

OD-1

APO/101/2021
In
WPO/373/2020
IA NO: GA/1/2021

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

AMALA ROY DAS @ AMALA DAS ROY
-VS-
THE STATE OF WEST BENGAL AND ORS.

BEFORE:
The Hon'ble JUSTICE HARISH TANDON

The Hon'ble JUSTICE RABINDRANATH SAMANTA
Date : 22nd December, 2022.

Appearance:
Mr. Syed Shamsul Arefin, Adv.
Mr. K. Kulsum, Adv.
Ms. Nadira Abedin, Adv.
...for the appellant

Ms. Chaitali Bhattacharyya, Sr. Govt. Adv.
Mr. Subhendu Roy Chowdhury, Adv.
...for State

The Court: The only point involved in the instant writ petition is whether Rule 4 of the Writ Rules is mandatory in nature and invites an order of dismissal if the same is not adhered to. It is no doubt true that the High Court frames Rules relating to an application under Article 226 of the Constitution of India incorporating various provisions relating to procedures to be adopted in this regard. By the impugned order, the Single Bench has held that the said Rule 4 of the Writ Rules is mandatory in nature and the moment the Court finds that the same to be mandatory, an infraction of the aforesaid provision, invites immediate dismissal of the writ petition.

Without further adieu to the point, we are privileged to have the decision of this Court rendered in the case of *Sakti Steel Traders Vs. Ashok Chakraborty and Others* reported in *AIR 1992 Cal 187* wherein the identical question arose and the various Division Bench decisions of this Court were taken into consideration. The said Bench upon taking into consideration the Division Bench judgments rendered in the case of *Messrs Arther Burtler & Co. Mazuffarpur Ltd. v. Union of India* decided on 20th September, 1993 and *Unital Province Electric Supply & Co. v. Industrial Tribunal (III) Allahabad* reported in *79 CWN page 312* held that the Bench having determination in relation to a particular matter both in the Appellate and Original Side, Rule 4 cannot be said to be mandatory as it does not provide any consequences in case of the infraction and/or violation thereof in these words :-

12. The Calcutta High Court is one High Court only for the purpose of administrative facility, there are two sides namely, Original Side and Appellate Side. It cannot be said that the Calcutta High Court has been divided into two High Courts namely, Calcutta High Court Original Side, Calcutta High Court Appellate Side. A Judge of the Calcutta High Court is a Judge of the Calcutta High Court as a whole it cannot be said that the Judge sitting in the Original Side is a Judge of the Original Side of the Calcutta High Court and a Judge sitting in the Appellate Side is a Judge of the Appellate Side of the Calcutta High Court. It is the determination made by the Hon'ble Chief Justice of the Calcutta High Court and a Judge takes up a matter relating to Original Side and matters relating to the Appellate Side but fact remains, a Judge of a High Court is a Judge of the High Court Calcutta which includes Original Side and also the Appellate Side. When a litigant filed an application under the

Art. 226 of the Constitution of India the description constitutional writ jurisdiction is the description of the jurisdiction of the High Court. The words "Original Side" or the words "Appellate Side" are superfluous. The said words do not confer any jurisdiction on the High Court whatsoever. It is for the identification for the facility of the administration that the application will be heard in the Original Side and/or in the appellate side. When a litigant files an application in the High Court and the application is entertained by the Calcutta High Court, it cannot be said that the application was filed before the Original Side of the High Court, Calcutta or the application is filed in the Appellate Side of the High Court, Calcutta. I have already pointed out that the Calcutta High Court is one High Court and not two High Courts and when an application filed before the Calcutta High Court and is entertained by any Judge of this Court whether in the Original Side or in the Appel-ate Side in its writ jurisdiction, the said application got to be decided on merit and it cannot be thrown away or dismissed on the ground that the same should be filed in the Appellate Side or in the Original Side and/or the lack of jurisdiction of the Judge concerned in the Calcutta High Court. Since the present application was entertained by this Court, I hold the applicant cannot be denied justice by holding that this matter should be heard by a Judge of the Appellate Side and as such the application should be dismissed. As the same is tantamount to denial of justices to a litigant which he is entitled to under Art. 226 of the Constitution of India, and this Court will be failing in it's duty if the application is not disposed of on merit.

13. It is well settled that long standing practice of the Court should not be normally disturbed. Since 1950 thousand of writ applications have been filed, some in Appellate Side, some in Original Side. If such a proposition is entertained at this stage,

relying upon the Division Bench judgment, which is a per incurium and a decision sub-silentio| in that event, that will create an uncertainty and will result injustice. This will create an administrative problem in this Court.

It is manifestly seen from the aforesaid observations that in absence of any consequences having been provided for non-adherence to the provision contained in Rule 4 of the Writ Rules, the said provision cannot be regarded as mandatory. Furthermore, normally the determination is assigned to a Bench in relation to particular matters instituted both in the Original and Appellate Side. It would be harsh on the litigant to suffer an order of dismissal simply because the writ petition ought to have been filed in the Appellate Side but has wrongly been filed in the Original Side.

The Court has ample discretion and powers to convert the proceeding from Original Side to Appellate Side and such power does not appear to have been taken away under the Writ Rules. The High Court being the court of record has inherent powers to pass an order to secure justice. Furthermore, the procedure is handmaid of justice and, therefore, should not be rigidly followed provided the consequence for non-observance has already been provided therein. We, thus, do not find that the dismissal of the writ petition filed in the Original Side with the liberty to file the same for the self-same relief in the Appellate Side would meet the ends of justice. Accordingly, the order is modified to the extent that the writ petition being WPO/373/2020 shall be registered in the Appellate Side and all the records will be sent to

the Appellate Side after assignment of a number and liberty granted to the parties to pray for listing of the said matter.

So far as the costs part is concerned, though it is a discretion of a Judge, yet we feel that in view of the fact that such imposition was made treating the provision contained in Rule 4 of the Writ Rules to be mandatory which is held otherwise in the abovenoted report, we, therefore, set aside the said portion of the order by which such costs was imposed.

The appeal and application are disposed of.

[HARISH TANDON, J.]

[RABINDRANATH SAMANTA, J.]