

IA NO:GA/1/2022
G.A./2/2022
APOT/208/2022
With
WPO2599 OF 2022
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

SUMANA BAGCHI @ SUMANA MADHUSHREE BAGCHI
VS
ATIJIT MUKHERJEE & ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE
The Hon'ble JUSTICE APURBA SINHA RAY
Date : 11TH NOVEMBER, 2022.

Appearance:

Mr. Shyamal Chakraborty, Advocate
Mr. Kaushik Pradhan, Advocate
Mr. Debjyoti Mondal, Advocate
...for appellants/petitioners

Mr. S.K. Debnath, Advocate
Ms. Suranjana Dey Sarkar, Advocate
.....for KMC

Mr. P.S. Deb Barman, Advocate
Mr. Amit Gupta, Advocate
Mr. Debayan Dey Nayak, Advocate
...for private respondent .

THE COURT: By consent of the parties, the appeal and the application are taken up for hearing.

G.A. No.1 of 2022 in APOT 208 of 2022 is an application for condonation of delay in filing the appeal. Causes shown being sufficient, the delay is condoned. G.A.No.1/2022 is disposed of.

This appeal is directed against a judgement and order dated September 22, 2022, whereby WPO 2599 OF 2022 was disposed of.

The respondent/writ petitioner claims to be in occupation of a portion of Premises No.P-287, CIT Road Scheme-4M, Borough-3, Ward No.35, Kolkata-700054. The present appellant who was the private respondent in the writ petition, claims to be a co-owner of the said premises. This claim is disputed by learned advocate for the writ petitioner.

Be that as it may, the grievance of the writ petitioner before the learned single Judge was that the present appellant has disconnected the water supply to his premises. He submitted that he had made a representation to the concerned officer of the Kolkata Municipal Corporation for granting water connection. Such representation was not responded to.

The learned Judge observed that water is an essential commodity and ought to be supplied to the writ petitioner from the existing ferule. Accordingly, the learned Judge disposed of the writ petition with the following directions :-

“In view of the above, the instant writ petition is disposed of by directing the respondent No.4 to take a decision with regard to the

prayer of the petitioner for grant of a separate water connection to the petitioner's portion in the said premises from the existing ferrule. The said respondent may afford an opportunity of hearing to the petitioner and the respondent No.5 prior to taking a decision in the matter.

The respondent No.4 shall pass a reasoned order and communicate the same to the parties. A decision shall be taken in the matter at the earliest, but positively within a period of six weeks from the date of communication of the order.

Learned advocate appearing for the petitioner is directed to forward a copy of the representation dated 9th November, 2021 to the aforesaid respondent at the time of communicating the order of this Court.”

Being aggrieved, the private respondent, in the writ petition, has filed this appeal.

We notice that the appellant was not present before the learned Judge on the day the order under appeal was passed. Learned Advocate for the appellant says that the learned Advocate who had been engaged by the appellant to represent the appellant before the learned single Judge, was prevented by sufficient cause from appearing in Court on the day the writ petition was disposed of.

Learned advocate appearing for the appellant sought to place various facts before us in support of his contention that the writ petitioner has no right, title and/or interest in respect of the premises in question or any portion thereof and he is not entitled to any water connection. Learned advocate also says that the writ petitioner is not a tenant in respect of any portion of the concerned premises as has been recorded in the order impugned.

We are not inclined to go into these facts. The appellant chose to stay away from Court on the day the writ petition was disposed of. The case that the appellant seeks to argue before us, ought to have been argued before the learned single Judge. We think it would be unfair to interfere with the order impugned, at the instance of the appellant, who did not even appear before the learned single Judge on the day the order was passed.

Further, learned advocate appearing for KMC says that the order under appeal has already been carried out. An order has been passed by the competent authority for giving water connection to the writ petitioner.

Be that as it may, we are not inclined to interfere with the order under appeal.

The appeal and the connected application are accordingly dismissed.

However, this order will not prevent the appellant from approaching the learned single Judge with an appropriate application. If

such application is filed, the learned Judge is requested to decide the same on its merits without being influenced by any observation in this order.

Since we have not called for affidavits, allegations made in the stay application are deemed not to have been admitted by the respondents.

[ARIJIT BANERJEE, J]

[APURBA SINHA RAY, J.]

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