

D/L  
Item No. 14  
05.08.2022  
KOLE

**MAT 879 of 2022**  
**With**  
**IA No. CAN 1 of 2022**  
**With**  
**IA No. CAN 2 of 2022**  
**Howrah District Co-operative Agriculture & Rural**  
**Development Bank Ltd. & Anr.**  
**-Vs.-**  
**Sukumar Samanta & Anr.**

*Mr. Malay Kr. Roy*

*...for the appellants.*

*Mr. Ziaul Haque,*  
*Mr. H. Kr. Mahata*

*...for the respondent no. 1.*

*Mr. Amal Kr. Sen, Ld. AGP,*  
*Mr. A. Das,*

*...for the State.*

**In Re: CAN 1 of 2022**

This is an application for condonation of delay of 16 days in filing the appeal. Causes shown being sufficient, the delay is condoned.

CAN No. 1 of 2022 is accordingly disposed of.

**In Re: MAT 879 of 2022 with IA CAN 2 of 2022**

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

This appeal is directed against a judgment and order dated April 29, 2022, whereby WPA No. 302 of 2022 was allowed. The respondent no. 2 in the writ petition being the Chief Executive Officer of the appellant-cooperative bank was directed to release the balance amount of retiral benefits to the writ petitioner, after deducting the amount already

paid in that regard, commensurate with the rate as applicable from March 29, 2018, which stipulates that the maximum limit shall be Rs. 20 lacs.

The writ petitioner, who is the respondent no. 1 herein, approached the learned Single Judge with the grievance that after his superannuation from service under the appellant-bank on November 30, 2019, retiral benefits were disbursed to him in terms of the previous rules although on March 29, 2018, the Payment of Gratuity (Amendment) Act, 2018 was brought into force, which was to apply to him. The learned Judge noted that in spite of service, repeatedly the cooperative bank was not represented. Since the matter pertains to retiral benefits of an ex-employee of the bank, the learned Judge proceeded to dispose of the writ petition *ex parte*. Being aggrieved, the bank has come up in appeal before us.

We have heard learned Counsel for the parties. It is not the case of the appellant that service of the writ petition had not been effected on the appellant. However, the bank failed to attend the hearing before the Learned Single Judge. We are not inclined to interfere as *prima facie* we see no infirmity in the order under appeal. However, if the appellant bank is entitled to approach the learned Single Judge with appropriate application seeking an opportunity of placing its case before the learned Single judge, and if the appellant does so, the learned Judge may consider such application and pass appropriate orders as the learned Judge may deem fit and proper. While considering such

application, if made, the learned Judge is requested not to take into account any observation made in this order.

Since we have not called for affidavits, the allegations made in the stay application are deemed not to be admitted by the respondents.

The appeal and the connected application are accordingly disposed of.

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.)**