

D/L
Item No 02
21.07.2023
KOLE

**MAT 1317 of 2023
With
IA No. CAN 1 of 2023
With
IA No. CAN 2 of 2023
With
IA No. CAN 3 of 2023**

**Prasanta Mondal & Anr.
-Vs.-
Krishna Mukherjee & Ors.**

*Mr. Subir Sanyal,
Mr. K. Raihan Ahmed,*

...for the appellants.

*Mr. Srijib Chakraborty,
Mr. D. Kar,*

...for the respondent no. 1.

*Mr. Sandipan Banerjee,
Mr. Ankit Sureka,
Mr. Sovan Mazumdar,*

...for the HMC.

In Re: CAN 2 of 2023 in MAT 1317 of 2023:

This is an application for leave to appeal against an order dated June 9, 2023 passed by a learned Single Judge in a contempt proceeding being CPAN 503 of 2021, to which the present applicants are not parties. The applicants say that they are vitally affected by the order. Hence, they should be permitted to prefer appeal against the order.

Having heard learned Counsel for the applicants, we are of the view that the applicants may have something to say and have *locus standi* to impugn the said order.

Accordingly this application is allowed.

IA No. CAN 2 of 2023 is, thus, disposed of.

In Re: CAN 1 of 2023 in MAT 1317 of 2023

This is an application for condonation of delay of 10 days in presenting the appeal as noted by the Additional Stamp Reporter.

Causes shown being sufficient, we condone the delay.

CAN No. 1 of 2023 is, thus, allowed.

In Re: MAT 1317 of 2023 with CAN 3 of 2023

When this matter was taken up, initially nobody appeared for Howrah Municipal Corporation. Finding Mr. Sandipan Banerjee, learned Advocate, who generally represents the Corporation before us, present in Court, we requested him to appear in this matter which he has done. His appointment should be regularized.

It appears that the appellants herein made construction beyond sanctioned plan. The respondent no. 1 lodged a complaint with Howrah Municipal Corporation. The Corporation initiated demolition proceedings. Ultimately, an order for demolition of the unauthorized portion being the 4th and 5th floor of the building in question was issued by the Corporation.

With the grievance that the Corporation was not implementing the demolition order, the respondent no. 1 herein approached a learned Single Judge in the writ jurisdiction. The learned Single Judge directed implementation of the demolition order.

Alleging willful violation of the order of the learned Single Judge, the respondent no. 1 herein filed a contempt application being CPAN 503 of 2021.

From time to time orders have been passed in the contempt application. On an earlier occasion against an order dated May 18, 2023 passed in the contempt proceeding, the present appellants had come up before us. By an order dated June 8, 2023, we had refused to entertain the appeal but had granted liberty to the appellants to approach the learned Single Judge if they are entitled to do so in law.

A further order has been passed by the learned Single Judge in the contempt proceeding on June 9, 2023 which is impugned in the present appeal. The substance of the said order is that the Corporation was directed to proceed to demolish the unauthorized 4th floor of the structure in question at the earliest. The 5th floor already stands demolished.

The anxiety and worry of the appellants is that in course of demolition of the 4th floor, the 3rd floor may also be demolished wholly or partly or may be substantially damaged by the Corporation.

The respondent no. 1 who is the petitioner in the contempt application before the learned Single Judge, has affirmed an affidavit before us, the material paragraphs whereof read as follows:-

“3. That during pendency of the said contempt application time to time direction was being issued by the Hon’ble Single Judge by which part by part demolition was being carried out.

4. That ultimately by the order dated 09.06.2023 further direction to carry out and complete the demolition of remaining unauthorized portion was being passed by

the Hon'ble Single Judge and the same is impugned in the present appeal.

5. That after the order dated 09.06.2023 the respondent Municipal Authorities have already complied with the direction of the Hon'ble Court. Accordingly the present mandamus appeal preferred by the appellants have become infractions. CPAN 503 of 2021 may also be disposed of."

The respondent no. 1 is also present in court today.

Therefore, it appears that demolition of the unauthorized portion of the structure in question has been completed by the Corporation. No question of any further demolition can, therefore, arise. If that be so, the apprehension of the appellants herein regarding damage to the other portions of the structure in question should also stand allayed.

In any event, we clarify that no portion of the authorized structure will be demolished or damaged in any way by the Corporation.

Both the respondent no. 1 and the Corporation say that nothing survives in the contempt application. However, it may not be appropriate for us to dispose of the contempt application. The parties would be at liberty to pray for such order before the learned Single Judge.

We are told that a further notice has been issued by the Corporation to the appellants to the effect that the Corporation people will visit the building in question on July 24, 2023, for further demolition. However, in view of the affidavit affirmed by the respondent no. 1 before us, there does not seem to be any question of further demolition.

We clarify that we have passed this order primarily on the basis of the affidavit affirmed before us today by the respondent no. 1 being the petitioner in the contempt application. However, we make it clear that if the Corporation finds that still unauthorized construction exists in any portion of the building in question, the Corporation will be at liberty to take steps against the same in accordance with law.

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.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)