

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 30.09.2024

DELIVERED ON: 30.09.2024

CORAM:

**THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
AND**

THE HON'BLE MR. JUSTICE BIVAS PATTANAYAK

M.A.T. 1832 of 2024

With

I.A. No. CAN 1 of 2024

With

I.A. No. CAN 2 of 2024

Sri Umesh Malpani & Anr.

Vs.

The State of West Bengal & Ors.

Appearance:-

Mr. Rishav Kumar Singh

Mr. Sagar Kr. Mishra

Mr. Soumalya Dutta

.....for the appellants

Mr. Susovan Sengupta

Mr. Sanatan Panja

.....for the State

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

In Re: I.A. No. CAN 1 of 2024

1. We have heard the learned advocates for the parties.
2. There is delay of 22 days in filing the appeal. We have perused the affidavit filed in support of the petition and we find that sufficient cause has been shown for not being able to prefer the appeal within the period of limitation.
3. I.A. No. CAN 1 of 2024 is allowed and the delay in filing the appeal is condoned.

In Re: M.A.T. 1832 of 2024

4. This intra-Court appeal by the writ petitioners is directed against the order dated July 8, 2024 in W.P.A. 10563 of 2024, by which the writ petition stood disposed by recording the submissions made by the respondent/police that the investigation has been completed and final report has been filed before the learned Trial Court.
5. The learned writ court directed the petitioners to approach the learned Trial Court with all the grievances that have been mentioned in the supplementary affidavit for further relief.
6. However, it is seen that the prayer sought for in the writ petition is for transfer of investigation to the Criminal Investigation Department, West Bengal since, according to the writ petitioners, the investigation by the local police was completely derailed and the final report was filed by the police stating that it is a case of mistake of fact. Therefore, it is contended on behalf of the appellants that no relief can be granted by the learned Trial Court, if the appellants/writ petitioners approach the Court since their prayer was for transfer of investigation. In this regard, the learned advocate for the appellants has drawn our attention to the various documents executed between the parties including the Power of Attorney, which was executed by the appellants in favour of the private respondents on April 27, 2012 wherein there is a specific condition that the appellants' property should be sold, the loan, which was borrowed by the appellants be discharged and the balance amount to be deposited in the appellants' bank account in HDFC Bank, Jaipur, Rajasthan in the given account number.

7. According to the appellants, the Power of Attorney holder after about more than 12 years sold the proper at a throw away price to her husband and son and by mentioning the value of the property as Rs.25,00,000/- when the circle rate at the relevant point of time was more than Rs.65,00,000/-.
8. Considering all these facts, we are of the view that the Court has to consider as to whether the prayer for transfer of investigation is justified or not, which appears to have not been properly placed before the learned Single Bench.
9. Therefore, the appeal and the connected application (I.A. No. CAN 2 of 2024) are allowed and the order passed in the writ petition is set aside and the writ petition is restored to the file of the learned Writ Court to be heard and disposed of on merits.
10. The respondents are directed to file their affidavit-in-opposition within six weeks from date, reply thereto, if any, be filed within a week thereafter.
11. Let the writ petition be listed before the appropriate Bench in the week commencing 25th November, 2024.
12. No costs.
13. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(BIVAS PATTANAYAK, J.)