

MAT 734 of 2021
With
CAN 1 of 2021
With
CAN 2 of 2021

Ankit Roy Biswas (Minor)
Vs.
Ratna Chowdhury & Ors.
(Through Video Conference)

Mr. Nayan Rakshit
Mr. Pranab Mitra

... ... for the appellant

Mr. Ashim Kumar Ganguly
Ms. Sukla Das Chandra

... ... for the State

CAN 2 of 2021 has been filed by the appellant seeking condonation of delay of three days in filing this appeal.

Having regard to the circumstances of the case and the plea taken in the application, we are of the opinion that the delay has properly been explained and sufficient reasons exist for the delay in filing this appeal, hence CAN 2 of 2021 is allowed and delay in filing the appeal is condoned.

Heard on merit.

This appeal is at the instance of the respondent no. 4 in the writ petition wherein the learned Single Judge by order dated 22.06.2021 had allowed the WPA 7157 of 2020 and directed the appellant to restore the possession of the premises to writ petitioner (respondent no. 1 herein) and also directed the respondent no. 3, i.e. the official respondent, to ensure that the writ petitioner's possession in the premises is restored.

It has been pointed out by the learned counsel for the appellant that the decree of eviction dated 04.09.2017 in T.S. 83 of 2015 was passed in favour of the appellant as against the respondent no. 1 and the appellant had applied for execution of the said decree which was duly executed on 29.05.2019 in T.Ex. 25 of 2018 and possession was delivered to the appellant.

He has also submitted that thereafter the respondent no. 1 had moved the application for recalling the ex parte decree under Order 9 Rule 13 of the CPC by filing Miscellaneous Case No. 51 of 2019 but the said application is still pending.

In support of his submission he has referred to the document enclosed along with the supplementary affidavit filed before this Court.

In the aforesaid background learned counsel for the appellant has pointed out that the learned Single Judge has proceeded on wrong factual premises that the ex parte decree passed in the eviction suit in favour of the appellant was recalled in Miscellaneous Case No. 15 of 2019.

Though the respondent no. 1 (writ petition) is served in this appeal but she is not appearing. Therefore, the plea of the appellant at this stage is uncontested.

Having regard to the submission that the learned Single Judge has proceed on wrong factual premises about recall of the ex parte decree and the material pointed out to this Court, we are of the opinion that the

issue is required to be examined afresh by the learned Single Judge having due regard to the documents relating to pendency of the application for recalling the ex parte decree and any contrary document submitted by respondent no. 1.

Hence, we set aside the order of the learned Single Judge under challenge in this appeal and permit both the parties to file their respective documents before the learned Single Judge in respect of the plea relating to recall of the ex parte decree/pendency of the application for recalling the ex parte decree.

The appeal is accordingly allowed. Learned Single Judge may decide the writ petition afresh considering the observations made above.

The appeal is accordingly allowed and the connected applications are disposed of.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)