

Item no. 01

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice T.S. Sivagnanam

And

The Hon'ble Justice Hiranmay Bhattacharyya

MAT 844 of 2022

with

IA No. CAN 1 of 2022

State of West Bengal & ors.

vs.

Rajesh Dutta & ors.

Appearance:

For the Appellants : Mr. Rabindra Narayan Dutta
Mr. Himangshu Ghosh

For the Respondents : Mr. Soumyajit Das Mahapatra

Heard on : 08.09.2022

Judgment on : 08.09.2022

Hiranmay Bhattacharyya, J.:

This Court passed an order on August 23, 2022 in open Court thereby dismissing the appeal after hearing the parties at length. However, when the file along with the said order was placed before us for signature it came to our notice that the appeal was filed beyond the prescribed period of limitation and the appeal was taken up for

consideration and dismissed on August 23, 2022 without any order on condonation of delay.

We accordingly directed this matter to be placed under the heading “To Be Mentioned” without putting our signature on the said order.

Today, when the matter is taken up for hearing, this Court after considering the prayer made for condonation of delay and upon hearing the learned advocates of the parties and also that the parties advanced arguments on merits of the appeal, this Court is inclined to exercise its discretion to condone the marginal delay in preferring the appeal. Accordingly, delay in preferring the appeal is condoned. The order dictated by the Court on August 23, 2022 shall be treated to be the order passed today in the appeal and the stay application.

The order, which was dictated in open Court on August 23, 2022, is set out hereunder.

“This appeal is at the instance of the review applicant and is directed against the order dated 21.04.2022 passed by the learned Single Judge in RVW 78/2021 and the original order dated 05.02.2021 in WPA 8628/2020. The Additional Stamp Reporter in his report dated 21.06.2022 noted that the review application is not maintainable in view of the provisions laid down under Order XLVII Rule 7(1) of the Code of Civil Procedure.

The appellant has preferred this appeal against the order rejecting the review application as well as against the original order

passed in the writ petition. In view thereof, the issue as to the maintainability of an appeal against an order rejecting the review application becomes academic and this Court shall now proceed to decide the appeal on its merit leaving the issue of maintainability of an appeal against the order rejecting the review application open.

The writ petitioner/respondent's plot of land has been acquired by the National Highway Authorities and it would be evident from the notice issued under Section 3(a)(2) of the 1956 Act that an award has been passed. The writ petitioner/respondent was not paid the compensation amount for which he was compelled to file a writ petition being WPA 8628/2020. The writ petitioner prayed for a mandamus directing compensation amount alongwith statutory interest to be paid till the date of making payment.

The learned Single Judge, by an order dated 16.12.2020, directed respondent no. 8 in the writ petition to make payment of the compensation amount within 15.01.2021. By the said order the writ petition was directed to appear in the list on 16.01.2021 to ascertain if the directions passed earlier was complied with by the appellant herein. The said writ petition again came up for hearing on 05.02.2021 when the learned Single Judge passed an order directing the appellant herein to pay interest to the petitioner on the compensation amount, at the rate of 10% p.a. for the period from March 1, 2019 till the date of payment of the compensation.

The appellant filed an application for review of the order dated 05.02.2021 on the ground that certain material facts could not be placed before the Court when the writ petition was disposed of. It is the case of the appellant that various litigations were pending concerning the same plot of land and the appellants were advised not to disburse the compensation amount.

Mr. Dutta, learned counsel for the appellant submits that since the amount of compensation was paid within the time limit stipulated by the order dated 16.12.2020, the appellant ought not to have been directed to pay interest on the compensation amount. He further submits that since the initial order directed only payment of the compensation amount and the writ petitioner accepted the said order, it would be deemed that the writ petitioner waived his right to claim interest on the compensation amount. He refers to a decision of the Hon'ble Supreme Court of India in the case of *Union of India vs. Pramod Gupta (D) by legal representatives & ors. reported in 2006 (1) ICC 133* in support of his contention that grant of interest is discretionary and not mandatory.

Mr. Mahapatra, learned counsel for the writ petitioner/respondent herein submits that the writ petitioner did not at any stage of the proceeding waived his right to claim interest on the compensation amount. He further submits that the property of the petitioner was taken possession of without paying compensation before

such possession was taken. He further submits that the learned Single Judge was justified in awarding interest on the compensation amount.

Heard the learned counsel for the parties at length and perused the materials placed.

The learned Single Judge while passing the order dated 16.12.2020 in WPA 8628/2020 directed the Special Land Acquisition Officer, Paschim Medinipore to pay the compensation amount within 15.01.2021. The writ petition was kept pending. Thereafter, the same was again taken up for hearing on 05.02.2021 when the learned Single Judge after taking note of the fact that the compensation amount has been paid on 05.01.2021 decided the issue regarding payment of interest for delayed payment of compensation. The writ petitioner claimed interest and there was no waiver on the part of the writ petitioner to claim such interest at any point of time as sought to be argued by Mr. Dutta. Mere pendency of the civil proceeding cannot be a ground to avoid payment of interest on compensation amount for delayed payment of the same. The learned Single Judge assigned reasons for holding that the concerned authority was liable to pay interest on the compensation amount. The learned Single Judge was thus perfectly justified in directing the appellant to pay interest on the compensation amount and the order rejecting the review application also does not suffer from any infirmity as there was no error apparent on the face of the record as rightly observed by the learned Single Judge while rejecting the application for review.

Hon'ble Supreme Court of India in the case of *Pramod Gupta* (supra) held that where the right to claim interest has been expressly waived by the parties and/or their counsel a discretion is vested with the Court and the Court may not exercise discretion to grant any interest though there may be a mandatory provision in the statute directing payment of interest. In the facts and circumstances of the case on hand, there was no waiver either express or implied of right to claim interest. In view thereof, the decision of the Hon'ble Supreme Court in *Pramod Gupta* (supra) does not have any manner of application to the facts and circumstances of the instant case.

For the reasons stated hereinabove, this Court does not find any reason to interfere with the orders passed on 21.04.2022 in RVW 78/2021 and on 05.02.2021 in WPA 8628/2020 respectively.

The instant appeal stands **dismissed** however without any order as to costs. Consequently, the connected application also stands disposed of.”

The aforesaid order shall form part of this order.

(Hiranmay Bhattacharyya, J.)

I agree.

(T.S. Sivagnanam, J.)

RP/Amitava (AR. CT.)