

06. 27.02.2023
Ct. No.6
Tanmoy

MAT 225 of 2023

**Sk. Aminuddin
-Versus-
State of West Bengal & Ors.**

**With
IA No: CAN/1/2023
With
IA No: CAN/2/2023
With
IA No: CAN/3/2023**

Mr. Indrajit Bhattacharjee, Adv.

...for the appellant/applicant.

Mr. Narayan Chandra Bhattacharyya, Adv.,
Ms. Sujata Ghosh, Adv.

...for the State respondents.

Affidavit of service filed in Court today be kept with
the records.

In spite of service, nobody appears for the writ
petitioner.

In Re: IA No: CAN/2/2023

This is an application for leave to prefer appeal
against a judgment and order dated December 23, 2022,
whereby the writ petition being WPA 26586 of 2022 was
disposed of. The present applicant/appellant was not a
party to the writ petition. The applicant says that he will
be affected by the order. Hence, he seeks leave to prefer
this appeal.

We are satisfied that the applicant/appellant may
be affected by the order in question.

This application is allowed.

The application being IA No: CAN/2/2023 is disposed of.

In Re: IA No: CAN/1/2023

This is an application for condonation of delay of sixteen (16) days in filing the appeal.

We have heard learned Counsel for the applicant. We are satisfied with the explanation given for the delay in filing the appeal.

The delay is condoned. The application is allowed.

The application being IA No: CAN/1/2023 is disposed of.

In Re: MAT 225 of 2023
With
IA No: CAN/3/2023

By consent of the appearing parties, the appeal and the connected application are taken up together for hearing.

The writ petitioner had approached the learned Single Judge with the grievance that the plan proposal that was submitted by it to Maheshtala Municipality along with the requisite fees, in February, 2022, has not been considered. The writ petitioner's subsequent representation requesting the Chairman of the Municipality to consider the plan proposal also yielded no result.

The learned Judge disposed of the writ petition with the following direction:-

“The writ petition is accordingly disposed of by directing the respondent no. 2 being the Mahestala Municipality to consider the plan proposal submitted by the petitioner in accordance with law, at the earliest, but positively within February 10, 2023 after giving reasonable opportunity of hearing to the petitioner and to intimate the fate of the plan proposal to the petitioner immediately thereafter.”

The appellant says that a civil suit is pending between the appellant along with other parties and the writ petitioner along with other parties, being Title Suit No. 45 of 2021, in the Court of the learned 3rd Civil Judge (Senior Division) at Alipore, in respect of the same property for which the plan proposal has been submitted by the writ petitioner to Maheshtala Municipality. Our attention has been drawn to the plaint filed in the suit. The appellant is one of the plaintiffs and the writ petitioner is the defendant no.13 in the suit.

Our attention has also been drawn to an *interim* order dated March 23, 2022, passed by a co-ordinate Bench in FMAT 48 of 2022, whereby the parties to the aforesaid suit have been restrained *“from alienating and/or encumbering and/or transferring their share in the suit property for a period of eight weeks from date or until further orders whichever is earlier.”* We are told that the *interim* order stands extended and is still in operation.

In the aforesaid factual scenario, learned Advocate for the appellant says that before taking a decision

regarding the plan proposal submitted by the writ petitioner being the respondent no.6 herein, Maheshtala Municipality should grant an opportunity of hearing to the appellant also.

Since civil disputes are pending between the writ petitioner and the appellant, we find some substance in the submission of learned Advocate for the appellant.

Accordingly, we direct the Maheshtala Municipality to afford an opportunity of hearing to the appellant or his authorized representative prior to taking a final decision in respect of the plan proposal submitted by the writ petitioner/respondent no.6 herein. The Municipality shall decide the matter by way of a reasoned order, in accordance with law, positively by the end of March, 2023, after giving reasonable opportunity of hearing to the writ petitioner/respondent no.6 herein, the appellant herein and any other party that the Chairman of the Municipality may deem necessary to hear.

We have not gone into the merits of the case. The Municipality shall take an informed decision in accordance with law.

Since we have not called for affidavits, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

The appeal being MAT 225 of 2023 and the connected application being IA No: CAN/3/2023 are disposed of.

Let urgent photostat certified copy of this order, if applied for, be made available to the parties, upon compliance with all necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)