

1709
2024

TUESDAY

Court : 08
Item : DL-09
Matter : MAT
Status : OP
Bench ID : 266048
Transcriber : NANDY

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

MAT 1635 of 2024

with

CAN 1 of 2024

ARUPRATAN DAS

Vs.

THE STATE OF WEST BENGAL & ORS.

Mr. Biswarup Biwasa, Advocate

.....for the Appellant

Mr. Arindam Chattopadhyay, Advocate

Ms. Lipika Chatterjee, Advocate

.....for the State

1. By the impugned order the direction was passed upon the respondents to file their affidavit-in-opposition to disclose their stand on the averments made in the writ-petition.
2. While passing such direction the Single Bench has, *prima facie*, opined that the point which in its opinion is involved in the said writ-petition, cannot be decided unless the respondents disclose their stand. The said order is assailed in the instant appeal primarily on the ground that the Court ought not to have entered into the merit of the claim which is *sub-judice* before the authority and should have relegated the parties to the authorities for a conscious decision. In support of the same, the unreported judgment of this Court passed in the case of ***Sukdeb Patra Vs. State of West Bengal & Ors. in FMA 1329 of 2022*** decided on 17.01.2024, is relied upon.
3. According, to the Counsel for the appellant the proper course, in terms of the Coordinate Bench decision is to relegate the parties to the

authorities and not to usurp the power of the authority and decide the core issue. The Counsel for the appellant is very much vocal in his submission that the Apex Court in SLP (C) No. 631 of 2024 has set aside the order of the Division Bench of the High Court wherein an interim order was passed and the respondents were invited to file affidavit-in-opposition in a matter where the Tribunal simply directed the parties to exchange affidavits.

4. There is no ambiguity in our mind to the proposition of law that the Appellate Court should not usurp the power of the authority or the Single Bench and decide the matter in an appeal filed against an order by which the Tribunal or the Single Bench directed the parties to exchange affidavits.
5. The reason can be seen from the fact that if the Appellate Court decides the matter finally, the writ-petition shall automatically become infructuous and shall be mere paper litigation. Another reason which we could visualize that a litigant could lose a forum if the Division Bench decide the main issue pending the writ-petition.
6. We are conscious of the aforesaid proposition and do not find that it would enure to the benefit of the appellant. The Single Bench did not apply its mind and simply make a tentative finding framing a point which in its opinion involved in the writ-petition and invited the respondents to respond to the averments made in the writ-petition. The point which is urged before the Appellate Court can very well be urged before the Single Bench and

the Single Bench shall decide the same when the occasion so arise.

7. Since no decision has been taken by the Single Bench nor we find that the appellant is an aggrieved person, the appeal is not entertainable.
8. The appeal being **MAT 1635 of 2024** is **dismissed**.
9. The Single Bench has granted leave to mention the matter for being taken up on priority basis. We trust and hope that the Single Bench will make endeavour to dispose of the matter as expeditiously as possible.

(Harish Tandon, J.)

(Prasenjit Biswas J)