

07.02.2023
Item no.1
Court No.6.
AB

F.M.A. 1174 of 2021
With
I A CAN 1 of 2021
I A CAN 2 of 2021

M/s. B. Enterprise & Anr.
Vs
The State of West Bengal & Others

Mr. Sandip Ghosh,
Mr. Partha Sarkarfor the Appellants.

Mr. Debabrata Saha Roy,
Mr. Indranath Mitra,
Mr. Subhankar Das.....for the Respondent No.8.

Mr. Lalit Mohan Mahata,
Mr. P. B. Mahatofor the State.

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

In re : IA CAN 2 of 2021

This is an application for condonation of delay of 64 days in filing the appeal. Causes shown being sufficient, the delay is condoned.

I A CAN 2 of 2021 is, accordingly, disposed of.

In re : FMA 1174 of 2021, IA CAN 1 of 2021

This appeal is directed against a judgment and order dated April 13, 2021, whereby the appellants' writ petition was disposed of by the learned Single Judge.

The writ petitioners approached the learned Single Judge with the grievance that their bill for

having done work for the concerned Panchayet, has not been paid. It was submitted that against the bill amount of Rs.4,61,836/-, the Panchayet, by a Resolution dated December 28, 2018, offered to pay to the writ petitioners a sum of Rs.2,30,000/- only, although there is no contemporaneous complaint regarding the quality of the work done by the writ petitioners. Learned Advocate for the Panchayet, however, says that the total bill amount was Rs.3,95,112/-. This is disputed by learned Counsel appearing for the appellants.

Before the learned Judge, it was submitted on behalf of the Panchayet that the quality of the work executed by the writ petitioners is substandard. The material used is not upto the mark. The writ petitioners did not complete the entire work.

The learned Judge recorded that the claim of the writ petitioners beyond the sum of Rs.2,30,000/- was highly disputed by the Panchayet. Accordingly, the learned Single Judge disposed of the writ petition by granting liberty to the writ petitioners to accept the sum of Rs.2,30,000/- without prejudice to their rights and contentions. It was left open for the writ petitioners to take recourse to the appropriate forum as regards their claim for the balance amount of the bill.

Being aggrieved, the writ petitioners have come up by way of the present appeal.

Since the learned Single Judge disposed of the writ petition without calling for affidavits, the stand of the Panchayet was not on record. Accordingly, we had directed exchange of affidavits. Affidavits have been filed.

In the affidavit filed on behalf of the Panchayet, the same statements have been made as were made before the learned Single Judge. Documents have been annexed including reports of engineers to the effect that there are defects in the work executed by the appellants. In a nutshell, the claim of the appellants beyond a sum of Rs.2,30,000/- has been strongly disputed by the Panchayet.

The Writ Court is not the appropriate forum for deciding such disputed claims. In our view, the learned Single Judge rightly did not enter into the disputed questions and disposed of the writ petition by granting liberty to the writ petitioners to accept the sum of Rs.2,30,000/- without prejudice to their rights and contentions. We see no infirmity in the order under appeal, which would call for our interference.

The appellants will be at liberty to accept the sum of Rs.2,30,000/- without prejudice to their rights and contentions. Such sum shall be paid by the Panchayet to the appellants within two weeks from the

date of receipt of a copy of this order by the Pradhan of the concerned Panchayet. Needless to say, receipt of such sum will be without prejudice to the appellants' right to approach the appropriate forum for recovery of their balance claim.

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

F.M.A. No.1174 of 2021 is, accordingly, disposed of along with IA CAN 1 of 2021.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)