

Item No.13.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 16.12.2022

DELIVERED ON:16.12.2022

CORAM:

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

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

M.A.T No.1824 of 2022

with

I.A. No.CAN 1 of 2022

Santosh Kumar Gupta.

Vs.

The Assistant Commissioner of Revenue, Howrah Zone & Ors.

Appearance:-

**Ms. Rita Mukherjee,
Mr. Abhijat Das**

...

for the appellant.

**Mr. T. M. Siddique,
Mr. Debasish Ghosh,
Mr. Nilotpall Chatterjee,
Mr. V. Kothari**

....

for the State.

JUDGMENT

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

1. This intra Court appeal by the writ petitioner is directed against the order dated 22nd September, 2022 passed in W.P.A. No.20530 of 2022. This is the second round of litigation, which the appellant has initiated. The appellant initially filed WPA No.3320 of 2022, which was disposed of by an order dated 14th March, 2022 and the said order was put to challenge by way of an intra-Court appeal in MAT 651 of 2022 and by a judgment dated 5th July, 2022, the appeal was disposed of with a direction to the authority to issue fresh show cause notice giving liberty to the appellant to raise all contentions. Pursuant to such direction, show cause notice was issued. The appellant appears to have discovered a new point stating that the search itself was illegal. The authorities, who issued the show cause notice had no jurisdiction to do so and on these grounds, the present writ petition was filed, which has been dismissed by the impugned order. Aggrieved by the same, the appellant is before us by way of this appeal.

2. We have heard Ms. Rita Mukherjee, learned Advocate appearing for the appellant and Mr. T. M. Siddique, learned Advocate for the State.

3. Pursuant to the directions issued by this Court, show cause notice was issued to the appellant and it appears that there

were three reminders sent to the appellant by the Assistant Commissioner, Bureau of Investigation, (South Bengal), Howrah. The appellant submitted a reply on 28th April, 2022 in which among other things, the appellant wanted to cross-examine the adjudicating authority himself and has also raised certain grounds questioning the validity of the search. The authority has passed an order dated 30th November, 2022. Admittedly, as against the said order, the appellant has an effective alternate remedy but without exhausting such remedy, the appellant cannot indirectly maintain a challenge to a search, which had ultimately culminated in a show cause notice.

4. Therefore, the proper course to be adopted by the appellant is to prefer an appeal against the order of the adjudicating authority dated 30th November, 2022.

5. Accordingly, the appeal stands disposed of along with connected application by directing the appellant to file an appeal before the concerned appellate authority within a period of 30 days from the date of receipt of the server copy of this order. If the same is complied with, the appeal shall be entertained by the appellate authority without rejecting the same on the ground limitation.

6. The appellant is at liberty to raise all factual and legal issues including the grounds raised by him in the writ petition questioning the validity of the search, jurisdiction of the adjudicating authority, etc. After affording an opportunity of personal hearing to the appellant, the appellate authority shall dispose of the appeal by passing a reasoned order.

7. In the light of the above direction, the costs which has been imposed on the appellant stands vacated.

8. It is submitted by the learned Advocate appearing for the appellant that already sum of Rs.79,000/- has been recovered from the credit ledger. If that be so, while calculating the pre-deposit amount, this amount shall be given due credit.

9. There shall be no order as to costs.

10. 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,

(HIRANMAY BHATTACHARYYA, J.)

NAREN/PALLAB (AR.C)