

8 13.04.2022

gd/ssd

FMA/153/2022
IA NO: CAN/1/2021
SOMNATH GHOSH
VS
SMRITI JATI AND ORS.

Mr. Goutam Banerjee,
Mr. Sandip Kumar Mondal
..for the Appellant

Mr. N.C. Bihani,
Ms. P.B. Bihani
..for the State

Mr. Prosenjit Mukherjee,
Mr. Kunal Ganguly,
Mr. Munshi Ashiq Elahi,
Mr. Tirupati Mukherjee
..for the Respondent

This appeal is at the instance of the respondent no.5 in the writ petition directed against the order of the learned Single Judge dated 13.09.2021 whereby WPA 170 of 2021 has been disposed of with certain directions.

The submission of the learned counsel for the appellant is that the impugned order has been passed by the learned Single Judge in the absence of the appellant, therefore, the true facts could not be placed before the learned Single Judge and that the writ petition itself was not maintainable as the dispute raised in the petition was of civil nature.

Learned counsel for the respondents have supported the impugned order.

Having regard to the fact that the order impugned

has been passed by the learned Single Judge in the absence of the appellant and the appellant has not been heard before the learned Single Judge, we are of the opinion that the appellant has remedy of filing an application for review/recall of the order before the learned Single Judge. If the appellant raises the issue relating to maintainability of the petition on the ground that the dispute involved is of civil nature, then the same is also required to be gone into by the learned Single Judge. The impugned order reflects that earlier a writ petition being WPA 11581 of 2020 was filed which was disposed of by the order dated 6th January, 2021 but this fact has been suppressed in the writ petition.

In the aforesaid circumstances, we dispose of the present appeal granting liberty to the appellant to apply for review/recall of the impugned order before the learned Single Judge. We hope if such an application is filed, the same will be decided in accordance with law.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)

