

**FMA 59 of 2021  
with  
CAN 1 of 2020 (Old No. CAN 1794 of 2020)**

(Madhusudan Ghosal Vs. Rabin Banerjee & Ors.)

**Mr. Anil Kumar Chattopadhyaya  
.... For the appellant**

**Mr. Tarunjyoti Tewari  
..... For the respondent nos. 1 to 4**

This appeal arises out of an order passed by the Hon'ble Single Bench dated August 13, 2019 dismissing the writ petition being W.P. No. 95 (W) of 2019 and awarding costs of Rs.1,00,000/- to be paid by the writ petitioner to the West Bengal State Legal Services Authority, Kolkata. The Hon'ble Single Bench was of the view that the writ petitioner has come to Court with unclean hands and therefore, the writ petition merited dismissal. Furthermore, the Hon'ble Single Bench directed that in the event the documentary evidence of payment of costs was not filed before the Court in seisin of Civil Suit being T.S. No. 32 of 2014 within a fortnight from date, it would be open to the plaintiffs therein/respondent nos. 6 to 9 [in W.P. No. 95 (W) of 2019] to apply before the Civil Judge for striking of the defence of the writ petitioner.

Mr. Chattopadhyaya, learned counsel appearing for the appellant/writ petitioner argues that initially a writ

petition was filed by the petitioner being W.P. No. 33931 (W) of 2014 praying for his representation for construction of a boundary wall to be considered by the Pradhan of Sahapur Gram Panchayat, P.O. – Belkulai, Dist – Howrah.

Despite the representation seeking permission for construction of boundary wall by the writ petitioner, who is the owner of the land, the Pradhan/respondent no. 3 in W.P. No. 33931 (W) of 2014 did not consider the same.

The said writ petition being W. P. No. 33931 (W) of 2014 was disposed of by an order dated September 10, 2015 passed by an Hon'ble Single Bench directing the Pradhan/respondent no. 3 to allow the petitioner to construct the boundary wall in the event the respondent no. 3 was of the opinion that there was no legal impediment to the same. In the event, the respondent no. 3 was of the opinion that the permission for the same could not be granted, then the representation of the petitioner was directed to be disposed of within a reasoned order. Furthermore, an application for addition of parties being CAN 1339 of 2015 was also treated on the day's list and disposed of along with W.P. No. 33931 (W) of 2015 with the consent of the parties. The application had become infructuous since the main writ petition itself was being disposed of. The Pradhan/respondent no. 3 was directed to consider the representation of the writ petitioner by giving all the

necessary parties as he may think necessary, an opportunity of being heard.

Pursuant to the said order dated September 10, 2015 in W.P. No. 33931 (W) 2014, the Pradhan, Sahapur Gram Panchayat/respondent no. 3 gave a permission to the writ petitioner to construct a brick boundary wall within his own land on March 16, 2018.

Thereafter, the present writ petition being W.P. No. 95 (W) of 2019, from which the appeal has been preferred, was filed by the writ petitioner contending that he was being prevented from constructing a gate to his own property by the respondent no. 3 in W.P. No. 95 (W) of 2019/Superintendent of Police, Howrah.

By an order dated April 1, 2019 passed by a Hon'ble Single Bench of this Court, the police authorities were directed to ensure that no breach of peace occurred at the locale when the petitioner is putting up the gate at the boundary wall. By the said order, the writ petition being W.P. No. 95 (W) of 2019 was disposed of.

Praying for recalling of the said order, the respondent nos. 6 to 9 preferred an application being CAN 6586 of 2019. While disposing of the said CAN application, the Hon'ble Single Bench came to the finding that the writ petitioner had filed a written statement in Title Suit No. 32 of 2014 pending before the 1<sup>st</sup> Court of Civil Judge (Junior Division), Howrah. The said civil suit was filed by the respondent nos. 6 to 9. Since the factum of the said

suit was not brought on record before The Hon'ble High Court in the first writ petition and also in the second writ petition, the Hon'ble Single Bench allowed the prayer for recalling and disposed of the CAN application being 6586 of 2019. Furthermore, the Hon'ble Single Bench dismissed the writ petition upon payment of costs as the petitioner approached the Court with unclean hands.

Mr. Chattopadhyaya argues that the writ petitioner has not come to Court with unclean hands since by the order dated September 10, 2015 passed in the first writ petition the Hon'ble Single Bench directed his representation to be disposed of upon hearing being given to all the necessary parties. Pursuant to the said order, the permission was granted on March 16, 2018 by the Pradhan. No challenge was made by the private respondent nos. 6 to 9 to the said order passed by the Pradhan on March 16, 2018. He further submits that from the order dated March 3, 2014 passed in the civil suit being T.S. No. 32 of 2014, it becomes clear that no *prima facie* case was made out by the plaintiffs therein/the private respondent nos. 6 to 9, and the prayer for injunction was refused. Therefore, the writ petitioner did not consider the same to be a material fact that was required to be on record. Every non-disclosure of fact does not tantamount to material suppression, is a well settled principle of law.

Mr. Tewari, learned counsel appearing for the private respondents, argues that neither the writ petitioner brought the civil suit to the notice of this Hon'ble Court in the first writ petition nor in the second writ petition. The petitioner has approached the Court with unclean hands and therefore, the writ petition being W.P. No. 95 (W) of 2019 should be dismissed along with the costs as assessed by the Hon'ble Single Bench.

Considering the facts of the case and the materials on record, this Court is of the view that imposition of costs is an extra ordinary power conferred upon the writ Court and such discretion should be exercised in very rare circumstances. The writ petitioner/appellant has only challenged the imposition of the costs in the present appeal and not the dismissal of his petition. Since this Court finds that no material suppression was made in the present case by the writ petitioner, the direction with regard to the imposition of costs is hereby set aside.

The appeal being **FMA 59 of 2021** along with the application for stay being **CAN 1794 of 2020** are, accordingly, allowed.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

**(Lapita Banerji, J.)**

**(Tapabrata Chakraborty, J.)**