

CPAN 473 of 2023
In
W.P.A. 25256 of 2018

Kailash Shaw & Ors.
Vs.
Mr. Abul Kalam Azad Islam & Anr.

Mr. Ujjal Ray
....for the Applicant

The contempt application is taken out on alleged violation of the direction as contained in the order dated 5th August, 2019 passed by a coordinate Bench in the connected writ petition which stood modified vide order dated 5th May, 2022 passed by the Hon'ble Division Bench on an intra Court appeal being MAT 1441 of 2019.

It has been submitted on behalf of the applicant that after passing order by the Hon'ble Division Bench on contempt application being CPAN 1291 of 2022 fixing time limit of two months within which the Municipality is required to conclude the proceedings under Section 218 contempt application lies before the learned single Judge.

Having perused the three orders one passed by the coordinate Bench on 5th August, 2019 and subsequent orders passed by the Hon'ble Division Bench one is dated 5th May, 2022 passed in aforesaid appeal and another is dated 10th January, 2023 passed in the connected contempt application it appears to this Court that order

passed by the coordinate Bench on 5th August, 2019 stood merged with the order dated 5th May, 2022 passed by the Hon'ble Division Bench while disposing of the appeal of the private respondents. The reason of application of doctrine of merger is modification of the order dated 5th August, 2019 passed by the coordinate Bench by passing order dated 5th May, 2022 by the Hon'ble Division Bench. Since the order of the coordinate Bench dated 5th August, 2019 stood modified vide order dated 5th May, 2022 the present contempt application is not maintainable before this Court.

In this regard reliance is placed on the judgment of the Apex Court reported in 2000 (6) SCC 359 (Kunhayammed & Others Vs. State of Kerala & Another)

Accordingly, the contempt application stands dismissed.

However, dismissal of this application does not preclude the applicant to take steps in accordance with law, if so advised.

(Saugata Bhattacharyya, J.)