

11.09.2024
Item No.06
Court No.11
Avijit Mitra

WPLRT 118 of 2024

In re: An application under Article 226 of the Constitution of India;

And

Samiran Bera & ors.

- versus -

State of West Bengal & ors.

Mr. Binoy Kumar Das

....for the petitioners

Mr. T.M. Siddiqui, Ld. AGP

Ms. Debdooti Dutta,

Mr. Suddhadev Adak

....for the State respondents

Mr. Masud Karim,

Ms. Anushika Bharati,

Mr. Rashed Rashid

...for the respondent no.6

Affidavit-of-service filed by the petitioners be kept on record.

This writ petition seeks a directive for the learned Tribunal to expedite disposal of the original application (in short, OA), being OA 1466 of 2017.

Mr. Das, learned advocate representing the petitioners, submits that the OA was filed in 2017. During the Covid-19 pandemic, the OA was dismissed for default. The petitioners subsequently filed an application for restoration, along with an application under Section 5 of the Limitation Act seeking condonation of delay in filing the restoration application. He also informs that, during the pendency of the OA, applicant No. 1 passed away, and therefore, another application for

substitution has been filed to bring the legal heirs of applicant No. 1 on record.

He submits that a directive be issued to the learned Tribunal to expeditiously dispose of the original application and its connected applications.

Mr. Karim, learned advocate appearing for respondent No. 6, opposes the prayer. Drawing our attention to prayer (a) of the writ petition, he submits that although the OA had already been dismissed for default, the petitioners have prayed for a direction upon the Tribunal to dispose of that OA. He argues that given this prayer, the writ petition is defective. He asserts that a writ petition with a defective prayer cannot be entertained.

Heard the learned advocates appearing for the respective parties and perused the materials on record.

The record reveals that the OA has been pending since 2017 and was dismissed for default during the Covid-19 pandemic. Additionally, one of the applicants passed away during the pendency of the OA. These two incidents have led to the filing of three applications in connection with the OA.

It is axiomatic that rules relating to pleadings are procedural in nature, and non-compliance with any procedural requirement should not automatically result in the rejection or dismissal of a petition, unless it is shown to be deliberate or mischievous. Procedure, as the handmaid of justice, should never be used as a means to deny justice. The rules governing pleadings are designed to inform each side of the other's case

so that it can be addressed, and to enable the courts to determine the real issues between the parties.

The petitioners have clearly expressed their grievances in the writ petition and have already filed an application for the restoration of the OA, along with two other applications. Needless to state that the OA should first be restored before it can be disposed of.

Given this context, we are of the view that due to any defect in the prayer, it would be iniquitous to dismiss the writ petition in *limine*.

Admittedly, the Tribunal has been constituted pursuant to Article 323A of the Constitution of India to adjudicate disputes, complaints, objections, and applications concerning matters under the specified Act as defined in Section 2(r) of the West Bengal Land Reforms & Tenancy Tribunal Act, 1997 (in short, the 1997 Act). In writ petition W.P.L.R.T 5 of 2023, a coordinate Bench of this Court observed that the 1997 Act aimed to achieve two objectives: firstly, to alleviate congestion in the docket of the High Court, and secondly, to provide speedy and effective justice. If the Tribunal takes nearly two years to dispose of three applications, namely, applications for restoration, condonation of delay, and substitution, it may be questioned whether the objective of setting up the Tribunal is being met.

In such conspectus, we are of the considered opinion that the above referred three applications and the OA should be disposed of on the returnable date i.e. 29th January, 2025 or expeditiously as possible, preferably within a period of eight

weeks thereafter without granting any unnecessary adjournments to either of the parties.

It is ordered accordingly.

The parties are directed to exchange their affidavits before the returnable date. If the affidavits are not exchanged within the stipulated time, the learned Tribunal shall be at liberty to dispose of the original application and its connected applications, even in the absence of such affidavits.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Partha Sarathi Chatterjee,J.) (Tapabrata Chakraborty, J.)