

07. 20.03.2024
Court No.6
(Tanmoy)

FMA/341/2024

**SRI RABINDRA NATH BAR
VS
JHARNA RATH AND ORS.**

**WITH
IA NO: CAN/1/2024**

Mr. Bhudeb Chatterjee, Adv.

...for the appellant.

Mr. Sudeep Sanyal, Adv.,
Mr. Snehasis Jana, Adv.,
Mr. Sukanta Das, Adv.,
Mr. Chndrachur Lahiri, Adv.,
Ms. Tutun Das, Adv.

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

Affidavit of service filed in Court today be kept with
the records.

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

A judgment and order dated January 2, 2024,
whereby the writ petition of the respondent no.1 herein
being WPA 17542 of 2023, was disposed of by a learned
Judge of this Court, is the subject-matter of challenge in
this appeal filed at the instance of the private
respondent in the writ petition.

The appellant says that he is aggrieved by the
learned Judge's direction on PWD (Roads) to take
necessary steps to deal with the alleged unauthorized
construction, in accordance with law, although the

impugned construction cannot be said to be unauthorized by any stretch of imagination. The appellant holds requisite permission for such construction. The appellant is also aggrieved by the learned Judge's direction on Contai Municipality to take steps if it is found that the construction is being made without obtaining sanction or in deviation from the sanctioned plan.

We notice that on the day the writ petition was disposed of, the appellant herein was not represented before the learned Single Judge.

Mr. Chatterjee, learned Advocate for the appellant, says that due to unavoidable circumstances, learned Advocate for the private respondent/appellant herein could not appear before the learned Single Judge. The fact remains that there was no representation on behalf of the appellant before the learned Single Judge on the day the writ petition was disposed of. Had the appellant made the submission that he is making before us, supported by documents, before the learned Single Judge, a different order may have been passed.

It will not be fair on our part to interfere with the order of the learned Single Judge at the instance of a respondent in the writ petition who, for whatever reason, did not appear before the learned Single Judge on the day the matter was disposed of.

We, therefore, decline to entertain this appeal. This will not prevent the appellant from approaching the learned Single Judge with an appropriate application, if he is entitled to do so in law, explaining his absence before the learned Judge on the day the writ petition was disposed of by the learned Judge. If such an application is made, the learned Judge having determination in the matter is requested to decide the same without being influenced by any observation in this order.

The appeal being FMA 341/2024 and the connected application being IA No: CAN/1/2024 are accordingly disposed of.

Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.

(Arijit Banerjee, J.)

(M.V. Muralidaran, J.)