

01.03.2024
Item No. 1
PG
Ct. No.7

C.O. 3415 of 2023
Sri Ramnarayan Roy
Vs.
M/s. RKB Reality Infra
Developers & Ors.

Mr. Ayan Banerjee
Mr. Soumo Choudhuri.....for the petitioner

Mr. Siddhartha Banerjee
Mr. Kazir Ardan Ali.....for the Uttarpara-Kotrang
Municipality

1. The order no. 2 dated August 28, 2023 passed by the learned Civil Judge (Junior Division), 1st Court, Serampore, District-Hooghly in Misc. Appeal No. 8 of 2023 is under challenge in this civil order.
2. By the said order, the prayer of the opposite party no. 1 herein for condonation of delay under section 5 of the Limitation Act stood allowed. Thereafter the application for stay of the demolition order was moved on 28th August, 2023 and in the later part of the order, the learned Judge of the Court of Appeal passed an order of stay of the demolition order dated 8th September, 2016 for a limited period.
3. Being aggrieved by the said order, the complainant before the Municipality has approached this Court.
4. Mr. Banerjee, learned advocate appearing for the petitioner submits that pursuant to the complaint of the petitioner, the Board of Councillors of Uttarpara-

Kotrang Municipality passed an order of demolition on August 30, 2016, which decision was communicated vide memo dated 8th September, 2016. Such communication was under challenge at the instance of the opposite party no. 1 herein in a proceeding under section 218(3) of the West Bengal Municipal Act, 1993 before the learned Civil Judge (Junior Division), 1st Court at Serampore, which gave rise to Misc. Appeal No. 8 of 2023.

5. By referring to the order dated 25th August, 2023 passed in Misc. Appeal No. 8 of 2023, Mr. Banerjee submits that though 29th November, 2023 was fixed for service returns and acknowledgement due but the learned Court below took up hearing of the application under section 5 of the Limitation Act only on 28th August, 2023 i.e. long prior to the date fixed and allowed the same.
6. He submits that the delay could not have been condoned without giving an opportunity of hearing to the petitioner. However, Mr. Banerjee, after taking instructions from his client, submits that his client is interested in expeditious disposal of the miscellaneous appeal and does not wish to assail the order condoning the delay in preferring such miscellaneous appeal.
7. He submits that the ad-interim order of stay of the demolition order was also passed on 28th August, 2023 without giving an opportunity to the petitioner to

contest the same and such order has been mechanically extended from time to time.

8. Mr. Banerjee raises an objection as to the maintainability of the miscellaneous appeal at the instance of the opposite party no. 1 herein.

9. Considering the fact that the miscellaneous appeal was filed sometimes in August 2023 challenging an order of demolition, this Court feels that the interest of justice would be subserved if a direction is passed upon the learned Judge of the Court below to dispose of the same expeditiously.

10. Mr. Banerjee submits that yesterday i.e. 29th February, 2024 was the date fixed for hearing of the stay application and he is not aware of the next date fixed.

11. In the event objection to the stay application has not yet been filed, the same shall be filed within a week from date upon serving an advance copy of the same to the learned advocate for the appellant in Misc. Appeal No. 8 of 2023.

12. It will be open to the petitioner herein to raise the point of maintainability of the miscellaneous appeal either in the objection to the stay application or by way of filing an independent application and if such objection is raised, the learned Judge of the Court of Appeal below shall decide the issue of maintainability

prior to extending the order of stay already passed in the miscellaneous appeal.

13. Considering the fact that delay was condoned without giving an opportunity of hearing to the petitioner and also that the order of stay was passed preponing the date fixed vide order dated 25th August, 2023 and also taking into consideration the fact that the order of demolition was passed sometimes in the month of August, 2016, which has been challenged at the instance of the opposite party no. 1 herein only in the year 2023, this Court is of the considered view that the instant case is an exceptional case for which a direction is to be passed upon the learned Judge of the Court below to dispose of the miscellaneous appeal within a specified time limit.
14. Accordingly, C.O. 3415 of 2023 is disposed of by requesting the learned Civil Judge (Junior Division), 1st Court at Serampore, District-Hooghly to dispose of the interlocutory applications as expeditiously as possible but preferably within a period of four weeks from the next date fixed without granting any unnecessary adjournment to either of the parties.
15. In the event the decision on the point of maintainability of the appeal is in favour of the opposite party no. 1 herein, the learned Civil Judge (Junior Division), 1st Court at Serampore, District-Hooghly shall dispose of the miscellaneous appeal as expeditiously as

possible preferably within a period of eight weeks from the date, the appeal is ready for hearing.

16. There shall be, however, no order as to costs.
17. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)