

25.08.2022
Court No.12
S/L. No. 55
Sourav/
Suvayan

FMA 2045 of 2018
With
IA No: CAN 3 of 2021
(Application not here)

Provat Ranjan Biswas
Vs.
Ranjit Kumar Rishi & Ors.

Mr. Kalyan Bandyopadhyay, Sr. Adv.
Mr. Saptansu Basu, Sr. Adv.
Mr. Ram Anand Agarwala
Mr. Ramesh Dhara
Mr. Ananda Gopal Mukherjee
Ms. Sonam ray

...for the appellant.

Md. Sarwar Jahan
Mr. Jayanta Samanta
Mr. Moidul Islam Kayal

...for the respondent no. 1.

Mr. Manwendra Singh Yadav
Ms. Satabdi Naskar (Kundu)

...for the IOCL

Heard Mr. Kalyan Bandyopadhyay, learned Senior Counsel appearing for the appellant, Mr. Sarwar Jahan, learned Counsel appearing for the contesting respondent No.1 and Mr. Manwendra Singh Yadav, learned Counsel appearing for the oil company.

This appeal has a chequered career and it is the third round of litigation by the present respondent No. 1 to enforce his right to get a licence in respect of a LPG dealership.

While hearing the appeal, we are taken through the order passed by the Division Bench on September 19, 2018 while admitting the present appeal and

passing the interim order. In the aforesaid order itself, question of *res judicata* and delay have been raised by Mr. Bandyopadhyay's client on the ground that the relief which could have been sought for in earlier two writ petitions having not been sought for, the present writ petition against the order of which the present appeal has been preferred is hit by the principle of *res judicata*, as enunciated in Section 11 explanation (IV) read with Order II Rule 2 Civil Procedure Code.

In course of hearing of this appeal today, it is submitted by Mr. Bandyopadhyay, learned Senior Counsel that the impugned writ petition is clearly hit by the principle enunciated in Order II Rule 2, Code of Civil Procedure, inasmuch as the petitioner (the present respondent No.1) had not made the prayer which he should have made in the earlier writ petitions.

Mr. Jahan, learned Counsel appearing for the respondent No.1 very fairly submits that he had filed the present writ petition with a prayer simplicitor for implementing the order of Division Bench passed in FMA 1030 of 2016 in view of the fact that SLP against the aforesaid order of the Division Bench had been dismissed *in limine*. He further submits that he just wants protection of the right of his client which has been upheld by the Division Bench and nothing more.

Mr. Yadav, learned Counsel appearing for the oil company submits that pursuant to the order passed

by the Division Bench in the aforesaid appeal, they have already processed the matter in favour of the present respondent No.1.

Be that as it may, the question of law regarding applicability of constructive *res judicata* having been raised in the appeal for the first time and no scope having been given to the parties concerned to file their affidavit-in-opposition to substantiate such claim on the point of law by supporting facts, we feel it just and proper to remand the matter for just and fair decision after giving opportunity to file affidavit-in-opposition to all the respondents who may choose to file such affidavit.

We could have done the said exercise in appeal also by affording the parties to file their respective affidavits but we desist from such exercise to afford the parties the benefit of a forum, reserving the jurisdiction of this appellate forum open to accommodate the grievance of the party aggrieved by the order of Hon'ble Single Judge.

Accordingly, we set aside the impugned order and remand back the matter to the Hon'ble Single Judge with the following observations:

1. Present respondent No.1 shall file the affidavit-in-opposition positively within seven days from the date of reopening of the Court after Puja Vacation.

2. The oil company is directed to file its affidavit within fifteen days from the date of reopening of the Court after Puja Vacation.
3. It is made clear that if the affidavit is not filed by the aforesaid date, no further time shall be granted and the parties who have been directed to file affidavit-in-opposition shall be non-suited accordingly.
4. The affidavit-in-reply, if any, shall be filed by the appellant by end of November, 2022.
5. The pleadings shall be exchanged amongst the parties by the end of November, 2022 and the Hon'ble Single Judge is requested to dispose of the matter within three months from 1st December, 2022, subject to His Lordship/Her Ladyship's convenience, taking into consideration the pendency in the board.

It is made clear that we have made no observation to the prejudice of any of the parties and it is also made clear that Hon'ble Single Judge shall not be influenced by the impugned order already set aside by us. The protection to the appellant shall not be interfered with till the disposal of the writ petition on remand as a matter of equity.

Accordingly, the appeal being **FMA 2045 of 2018** along with interim application being **CAN 3 of 2021** are disposed of.

(Chitta Ranjan Dash, J.)

(Aniruddha Roy, J.)