

D/L
Item No. 10
29.06.2022
KOLE

**MAT 469 of 2022
With
IA No. CAN 1 of 2022**

**The Howrah Municipal Corporation & Anr.
-Vs.-
M/s. Production Enterprises & Anr.**

*Mr. Sandipan Banerjee,
Mr. A. Surekha,
Mr. S. Majumdar,*

...for the appellant.

*Mr. Sandip Ghose,
Mr. S. Das,
Mr. D. Ghosh,
Mr. A. Amin,*

...for the respondents.

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

The writ petitioners/respondents herein approached the learned Single Judge with the grievance that in respect of supplies made and services rendered by them to the Howrah Municipal Corporation (in short ‘HMC’), although the Chief Officer Finance of HMC has passed the bill for a net amount of Rs. 16,96,706/- after deducting amounts on account of security deposit, income tax and cess, payment was being withheld unjustly.

The impugned order records that it was submitted on behalf of HMC that “order of Court will be complied with. Six weeks time be given”.

Accordingly, the learned Single Judge disposed of the writ petition by passing the following direction:-

“The Corporation will determine appointed day in terms of provision in the Act of 2006.

Statutory interest is to be calculated on the amount payable, calculated up to the date of payment. Payment is to be made of said net amount and interest amount, less deduction of income tax and/or any other statutory liability, if mandated to be deducted at source. Payment must be made prior to expiry of six weeks from date as prayed for by Mr. Banerjee. It goes without saying that deduction on account of tax and cess must be justified by issuance of appropriate certificates”

The Corporation has come up in appeal. It is submitted that even without completing the subject work, the writ petitioners have received substantial sums of money. Now, they are claiming statutory interest which will be in the region of Rs. 35 lacs. Mr. Ghosh, learned Advocate appearing for the writ petitioners/respondents strongly disputes such contention. According to him, the work has been completed. The amount of interest that is payable to his client was in the region of Rs. 17 lacs as on 20.01.2021.

We are not inclined to go into the merits of the controversy at all. We find that the order was passed by the learned Single Judge upon the Corporation saying that it will comply with the court's order and six weeks time should be given. In effect, it was in the nature of a consent order. We are not inclined to entertain this appeal.

Learned Advocate for the Corporation says there was wrong recording in the order under appeal. If that be so, the Corporation has its remedy elsewhere and not before the appeal court as is established law. If the Corporation is entitled in law to approach the learned Single Judge for

modification/recall/review of the order under appeal, it will be at liberty to do so.

The appeal and the connected application are, accordingly, dismissed.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Rai Chattopadhyay, J.) (Arijit Banerjee, J.)