

D/L
Item No 10
18.05.2023
KOLE

**MAT 779 of 2023
With
IA No. CAN 1 of 2023**

**Arambagh Apexx Diagnostic and Health
Care Private Limited**

-Vs.-

The State of West Bengal & Ors.

*Mr. Kollol Basu,
Mr. Samrat Choudhury,*

...for the appellant.

*Mr. Asish Kumar Guha,
Mr. Jayak Kumar Gupta,*

...for the State.

Mr. Arpita Mondal Adak,

...for the Municipality.

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

The appellant's writ petition being WPA 2106 of 2023 has been dismissed by the impugned judgment and order dated April 12, 2023.

The appellant is a lessee under the concerned Municipality. It approached the learned Single Judge with the case that clause 11 of the lease deed executed by and between it and the Municipality required the Municipality to provide certain infrastructural facilities. The Municipality has failed to do so. As a result, the appellant is unable to get itself empanelled under the West Bengal Health Scheme. The Learned Judge observed that the prayer of the writ petitioner is for implementation of certain conditions mentioned in the lease deed. Such prayer could not be allowed by the writ court. If implementation of conditions of

a lease is to be claimed, the appellant should approach the civil forum.

The other issue that was agitated before the learned Single Judge was that the trade license of the writ petitioner had expired in March 2021 but the Municipality was refusing to renew the same. It was submitted on behalf of the Municipality that if the writ petitioner cleared the rent dues, the Municipality would take steps for renewal of the trade license of the writ petitioner. The learned Judge observed that it will be open for the petitioner to make payment of the rent dues for obtaining renewal of trade license.

Being aggrieved, the writ petitioner is before us by way of this appeal.

Mr. Basu, learned Advocate, appearing for the writ petitioner/appellant says that the Municipality could not have imposed any condition for renewal of the trade license. Mr. Basu relied on Sections 118, 119 and 201 of the West Bengal Municipal Act, 1993 in this regard. He also relies on two unreported decisions of learned Single Judges of this court in the cases of **Subir Bhowmick-vs.-The State of West Bengal & Ors.** and **Shirin Foods Limited & Anr.-vs.-Kolkata Municipal Corporation & Ors.**

On our query, it was submitted before us that these legal points were not urged before the learned Single Judge. We are of the view that if that be the case, it will be unfair on our part to in any manner interfere with the order impugned.

Mr. Basu says that misconception of law and facts on the part of the parties are also grounds for review under

Order 47 Rule 1 read with Section 114 of the Code of Civil Procedure.

We have recorded the submission of Mr. Basu. If the appellant is entitled, in law, to approach the learned Single Judge for review of the judgment and order impugned before us, it will be open to him to do so in accordance with law.

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

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.)