

D/L
Item No. 7
20.03.2023
KOLE

MAT 266 of 2023
With
IA No. CAN 1 of 2023

The Rifle Factory Cooperative Society Ltd.
-Vs.-
The Union of India & Ors.

Mr. P. C. Bhattacharyya,
Mr. C. Kumar Lal,

...for the appellant.

Mr. Souvik Nandi,
Mr. S. K. Tiwari,

...for the respondent nos. 1 and 2.

Mr. Pradip Kumar Roy,
Mr. Joydeep Roy,

...for the respondent no. 4.

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

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

In spite of service nobody appears for the respondent no. 3.

This appeal is directed against an order dated January 18, 2023, *interim* in nature, passed in the appellant's writ petition being WPA 28989 of 2022. By the impugned order, the learned Judge simply directed exchange of affidavits and directed the matter to be listed in the Monthly List of April 2023.

Learned Advocate for the appellant says that the prayer of the appellant for an *interim* order in terms of prayer (c) of the writ petition, although pressed, was not

allowed by the learned Single Judge. Prayer (c) of the writ petition reads as follows:-

“(c) An interim order restraining the respondent no. 2 from making full payment of retirement dues to the respondent no. 3 without withholding payment of Rs. 5,97,753/- (Rupees Five Lakhs Ninety Seven Thousand Seven Hundred and Fifty Three) only.”

We have to go by what the impugned order records. We cannot consider any submission beyond what is recorded in the order.

However, having heard learned Counsel for the parties, we are of the view that if an *interim* order is not passed till the disposal of the writ application by the learned Single Judge, the appellant/writ petitioner may be seriously prejudiced. The claim of the appellant/writ petitioner appears to be based on statutory provisions and in particular Section 59 of the West Bengal Cooperative Societies Act, 2006. If the entire retiral dues are paid to the respondent no. 3, it may well be impossible for the appellant/writ petitioner to recover the loan advanced by the Society to the respondent no. 3. We have also recorded above that the respondent no. 3 has chosen not to appear in spite of being served with the appeal papers.

Accordingly, there will be an *interim* order in terms of prayer (c) of the writ petition which will operate till the disposal of the writ petition.

Time for the respondents to file affidavit in opposition to the writ petition is extended till April 3, 2023. Reply, if any, be filed by April 10, 2023.

The parties may mention the matter before the learned Single Judge upon exchange of affidavits or upon expiry of the time granted hereby for filing of affidavits.

The order of the learned Single Judge stands modified accordingly.

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

We clarify that the observations made in this order are *prima facie* in nature and only for the purpose of considering the appellant's prayer for interim protection till disposal of the writ petition. The learned Single Judge is requested to dispose of the writ petition without being influenced by any observation in this order.

The appeal and the connected application are, accordingly, disposed of.

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

(Apurba Sinha Ray, J.) (Arijit Banerjee, J.)