

WPLRT 34 of 2023

Md. Shahid & Ors.
Vs.
Muktar Ahmed @ Muktar & Ors.

Md. Mokaram Hossian
Mr. Sandipan Maity
... for the petitioners

Mr. M. P. Gupta
Mr. Ayan Mitra
... for the respondent no. 1

Sk. Rejaul Alam
... for the respondent no. 3

Mr. Sirsanya Bandyopadhyay, Ld. Junior standing counsel
Mr. Arka Kumar Nag
... for the State

The writ petition is directed against an order dated February 2, 2023 passed in O.A. 1042 of 2023 by the West Bengal Land Reforms and Tenancy Tribunal.

Learned advocate appearing for the writ petitioner submits that, O.A. No. 1042 of 2023 was initially dismissed for default on April 17, 2014. Two applications were filed being MA 1085 of 2014 and MA 1086 of 2014. One was for the condonation of delay of filing an application for restoration and other was an application for restoration. He submits that, both the applications were disposed of by an

order dated August 24, 2017 passed by the learned Tribunal. Since, the cost imposed was paid by the writ petitioner, the original applications stood restored to its file and number. Therefore, the learned Tribunal erred in redeciding of MA 1085 of 2014 and MA 1086 of 2014 by the impugned order. The learned Tribunal in any event, was required to allow both the applications in view of the fact that, laches on the part of the advocate should not befall on the writ petitioner. Court should be lenient in allowing the application for restoration and condoning delay in respect of the filing of the application for restoration.

State and the private respondents are represented.

It is contended on behalf of the respondents that, the order dated August 24, 2017 passed by the learned Tribunal, was assailed at the behest of the writ petitioner by way of a writ petition being WPLRT 134 of 2022, which was disposed of by an order dated November 4, 2022. Such order directed disposal of MA 1085 of 2014 and MA 1086 of 2014. Pursuant to such order, learned Tribunal disposed of the proceedings by the impugned order dated February 6, 2003. The learned Tribunal did not find any ground for restoration.

It is contended on behalf of the respondents that, the writ petitioner as an original applicant is seeking to reopen issues settled between the private parties in a civil suit. The writ petitioner suffered a decree from the trial Court. Such decree was affirmed on appeal. The decree passed by the First Appellate Court was affirmed on second appeal. The writ petitioners are essentially trying to reopen settled issues and, if not, keep such issues pending.

It appears from the records that, the writ petitioners approached the learned Tribunal by filing O.A. 1042 of 2023. Such original application was dismissed for default on April 17, 2014. Application for restoration accompanied by an application for condonation of delay in filing the application for restoration being MA 1085 of 2014 and MA 1086 of 2014 were filed at the behest of the writ petitioners. Both the applications were dismissed for default on June 14, 2016. The writ petitioner filed an application being MA 604 of 2016 being recalling the order dated June 14, 2016. Such application for recalling was allowed on August 24, 2017.

However, we find from the records that, the learned Tribunal, was pleased to allow the application for restoration being MA 1085 of 2014 and MA 1086 of 2014

subject to payment of cost of Rs.2,000/- by the writ petitioners to the private respondent no. 1 on proper receipt by the order dated August 24, 2017.

The Court is informed that cost was paid in terms of the order dated August 24, 2017.

The order dated August 24, 2017 was made subject matter of challenge at the behest of the writ petitioners in WPLRT 134 of 2022. Such writ petition was disposed of by an order dated November 4, 2022. The order dated November 4, 2022 of the Coordinate Bench passed in WPLRT 134 of 2022 is as follows:

"By the impugned order dated August 24, 2017 the Tribunal allowed the application for addition of party which is the subject matter of challenge in the instant writ-petition. The Original Application being OA 1042 of 2013 was dismissed for default and two applications being MA 1085 of 2014 and MA 1086 of 2014 were taken out for restoration of the said tribunal application upon condonation of delay. The said two applications also dismissed for default. A further application was taken out for restoration of the aforesaid two applications which was eventually allowed on August 24, 2017 subject to payment of costs.

It is not in dispute that the costs have been paid. Consequently, the aforesaid two applications being MA 1085 of 2014 and MA 1086 of 2014 were being proceeded with and in course of the hearing it transpires that the State of West Bengal is a necessary party. An application was taken out to implead the State of West Bengal as party-respondent in the said proceeding.

Since the original proceeding stood dismissed for default and the application for restoration as well as condonation of delay are pending, we do not find any infirmity on the part of the Tribunal in impleading the party in the aforesaid applications. The said applications are akin to an application under Order 9 Rule 9 of the Code of Civil Procedure and even if those are registered as Miscellaneous application yet it does not lose its existence under the aforesaid Rules.

Since the Private Respondents do not raise any objection rather consented in the impleadment of the State of West Bengal as party-respondent, we do not find any justification in interfering with the impugned order. However, we feel that the aforesaid two applications which have been filed way back in the year 2014 and restored in the 2017 should not remain pending for indefinite period.

We, therefore, direct the Tribunal to fix a date for hearing those applications which should not exceed fifteen days from the date of communication of this order and shall try to dispose of the same within a month therefrom after affording an opportunity of hearing to the respective parties and by recording proper reasons in accordance with law.

With these observations, the writ-petition being WPLRT 134 of 2022 is disposed of. No order as to costs."

Our understanding of the order dated November 4, 2022 is that, the High Court required the learned Tribunal to hear and dispose of MA 1085 of 2014 and MA 1086 of 2014 within a period not exceeding 15 days from the date of communication of the order.

Learned Tribunal, by the impugned order, considered both MA 1085 of 2014 and MA 1086 of 2014 and did not find any cogent ground to recall the order of dismissal of the original application dated April 17, 2014.

Today, the contention on behalf of the writ petitioners is not that, the writ petitioners made out cogent grounds for the purpose of recalling the order dated April 14, 2016. Rather the contention is that, since the learned

Tribunal allowed the two applications on August 24, 2014, the learned Tribunal was, therefore, better advised to dispose of the original application instead of dealing with the two miscellaneous applications as sought to be done in the impugned order.

We are afraid, we are unable to accept the contention made on behalf of the writ petitioners in view of the express directions of the Coordinate Bench as contained in the order dated November 4, 2022. The order dated November 4, 2022 was passed on a writ petition filed at the behest of the writ petitioners assailing the order dated August 24, 2017 of the learned Tribunal. The writ petitioners themselves were aggrieved by the learned Tribunal allowing the applications being MA 1085 of 2014 and MA 1086 of 2014.

In such circumstances, we find no merit in the present writ petition.

WPLRT 34 of 2023 is dismissed without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)

