

46. 29.09.2023
Court No.6
Tanmoy Ghosh

MAT 954 of 2023

Ms. Maitrayee Ghosh (Nee Naha)
-Versus-
Khanchay Sakal Cooperative Housing Society Ltd. & Ors.
With
IA No: CAN/1/2023
With
IA No: CAN/2/2023

Mr. Prabir Kumar Ghosh, Adv.,
Mr. Sunil Kr. Singhania, Adv.,
Ms. Supriya Barat, Adv.

...for the appellant/
writ petitioner.

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

From the affidavit of service filed in Court today, it does not appear that the respondents have in fact received notice of this appeal. However, we are not inclined to defer hearing of this appeal or direct fresh service since we are not minded to entertain the appeal.

In Re: IA No: CAN/1/2023

This is an application for condonation of delay of three hundred and fifty four (354) days in filing the appeal, as noted by the Stamp Reporter. Causes shown being sufficient, the delay is condoned. The application being IA No: CAN/1/2023 is accordingly disposed of.

In Re: MAT 954 of 2023
With
IA No: CAN/2/2023

By consent of learned Advocate appearing for the appellant, the appeal and the connected application are taken up together for hearing.

A judgment and order dated December 7, 2020, whereby the appellant's writ petition being WPA 9143 of 2020 was dismissed by a learned Single Judge of this Court, is the subject-matter of challenge in this appeal.

It appears that the appellant/writ petitioner initiated arbitration under the provisions of the West Bengal Co-operative Societies Act, 2006, raising a dispute that in spite of receipt of application for membership and in spite of receipt of Rupees three lakh from her, the concerned Co-operative Housing Society has not admitted her as a member. The Arbitral Tribunal rejected the appellant's claim holding that there is no evidence to show that the application was ever received by the Housing Society.

The appellant challenged the Arbitral Award before the Co-operative Tribunal. The Tribunal upheld the Award.

Challenging the Award of the Arbitral Tribunal and the order of the Co-operative Tribunal, the appellant approached the learned Single Judge by way of the instant writ application.

The learned Judge noted that although an application for membership dated December 18, 2014 was disclosed in evidence before the Arbitrator, there is no proof or evidence on record to show that the same was received by the Society. The 60-day benefit of automatic membership under Section 64 of the West Bengal Co-operative Societies Act, 2006 has, therefore, been rightly found to be inapplicable to the writ petitioner by the Arbitrator as well as by the Tribunal. The learned Judge further noted that

the Tribunal has held that in spite of money being paid by the writ petitioner, there is no evidence to show any formal receipt issued by the Society. The Tribunal held that the said sum of money could not have been towards any residential unit in the Society. The learned Judge also noted that the Arbitrator as well as the Tribunal held that there has been inordinate and unexplained delay on the part of the writ petitioner in approaching those fora.

It was argued on behalf of the writ petitioner before the learned Single Judge that the Bye-laws of the Society and in particular clause 5 thereof does not permit the Society to accept any money from a non-member. Having accepted Rupees three lakh from the writ petitioner, in three instalments, she is deemed to have become a member of the Society. The learned Judge rejected such argument as preposterous and in our view, rightly so. Anybody can deposit money in another person's Bank account, particularly if that person is an Association or any other juristic entity. The learned Judge rightly held that mere deposit of money cannot create any equity or right in favour of the writ petitioner. The learned Judge dismissed the writ petition with the following observations:-

“This court finds no procedural infirmity or violation of principles of natural justice either canvassed in the writ application or evident from the proceedings annexed to the writ petition both before the Arbitrator Tribunal and the Cooperative Tribunal.

The impugned orders, therefore, do not call for any interference.

In so far as the refund of the said sum of Rs.3 lacs ordered by the Arbitrator and the Tribunal, it is submitted by the Society

that the refund has been made to the petitioner and the sum has been refused.”

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

We have heard learned Advocate for the appellant/writ petitioner at length. Essentially, learned Advocate for the appellant repeated the same argument as was made before the learned Single Judge, as we have noticed above. Unilaterally depositing money in the Bank account of the Housing Society could not have created any right in favour of the appellant. There is nothing to show that any application was received by the Housing Society or any money receipt was issued by the Society for the amounts deposited in its Bank account by the appellant. The Arbitrator and the Tribunal, both found no merit in the case of the appellant. The learned Single Judge also was not impressed with the appellant’s case, nor are we. We see no infirmity in the judgment and order assailed before us.

The appeal being MAT 954 of 2023 and the connected application being IA No: CAN/2/2023 are dismissed.

There will be no order as to costs.

Let urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with all necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)