

08.06.2023
Item No.2.
Court No.6.
AB

M.A.T. 1004 of 2023
With
I A CAN 1 of 2023
I A CAN 2 of 2023

Prasanta Mondal & Anr.
Vs
Krishna Mukherjee & Ors.

Mr. Subir Sanyal,
Mr. K. R. Ahmed,
Mr. Sagnik Roychoudhury ...for the Appellants.

Mr. Sandipan Banerjee,
Mr. Ankit Sureka,
Mr. Sobhan Majumdarfor the HMC.

Mr. Srijib Chakraborty,
Mr. Deeptangshu Kar
....for the Respondent No.1.

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

There appears to be some controversy as regards whether or not, the Corporation has been served. However, finding Mr. Sandipan Banerjee, learned Advocate, in Court, who normally represents Howrah Municipal Corporation before us, we requested Mr. Banerjee to appear in this matter. His appointment should be regularized.

The order, that is assailed in this appeal, was passed by a learned Single Judge on May 18, 2023, in a contempt application being CPAN 503 of 2021. The order reads as follows:

“The learned advocate representing the HMC submits, upon instruction that, though the police were available at the spot on the day the demolished programme was due to be conducted but the police did not take any step to break the padlock for removal of the occupants of the unauthorized construction.

It appears that in the contempt proceeding the police have not been impleaded as the alleged contemnor.

It appears from the order dated 19th March, 2021 passed in the writ petition that Mr. Rajarshi Basu and K. M. Hossain appeared on behalf of the State respondents. Let notice be served upon the aforesaid learned advocates intimating that this matter will appear in the list on 9th June, 2023.

Let Officer-in-Charge, Golabari PS appear personally before this Court on 9th June 2023 when the matter will appear in the list marked “For Orders”.

Learned advocate for the petitioner is directed to communicate this order to the learned advocate for the State respondents and to the Officer-in-Charge, Golabari P.S.”

The intending appellants are not parties to the contempt proceedings. Hence, an application has been filed for leave to appeal.

Learned Advocate for the intending appellants says that the contempt proceeding has been initiated for alleged wilful violation of an order dated March 19, 2021, passed by the learned Single Judge in WPA 9390 of 2020. Learned Advocate says that subsequently, a fresh order of demolition was passed by the Corporation. There were further rounds of litigation between the parties. Ultimately, an order of demolition has been passed by the Corporation on March 4, 2022, which was challenged by the present intending appellants by filing WPA 4408 of 2022. The

learned Single Judge upheld the order of demolition. The appeal against such order being MAT 434 of 2022 was dismissed by an order dated August 10, 2022.

Learned Advocate says that in view of further proceedings having taken place and fresh order of demolition having been issued by Howrah Municipal Corporation, no contempt proceedings would lie for violation of the earlier order dated March 19, 2021, which was passed in WPA 9390 of 2020.

We have set out the order sought to be impugned in this appeal. The order decides nothing. The order per se does not decide any right of the parties. Admittedly, this is not an appeal under Section 19 of the Contempt of Courts Act as the impugned order has not been passed in exercise of jurisdiction to punish for contempt of courts. In our opinion, the order sought to be assailed is also not a judgment within the meaning of Clause 15 of the Letters Patent. Hence, no appeal under Clause 15 would also lie.

Without going into the merits of the disputes between the parties, solely on the ground of non maintainability of the appeal, the appeal and the connected applications are disposed of.

Since we have not touched the merits of the case at all, the intending appellants before us will be at liberty to approach the learned Single Judge, if they are entitled to do so in law.

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

MAT No.1004 of 2023 is disposed of along with CAN 1 of 2023 and CAN 2 of 2023.

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

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)