

OD-2

ORDER SHEET

WPO/2121/2022

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

ATISH GHOSH
Versus
THE STATE OF WEST BENGAL & ORS.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date : 5th July, 2022.

Appearance:

Mr. Tanmoy Mukherjee, Adv.

Mr. Tanmoy Sett, Adv.

Mr. Dilip Kumar Ghosh, Adv.

Ms. Sumana Biswas, Adv.

Mr. Souvik Das, Adv.

Mr. K. Raihan Ahmed, Adv.

For the petitioner.

Mr. Deepnath Roy Choudhury, Adv.

Mr. Hariram Singh, Adv.

For the respondent no.2.

Mr. Pradip Kumar Roy, Adv.

Mr. Biplab Das, Adv.

For R.O.C.

Mr. Ankit Surana, Adv.

For the Special Officer.

The Court :- The writ petition is entertained only because the appellate authority is not functioning. The petitioner is aggrieved by an order dated December 6, 2021 passed by the Assistant Registrar of Co-operative Societies, Kolkata Metropolitan Area Housing Cell in Dispute

Case No. 06/KMAH of 2021. The authority had ordered that the plaint be withdrawn from the file ‘with liberty to file again, properly.’

Accordingly to Mr. Mukherjee, learned Advocate for the petitioner, the order amounted to dismissal of the plaint on the ground of defect in the plaint. The defect being that the signature of Sri Atish Ghosh did not appear either in the Vokatnama or in the plaint.

Mr. Roy Choudhury, learned Advocate appearing for the Co-operative Societies, submits that the Assistant Registrar had not rejected either the plaint or the dispute case, but had directed that the file be withdrawn and submitted properly. According to Mr. Roy Choudhury and Mr. Surekha, learned Advocate for the respondents, the Court had granted liberty to cure the defect and had not rejected the dispute case.

Mr. Ray, learned Advocate for the Assistant Registrar of Co-operative Societies, also submits that it was the bounden duty of the plaintiff to file the dispute case upon compliance of necessary formalities and as such, a defective plaint could not have been entertained.

The petitioner has placed a decision of the Hon’ble Apex Court reported in **(2006) 1 Supreme Court Cases 75 (Uday Shankar Triyar-Versus-Ram Kalewar Prasad Singh And Another)**. The Hon’ble Apex Court had held that in case a plaint was not signed by the plaintiff or his duly authorized agent. Such bona fide error, could be permitted to be rectified either by the trial court at any time before judgment, or even by the appellate court, by permitting appropriate amendment. Non

compliance with any procedural requirement would not entail automatic dismissal or rejection, unless the relevant statute or rule so mandated.

In this case, the order does not reflect that the plaint was either rejected or dismissed. It appears that the petitioner was granted liberty to withdraw the plaint from the file and file the same in a proper manner.

Under such circumstances, in the opinion of the Court, the Assistant Registrar had granted liberty to the petitioner to cure the defect by taking back the plaint from the records, and re-submit the same in the proceedings.

This Court is of the view that the order does not amount to rejection and dismissal of the dispute case. The question of filing fresh court fees would not arise. The merits of the dispute has not been gone into by this Court.

Mr. Surekha, learned Advocate for the respondents, submits that the Special Officer has handed over charge some time in November, 2021 and should be described as the erstwhile special officer. The Society shall not be represented in this proceeding, by the erstwhile special officer, but by the newly elected Board.

The writ petition is disposed of.

Parties are to act on a server copy of this order.

(SHAMPA SARKAR, J)