

07. 25.04.2024
Court No.6
(Tanmoy)

MAT/800/2024

**SABYASACHI MULLICK CHOWDHURY
VS
KOLKTA MUNICIPAL CORPORATION AND ORS.**

**With
IA No: CAN/1/2024**

Mr. Rupak Ghosh, Adv.,
Mr. Vishwarup Acharyya, Adv.

...for the appellant/
writ petitioner.

Mr. Ashok Kr. Banerjee, Ld., Sr. Adv.,
Mr. Alak Kr. Ghosh, Adv.,
Mrs. Sima Chakraborty, Adv.

...for KMC.

Mr. Ankit Sureka, Adv.,
Mr. Asis Dutta, Adv.

...for the Metropolitan Co-operative
Housing Society Limited.

Mr. Lalit Mohan Mahata, Ld. AGP,
Mr. P.B. Mahata, Adv.

...for the State.

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

This appeal has been preferred by the writ
petitioner in WPA 12605 of 2017. The order impugned
reads as follows:-

*“On hearing the writ petition and in order to decide the
issue whether the writ petition suffers from non-joinder of
parties a short affidavit is required to be filed on behalf of the
Kolkata Municipal Corporation disclosing whether the
sanctioned plans were accorded in favour of the members of
Metropolitan Cooperative Housing Society Limited on making
applications in accordance with the relevant provisions of the*

Kolkata Municipal Corporation Act, 1980 by the said members or by the Society.

Let such affidavit be filed by ten days from date and affidavit-in-reply be filed within seven days thereafter.

List the writ petition under the same heading for further consideration on 25th April, 2024.”

The order decides nothing. No right of any of the parties has been decided by the impugned order. This appeal is not maintainable. By no stretch of imagination it can be said that the impugned order is a judgment within the meaning of Clause 15 of the Letters Patent. The order is also not otherwise appealable under the provisions of Order XLIII, Rule 1 of the Code of Civil Procedure, 1908. According to us, this is a misconceived appeal.

Mr. Ghosh, learned Advocate for the appellant/writ petitioner, says that the learned Judge deferred hearing of the writ petitioner's amendment application being IA No: CAN/4/2024, as His Lordship was of the view that the issue of maintainability of the writ petition should be decided first. Hence, without considering the amendment application the learned Judge started hearing the point of maintainability of the writ petition. In the midst of such hearing, the learned Judge ought not to have called for an affidavit from Kolkata Municipal Corporation (in short, 'KMC') disclosing the details of the party in whose favour the concerned building plan has been sanctioned. In that event, the writ petitioner should be also allowed to rely on documents which he seeks to

bring on record by way of amendment of the writ petition.

We have recorded the above arguments advanced on behalf of the appellant/writ petitioner. The writ petition is pending and is being heard by the learned Judge, *albeit* on the point of maintainability. Finally what order His Lordship may pass, nobody can speculate. In our view, the order impugned warrants no interference. In any event, we have held that this appeal is not maintainable.

The appeal being MAT/800/2024 along with the connected application being IA No: CAN/1/2024 are, therefore, dismissed. There will be no order as to costs.

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.)

(Prasenjit Biswas, J.)