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21.09.2023
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In the High Court at Calcutta
In the Circuit Bench at Jalpaiguri

MAT 88 of 2022
with
C.A.N. 2 of 2023

Jay Bee Properties Pvt. Ltd.
-Vs.-
West Bengal Industrial
Development Corporation & Ors.

Mr. Surya Prasad Chhtopadhyay,
Mr. Subham Ghosh,
Mr. Arjun Samanta,
Mr. Mayank Roy
...for the appellant

1. Learned counsel for the appellant submits that service has been effected on the State-respondents.
2. On the prayer of learned counsel for the appellant, leave is granted to the appellant to file affidavit of service during the course of the day.
3. The appeal and the application are taken up for disposal on the short ground that the learned Trial Judge dismissed the writ petition only on the ground that no public law element was involved, that too after pendency of about 12 years of the writ petition. It is

submitted by learned counsel for the appellant that the writ petition was filed in the year 2011 and it was initially admitted and affidavits were directed and exchanged. An interim order was also passed therein.

4. It is contended that at this mature juncture, the point of maintainability having never been taken on any previous occasion, the writ petition ought not to have been dismissed on such technical ground. That apart, on merits, it is submitted that there are public law elements involved.
5. We find from the records that the learned Trial Judge dismissed the writ petition at the stage of final hearing only on the ground that no public law element is involved and the matter pertains to a private contract.
6. Apart from the fact that such objection was never taken or recorded at any point of time during the 12- years of pendency of the writ petition, the writ petition was at the hearing stage, affidavits having been exchanged between the parties. As such, it would be tantamount to shirking the court's duty not to decide the writ petition on merits.

7. That apart, under the principal of Order XIV Rule 2 of the Code of Civil Procedure which, in the absence of any contrary rider, is also applicable to the writ jurisdiction on principal, it was the duty of the learned Trial Judge to decide all issues.
8. Moreover, the question as to whether any public law element is involved is in the least arguable, since the petitioner no. 1 is a company which has set up an industry and the principal respondent is an authority, which is an instrumentality of the State and is in charge of facilitating industry in the public domain.
9. In such view of the matter, we are of the opinion that the impugned order, being cryptic and based on a wrong presumption of law, ought to be set aside.
10. Accordingly, MAT 88 of 2022 as well as C.A.N. 2 of 2023 are allowed, thereby setting aside the order dated May 12, 2022 passed in W.P.A. No. 5913 of 2011 and remanding the matter to the appropriate learned Single Judge having determination for deciding the writ petition on merits.

11. The interim order, which had been granted initially in the writ petition prior to its dismissal, stands revived as on this date till the disposal of the writ petition.
12. The writ petition be placed for final hearing before the appropriate Bench having determination in the next Circuit, subject to convenience of such Bench.
13. There will be no order as to costs.
14. Urgent certified copies of the order, if applied, be made available to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)