

18.01.2022
Item No.41
Crt. No.16.
KB/RP

**MAT 897 of 2021
with
I.A. No. CAN 1 of 2021**

**Kushal Polysacks Pvt. Ltd. & Anr.
-Vs-
Union of India & Ors.**

(Via Video Conference)

Mr. Arijit Chakrabarti
Mr. Nilay Sengupta
Mr. Sujit Banerjee
... For the Appellants.

Mr. Vipul Kundalia
Mr. Sujit Mitra
... For the Respondents

This intra-Court mandamus appeal preferred by the writ petitioner is directed against an order dated 20th July, 2021 passed by the learned Single Bench disposing of the writ petition by directing the appellants to avail alternative remedy provided under the act. The specific contention of the appellants was that the show cause notice dated 20th October, 2016 was not served on the appellants nor any of the notices informing the dates of personal hearing was served on the appellants. The appellants' further case is that they came to know about passing of the order-in-original only on 23rd June, 2021 and on 29th June, 2021 they addressed the authority to

recall the order dated 30th March, 2021 on the ground that it is an ex parte order and allow them to participate in the proceeding. This representation has not considered which necessitated the appellants to come before this Court and file a writ petition. When the appellants have raised a contention that there has been violation of principles of natural justice inasmuch as the show cause notice was not served, it would be the endeavour of the Court to examine the said submission for its correctness. If the Court finds that sufficient opportunity was granted to the appellants, yet the appellants failed to utilize the same then the Court will be justified in directing the appellants to avail the alternative remedy. However, at the very threshold the writ petition has been disposed of keeping aside the question as to whether the show cause notice was served or not. In our considered view, service of show cause notice is a statutory mandate and if the authorities are unable to show that show cause notice was, in fact, served on the appellants, then the matter requires reconsideration and that may be a good ground to entertain the writ petition and interfere with. Therefore, we are of the view that the Writ Court would be justified in examining the issue to that limited extent. Hence, we are inclined to restore the writ petition to its original file and number to the learned

Single Judge to decide the only issue as to whether the show cause notice was served on the appellants and whether the hearing notices were also served on the appellants. In this regard the appropriate respondent is required to file affidavit-in-opposition in which they shall clearly indicate as to the statutory compliance regarding service of notice on the appellants along with the affidavit-in-opposition and annexures can be filed to establish their stand. The affidavit-in-opposition shall be filed within three weeks from date after serving advance copy of the same on the learned Counsel for the appellants and the reply, if any, be filed by the appellants within ten days thereafter.

The Registry is directed to list the writ petition after four weeks.

With the above direction the appeal and the connected application are disposed of by modifying that portion of the order whereby the learned Single Bench has directed the appellants to avail alternative remedy.

Mr. Vipul Kundalia, learned Standing Counsel has been heard in the matter on behalf of the respondents as he had appeared before the learned Writ Court. Therefore, his appearance before us in this matter be regularized by the appropriate authority, more particularly because the papers were served on the

learned Standing Counsel only today when the matter was called on.

(T.S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)