

28.08.2024

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Sl. No. 16

Ct. No. 08

MAT 211 of 2024
With
CAN 1 of 2024, CAN 2 of 2024

Prof Sadhan Chakraborti

Vs.

Sri Chandan Koner & ors.

Mr. Arunangshu Chakraborty

Mr. Arijit Bera

Ms. Geniya Banerjee

Ms. Zeba Rashid

Ms. Shaika Amrin

..... for the appellant

Mr. Somnath Ganguli

Mr. Tapan Kr. Dey

.... for the State

Mr. Joydip Kar

Mr. Pijush Biswas

Mr. Puspasish Gupta

....for the respondent No. 1

Mr. Sourav Kr. Mukherjee

Mr. Sudipto Ghosh

Ms. Sahana Pal

....for the respondent Nos. 3-6

In Re: CAN 2 of 2024

Let the supplementary affidavit filed by the appellant be taken on record.

By the supplementary affidavit, the appellant has elaborated the incident which impaired the filing of the instant appeal within the period of limitation. Mr. Kar, learned senior advocate appearing for the respondent fairly submits that after going through the averments made in the application for condonation of delay as well as the supplementary affidavit, he does not stand in the way of condoning the delay provided the appeal itself is taken up for final disposal.

In such view of the matter, the application being CAN 2 of 2024 for condonation of delay is hereby allowed. The delay in filing the instant appeal is hereby condoned.

In Re: MAT 211 of 2024

By consent of the parties, the main matter is taken up for hearing. Mr. Chakraborty, learned advocate appearing for the appellant vociferously submits that the moment a finding leading to an ultimate decision, is found to be an outcome of fraud, there is no impediment on the part of the one of the respondents in filing the appeal before the Division Bench. He, however, submits that assailing the order dated 04.07.2023 passed in WPA 6850 of 2023 the Special Leave Petition was filed before the Supreme Court by the appellant being SLP (Civil) No. 23222 of 2023 which came up for disposal on 20th November, 2023 where the permission to withdraw the SLP was granted with liberty to approach the Division Bench. It is submitted that pursuant to such liberty having granted, the instant appeal is filed.

We had an occasion to peruse the order dated 04.07.2023 wherein the writ Court on the basis of the submission advanced by the writ petitioner proceeded to dismiss the said writ petition for non-prosecution. The first two paragraphs of the impugned order has been construed by the appellant to have widely affected the right and, therefore, there is every possibility of the

writ petitioner therein to take an advantage thereof in any future litigations. We had an occasion to peruse the order containing four paragraphs and the impression which we gathered therefrom is that the petitioner intended not to pursue the writ petition or the reliefs claimed therein as the termination order has been revoked by the University and the petitioner is still continuing in service.

Such observation, in our view, cannot be construed on the conferment of any right nor adversely affecting the appellant. The law is somewhat settled that any adverse observations made in the order against the respondent who ultimately emerged successful in the litigation shall not operate adversely against the successful litigant nor the principles of *res judicata* can be applied in this regard. Such adverse finding, if there be any, does not make a person an aggrieved person when he is found successful in an ultimate decision taken in a legal proceedings. It would have been different when the ultimate order adversely affect the person on the basis of findings or the facts recorded therein as in such event the person can be said to be an aggrieved person and not when the relief has been denied against such person though certain findings may be used adversely but in such event, such adverse finding would not stand in the way of a successful litigant nor can operate against him.

(See Midnapur Zamindari company reported in AIR 1922 Privy Council 241).

It has been held that a wholesome decree in favour of the respondent wipes off, any adverse finding against the successful party.

In such view of the matter, we do not find that the appellant can be said to be an aggrieved person.

Accordingly, the appeal is thus dismissed as not maintainable.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)