

3.
01-02-2024
(Ct. no.06)
debajyoti

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE**

**MAT 102 of 2023
+
IA NO:CAN/1/2024**

**Sk. Islam Hossen
Vs.
The State of West Bengal & Ors.**

Mr. Susanta Kumar Rakshit,
Mr. Manish Biswas
... For the Appellant.

Mr. Chandi Charan De, learned A.G.P.,
Mr. Anirban Sarkar
... For the State.

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

A judgment and order dated December 21, 2022, whereby the writ petition of the appellant herein being WPA 25721 of 2022, was dismissed by a learned Judge of this Court, is the subject matter of challenge in this appeal at the instance of the writ petitioner.

It appears that the writ petitioner approached the learned Single Judge with primarily the following prayer:-

“ a) A writ in the nature of Mandamus commanding the respondent Nos.2 and 4 for issuing the environment clearance certificate and for granting order for execution of the long term mining lease deed for five years in favour of your petitioner in respect of the plot in question and also to show cause the Member Secretary, DLEIAA how

the environment clearance of six acres has been issued in favour of Sri Biswanath Pal, whose feasibility and availability report was only of two acres. ”

The learned Judge was apprised by learned advocate for the private respondent that the writ petitioner herein had filed an earlier writ petition being WPA 3770 of 2022, with the same prayer, which was withdrawn by him without obtaining liberty to file a fresh writ petition on the same cause of action. A copy of the writ petition and copy of the order was filed before the learned Single Judge and the same was retained with the records. This fact was also not disputed by learned advocate for the writ petitioner.

Accordingly, the learned Judge dismissed the writ petition on the ground that a similar writ petition with similar prayers having been withdrawn by the writ petitioner earlier without seeking liberty to file afresh on the same cause of action, the present writ petition is not maintainable.

Being aggrieved, the writ petitioner has come up by way of this appeal.

We have not called upon the State to make submission. The private respondent is not represented.

Learned advocate for the appellant/writ petitioner tried to impress upon us that the prayers in the earlier writ petition and those in the present writ petition are different. However, we have gone through the prayers in the two writ petitions. They are effectively the same.

Learned advocate then said that it was a mistake on the part of the erstwhile advocate of the appellant to withdraw the earlier writ petition without obtaining liberty to file a fresh writ petition on the selfsame cause of action. A litigant should not suffer for the mistake committed by his lawyer. Hence, the present writ petition should be entertained and decided on merits.

We are afraid we cannot agree. There is a statutory bar. Under the provisions of Order XXIII Rules 3 and 4 of the Code of Civil Procedure, the appellant having withdrawn his earlier writ petition without having obtained leave to file afresh on the same cause of action, he is precluded from filing a fresh writ petition on substantially the same cause of action and the same prayers. Although the provisions of the Code of Civil Procedure may not apply in terms to writ petitions, by reason of Rule 53 of the Writ Rules of this Court, the principles of Code of Civil Procedure will apply to writ proceedings insofar as the same can be made applicable. In any event, the Supreme Court in the case of **State of Orissa & Anr. Vs. Laxmi Narayan Das (Dead) through Lrs. & Ors.** reported in **2023 SCC Online SC 825**, has now made it clear that Order XXIII is a matter of public policy and will apply to all legal proceedings as a litigant cannot be vexed twice on the selfsame cause of action.

In view of the aforesaid, we are unable to grant any relief to the appellant. The appeal and the connected application are, accordingly, dismissed.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(M. V. Muralidaran, J.) (Arijit Banerjee, J.)