

January 13, 2022
Sl. No.13 & 14
Court No.1
s.biswas/ssi

MAT 1909 of 2019
With
CAN 1 of 2020 (Old No. CAN 1749 of 2020)
+
CAN 2 of 2020 (Old No. CAN 1752 of 2020)

Abul Saikh
vs.
Union of India and others

AND

MAT 280 of 2020
With
CAN 1 of 2020 (Old No. CAN 1751 of 2020)
+
CAN 2 of 2021 (Not with the file)

Abul Saikh
vs.
Mir Takiul Hossain and others

(Through Video Conference)

Mr. Gopal Chandra Ghosh,
Mr. Rajkrishna Mondal, Advocates
... for the appellant

Mr. Bidhayak Lahiri,
Mr. Md. Kalam,
Ms. Bhaswati Lahiri, Advocates
... for the respondent Nos.1-5

The appellant has filed affidavit of service indicating that the respondents are served in the matter.

In MAT 1909 of 2019 there is a delay of 255 days in filing the appeal. Hence, CAN 1 of 2020 (Old No.CAN 1749 of 2020) has been filed under Section 5 of the Limitation Act seeking condonation of delay. Learned counsel for the appellant has also filed the supplementary affidavit in connection with CAN 1 of 2020 (Old No.CAN 1749 of 2020) giving further explanation for delay in filing MAT 1909 of 2019.

Having regard to the reasons which are disclosed in CAN 1749 of 2020 as also the supplementary affidavit dated 25.11.2021, we are of the opinion that the appellant was prevented from filing this appeal within time on account of bona fide reason and the delay has sufficiently been explained. Accordingly, CAN 1 of 2020 (Old No.CAN 1749 of 2020) is allowed and delay in filing MAT 1909 of 2019 is condoned.

MAT 1909 of 2019 is directed against the order of learned Single Judge dated 06.03.2019 whereby WP 4841 (W) of 2019 filed by the appellant has been disposed of.

MAT 280 of 2020 has been filed by the appellant questioning the order of learned Single Judge dated 21.01.2019 passed in WP 94 (W) of 2019 whereby the writ petition was filed by the respondent No.1 has been allowed and a direction has been issued to the official respondents to remove the unauthorized occupation from the second parking stand and to hand over the illegally occupied portion to the writ petitioner therein in accordance with law. In the WP 94 (W) of 2019 the appellant was not a party, therefore he has filed CAN 1 of 2020 (Old No.CAN 1751 of 2020) seeking leave to appeal.

Having regard to the circumstances pointed out by learned counsel for the appellant and considering the fact that the appellant is stated to be a party directly affected by the order under challenge, CAN 1 of 2020 (Old No.CAN 1751 of 2020) is allowed and leave is granted.

In substance, the case put forth by learned counsel for the appellant is that the appellant was awarded the contract and the work order dated 15.01.2019 was issued to the appellant for two, three and four wheeler parking stand at the New Farakka station circulating area for three years from 16.01.2019 to 15.01.2022.

There is another work order issued in favour of the respondent No.1 on 29.05.2017 in respect of two wheeler parking stand at New Farakka station circulating area for three years with effect from 02.06.2017 to 01.06.2020.

The appellant had approached the writ Court by filing WP 4841 (W) of 2019 with a grievance that in pursuant to the work order, the Railways authority had not given possession. Learned counsel appearing for the Railways had orally submitted before the Court that there were two parking stands at New Farakka station and considering the same, learned Single Judge had reached to the conclusion that no interference in the writ petition was required.

Respondent No.1 had approached the writ Court by a separate writ petition being WP 94 (W) of 2019 in which he had raised the same grievance that the parking area allotted to him was in illegal possession of some third party. Learned Single Judge had noted that there were two separate parking areas and the work order issued to the respondent No.1 was in respect of the second parking stand. Accordingly, learned Single Judge had directed

the official respondents to remove the unauthorized occupation of the thirty party from the second parking area.

The grievance of the appellant in these appeals is that though the work order has been issued to the appellant for two, three and four wheeler parking areas, for the same area for which the work order of respondent No.1 relates but he has been dispossessed on account of the order passed in WP 94 (W) of 2019. From the record it is not reflected as to whether there are two parking areas or only one parking area as both the work order mention about the same parking area. That apart, we also notice that the period of contract which was awarded to the appellant is coming to an end on 15.01.2022 i.e. only after two days.

In these circumstances, learned counsel for the appellant has prayed for a limited direction submitting that in spite of the contract he has not been permitted to operate in the area awarded to him, therefore, he is entitled to appropriate damages. The issue relating to damages is required to be raised by the appellant before the appropriate authority of the respondents.

Hence, we dispose of these appeals granting liberty to the appellant to approach respondent No.4, Divisional Commercial Manager, Eastern Railways, by filing an appropriate representation/application seeking damages in the above circumstances. If such a representation is

filed by the appellant, the respondent No.4 will duly look into the grievance of the appellant and will take appropriate decision in accordance with law as expeditiously as possible preferably within a period of two months from the date of receipt of the representation.

Appeals and connected applications are disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on usual undertaking.

[Prakash Shrivastava, C.J.]

[Ajoy Kumar Mukherjee, J.]