.

Learned counsel for the private respondents has opposed this appeal.

Learned counsel for the State has submitted that in the complaint no cognizable offence was disclosed, therefore only general diary entry was made and no FIR has been registered.

Having heard learned counsel for the parties and on perusal of the record, especially the final partition decree in Title Suit No.23 of 1985 dated 28.04.1995 as also the plaint in the suit for eviction and recovery of possession being Title Suit No.192 of 2021 wherein the appellants as also the private respondent No.1 (writ petitioner) are parties, we find that the dispute of civil nature exists between the parties and that though the writ petitioner was a party in the suit for recovery of possession but this fact was not disclosed in the writ petition.

If the police authorities had not registered the FIR then the complainant is required to follow the procedure which has been prescribed in Criminal Procedure Code. In such a case the direction to the police authorities to register the complaint or the FIR ought not to have been issued.

Hence, we are unable to uphold stay the direction of learned Single Judge which runs contrary to the judgment of Hon'ble Supreme Court in the case of *Sakiri Vasu vs. State of Uttar Pradesh and others* reported in (2008) 2 SCC 409.

Accordingly, the appeal is allowed and the order of learned Single Judge under challenge is set aside.

[Prakash Shrivastava, C.J.]

[Rajarshi Bharadwaj, J.]