

D/L
Item No 20
19.06.2023
KOLE

**FMA 788 of 2019
With
IA No. CAN 1 of 2019 (Old No. 8828 of 2019)**

**Sri Banamali Samui
-Vs.-
The Kolkata Municipal Corporation & Ors.**

Ms. Susmita Dey (Basu)

... for the appellant.

*Mr. Alok Kr. Ghosh,
Mr. Swapan Kr. Debnath,*

... for the KMC.

The original of CAN 1 of 2019 (Old No. 8828 of 2019) is not available in the records. The Department has given a note that the same could not be traced. Let two authenticated copies of CAN 1 of 2019 (Old No. 8828 of 2019) be made available to our Court Officer in course of the day, to be retained with the records.

A judgment and order dated October 4, 2018, whereby the appellant's writ petition being WP No. 18727 (W) of 2018 was disposed of, is under challenge in this appeal.

We fail to see how the appeal is maintainable. The order assailed reads as follows:-

“Learned advocate appearing for the petitioner seeks leave to withdraw the writ petition and to file the same on the self-same cause of action before the appropriate forum.

The Corporation Authority is represented.

In such circumstances, W.P. No. 18727 (W) of 2018 is dismissed as withdrawn with the liberty as prayed for.”

The learned Judge decided no right of the writ petitioner. In any event, the writ petitioner having withdrawn the writ petition with liberty file afresh before the appropriate forum, he cannot challenge such order.

Learned Advocate for the appellant says that the writ petitioner's only prayer is for consideration of his representation made to the concerned officer in the Kolkata Municipal Corporation. The corporation not having considered such representation, the appellant had approached the learned Single Judge. That was the appropriate forum. There must have been some deficiency on the part of learned Advocate in assisting the learned Judge.

We have noted the above submission of the appellant. However, we are unable to entertain this appeal.

Accordingly, the appeal and the connected application are dismissed without any order as to costs.

However, this will not prevent the appellant from approaching the learned Single Judge by way of an appropriate application if the appellant is entitled to do so in law.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)