Item No.17.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 28.09.2022

DELIVERED ON:28.09.2022

CORAM:

THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE SUPRATIM BHATTACHARYA

M.A.T. No.1504 of 2022
With
I.A. No.CAN 1 of 2022

Susmita Islam, Proprietor of Glass Centre.
Vs.
State of West Bengal & Ors.

Appearance:-
Ms. Sweta Mukherjee ..... for the appellant.

Mr. T. M. Siddique,
Mr. Debasish Ghosh,
Mr. Nilotpal Chatterjee .... for the State.

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, J.)

1. This intra-Court appeal is directed against the order dated 1st September, 2022 in W.P.A. No.19595 of 2022, which was heard along with other connected matters.

2. The appellant is aggrieved by the impugned order on account of the fact that no interim order was granted by the learned Single Bench but affidavit-in-opposition was directed to be filed. The challenge in the writ petition was to an order passed by the Senior Joint Commissioner of State Tax, 24 Parganas Circle dated 27th October, 2021 by which the appeal petition filed by the appellant was dismissed.

3. The learned Advocate appearing for the appellant submitted that the appellant's husband had appeared before the concerned appellate authority on 27th October, 2021 and submitted that the appellant had undergone a surgery and requested for an adjournment and it was informed that a fresh date will be given. However, the order dated 27th October, 2021 was passed and it was sent by email only on 12th November, 2021 and the appellant was shocked to find that the appeal was dismissed by passing an ex parte order.

4. The learned Government standing counsel would strenuously contend that thrice the matter was adjourned but the appellant had not taken any effective step to prosecute the matter and

therefore, the appellate authority was right in rejecting the appeal by taking an ex parte decision.

5. After hearing the learned Advocates appearing for the parties and perusing the materials placed on record, while the appellate authority would be justified in proceeding ex parte, yet in revenue matters especially when the assessee is an individual, certain amount of leverage can be granted. In any event, the first date of hearing of the appeal was fixed on 15th September, 2020 and the next date was fixed after more than a year, i.e. on 27th October, 2021. Therefore, no prejudice has been caused to the department if one more adjournment had been granted.

6. Furthermore, the appellate remedy being a very efficacious and effective remedy and the appellate authority being entitled to re-appreciate the facts and circumstances of the case, it would be better in the interest of revenue to pass a speaking order after hearing the appellant. However, we make it clear that if the appellant gets an opportunity, she should cooperate in the conduct of the appeal proceedings and should not seek for any adjournment.

7. For the above reasons, the writ petition as well as this appeal and connected application stand disposed of and the order

passed by the appellate authority dated 27th October, 2021 is set aside and the appeal stands restored to the file of the appellate authority, who shall fix a date of hearing of the appeal in November, 2022 and the appellant shall appear on the said date without seeking further adjournment and after hearing the appellant, the appeal shall be disposed of on merit and in accordance with law as expeditiously as possible.

8. There shall be no order as to costs.

9. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM, J)

I agree,

(SUPRATIM BHATTACHARYA, J.)

NAREN/PALLAB(AR.C)