

3 06.7.2022  
Sc Ct. no.12

**FMA 1396 OF 2019**

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Sajal Mandal

Vs.

Indian Oil Corporation Limited & Ors.

Mr. Kallol Basu  
Mr. Sudipto Panda  
Mr. Subrata Ghosh  
Mr. Samik Sarkar.

..... For the Appellant/  
Petitioner

Mr. Manwendra Singh Yadav

..... For the Respondent  
Nos. 1 to 3

Mr. Radhamohan Ray

..... For the Respondent  
No. 5

Heard Mr. Kallol Basu, learned counsel for the appellant, Mr. Manwendra Singh Yadav, learned counsel for the respondents Indian Oil Corporation Limited and Mr. Radhamohan Ray, learned counsel for the Union of India.

In course of hearing, we noticed that the learned Single Judge has dismissed the writ petition on the question of maintainability alone without going into the merits of the claim of the appellant/petitioner.

In our wisdom we deem it just and proper to observe here that even though the question of maintainability is raised at the motion stage, the parties should have been given opportunity to file affidavits to support the claim and to oppose the claim of the petitioner. A decision should also have been reached on maintainability as well as on merits.

We are of the aforesaid view inasmuch as if we decide the present appeal either way and any of the aggrieved party moves the Apex Court, there is nothing to be decided on merits before that Court too. Similarly, if we take a different view from what has been taken by the learned Single Judge, we have to resort to remand of the matter because there is no decision on merits of the claim of the appellant/petitioner.

In the fitness of things therefore, we set aside the impugned order and remand the matter for disposal on the question of maintainability as well as on the question of merits of the claim of the appellant/petitioner.

We direct the respondent to file affidavit-in-opposition to the writ petition within a period of three weeks from today before the learned Single Judge and the petitioner may file affidavit-in-reply within one week thereafter.

We request the Hon'ble Single Judge to dispose of the matter as expeditiously as possible.

With the aforesaid direction the appeal is disposed of. There will be no order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

**(Chitta Ranjan Dash, J.)**

**(Aniruddha Roy, J.)**