

21.12.2023
Item No.06
Court No.6.
S. De

M.A.T. 2465 of 2023
With
I.A. No. CAN/1/2023

Sampa Das.
Vs
Swapan Kumar Debnath & Ors.

Mr. Tanmoy Mukherjee,
Mr. Rudranil Das,

...for the appellant.

Mr. Subhabrata Das,
Mr. Mrinal Kanti Das,
Mr. Kartick Kr. Goyal,

...for the respondent nos. 3 & 7.

Mr. Sudarsen Halder,

...for the respondent no. 1/writ petitioner.

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

This appeal is directed against an order dated December 12, 2023, passed by a learned Judge of this Court in WPA 21912 of 2023 being a writ petition filed by the respondent no.1 herein. By the order impugned, the learned Judge has directed implementation of a demolition order.

The appellant herein is the respondent no.8 in the writ petition which is still pending before the learned Judge and has been directed to be listed on January 24, 2024. On the day the impugned order

was passed the appellant/respondent no.8 was not represented before the learned Judge.

Mr. Mukherjee, learned advocate appearing for the appellant says that there was very good reason as to why the appellant could not be represented before the learned Single Judge. In any event, even in the absence of the appellant herein, the order impugned ought not to have been passed. The appellant herein is the developer of the alleged unauthorized structure. She is also the power of attorney holder of the owner of the impugned construction being the respondent no.8 in this appeal. She was not given an opportunity of hearing before the demolition order was passed.

The appellant may have a very good case on merits. However, we are not inclined to consider her case on merits as she chose not to appear before the learned Single Judge. We, therefore, do not entertain this appeal. Needless to say, it will be open for the appellant to approach the learned Single Judge with an appropriate application explaining her absence on the day the order impugned was passed. If any such application is made, the learned Judge is requested to dispose of the same in the manner the learned Judge thinks fit and proper. We have not gone into the merits of the case. All points are left open.

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

Accordingly, MAT 2465 of 2023 is disposed of along with the application being I.A. No. CAN 1 of 2023.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(M.V. Muralidaran, J.)

(Arijit Banerjee, J.)