

**In the High Court at Calcutta
Special Civil Jurisdiction
Appellate Side**

Present :

The Hon'ble Justice Subhendu Samanta

CPAN 2047 of 2024

**Byomkesh Paul
Versus
Sri Ansul Gupta, Managing Director (WBTC/CSTC) & Ors.**

IN

**WPA 22211 of 2019
With
IA No.: CAN 1 of 2024**

**For the petitioner : Mr. A. Khan
Mr. P. Roy**

**For the alleged Contemnors : Mr. Mr. Amal Kumar Sen
Mr. Sabyasachi Mondal**

Heard on : 20th May, 2025.

Judgment on : 2nd September, 2025

Subhendu Samanta, J :

In Re.: CAN 1 of 2024

1. This is an application for recalling the exparte order dated 01.08.2024 passed by this Court in W.P. No. 22211 (W) of 2019.

2. Respondent Calcutta State Transport Corporation filed the instant application for recalling of an order of this Court dated 1st of August, 2024 whereby this Court in absence of the respondent disposed of the writ petition and made some necessary direction upon the respondent authority.
3. Mr. Amal Kumar Sen, learned counsel appearing on behalf of the petitioner (CSTC) submits that at the time of disposing of the instant writ petition this Court directed the respondent authority to pass necessary order regarding absorption of present petition as a regular employee according to the Memorandum dated 3rd of August, 1979 from three years after the dated of his appointment as temporary employee i.e. from 24.12.2002 with rider that since petitioner had already superannuated from his service she shall be entitled to get the retired benefits and other benefits as a regular employee.
4. Mr. Sen submits that the order/direction dated 1st of August, 2024 came to the knowledge of (CSTC) for the first time on 8th of August, 2024, in view of letter dated 6th of August, 2024 written by learned counsel for the petitioner.
5. It is the contentions of the petitioner (CSTC) that Sri Amal Kumar Sen with his Junior Sri Sabyasachi Mondal was engaged by the (CSTC) to conduct this matter before this Court but, both the advocates were engaged elsewhere and both of them unfortunately miss the matter when the matter was called on for hearing. It was

not under the knowledge of the learned advocates that the said matter was appearing in the list of this Court.

6. In view of the above, none of the advocates appeared when the matter was fixed for hearing on 1st of August, 2024.
7. Mr. Sen further argued that the petitioner was a trainee driver under the Corporation such temporary/ad-hoc appointment cannot be made permanent in view several decisions of Hon'ble Supreme Court as well as this Court passed in ***State of Karnataka Vs. Umadevi & Ors. (2006) 4 SCC 1 as well as State of Karnataka & Ors. Vs. M.L. Kesari & Ors. (2010) 9 SCC 247.***
8. He further submits that the respondent authority (CSTC) was always ready to contest the matter before this Court and they have prepared the affidavit-in-opposition against the writ petition but though it was affirmed but was not filed before this Court and it was served upon one learned advocate Smt. Susmita Dey (Basu) who normally in most of cases used to appear on behalf of writ petitioners against present respondent (CSTC).
9. Mr. Sen also narrated the merit of the matter in short and submits that there are several reasons to dispose of the writ petition on contest. Thus, the exparte order passed by this Court is required to be set aside.
10. Learned counsel appearing on behalf of the writ petitioner filed affidavit-in-opposition against the application.

11. It is the contentions of the petitioner that application by the respondent under order 9 Rule 13 CPC for recalling impugned order dated 1st of August, 2024 is not at all maintainable and required to be dismissed.
12. He further submits that before taking of the matter as per direction of this Court, notice was served upon the respondent before mentioning. After following the said procedure this matter appears in the list for quite few days.
13. None of the learned advocates appeared before the Court consequently this Court had no option but to pass the order on merits. He submits that the respondent authority cannot take advantage of their own failure to appear before this Court. He further submits that no affidavit-in-opposition was served upon the learned counsel for the petitioner.
14. Smt. Susmita Dey (Basu) was never engaged by the petitioner or appeared on behalf of the petitioner before this Court.
15. In support of his contentions, he cited a decision of Hon'ble Supreme Court reported in **Puran Singh & Ors. V. State of Panjab and Ors, AIR 1996 Supreme Court 1092.**
16. I have perused the observation of Hon'ble Supreme Court in **Puran Singh (supra)** wherein this Court has observed that:

"When the High Court exercises extraordinary jurisdiction under [Article 226](#) of the constitution, it aims at securing a very speedy and efficacious remedy to a person,

whose legal or constitutional right has been infringed. If all the elaborate and technical rules [laid down in](#) the Code are to be applied to writ proceedings the very object and purpose is likely to be defeated. According to us, in view of the conflicting opinions expressed by the different courts, the Parliament by the aforesaid amending Act introduced the explanation saying that in Section 141 of the Code the expression "proceedings" does not include "any proceedings under [Article 226](#) of the Constitution" and statutorily recognized the views expressed by some of the courts that writ proceedings under [Article 226](#) of the Constitution shall not be deemed to be proceedings within the meaning of Section 141 of the Code. After the introduction of the explanation to Section 141 of the Code, it can be said that when Section 141 provides that the procedure prescribed in the Code in regard to suits shall be followed, as far as it can be made applicable "in all proceedings in any court of civil jurisdiction" it shall not include a proceeding under [Article 226](#) of the constitution. In this background, according to us, it cannot be held that the provisions contained in Order 22 of the Code are applicable per se to writ proceedings. If even before the introduction of the explanation to Section 141, this Court in the case of [Babubhai v. Nandlal](#) (AIR 1974 SC 2105) (supra) had said that the words "as far as it can be made applicable occurring in Section 141 of the Code made it clear that in applying the various provisions of the Code to the proceedings other than those of a suit, the court has to take into consideration the nature of those proceedings and the reliefs sought for" after introduction of the explanation the writ proceedings have to be excluded from the expression "proceedings" occurring in Section 141 of the Code. If because of the explanation, proceeding under [Article](#)

226 of the Constitution has been excluded, there is no question of making applicable the procedure of Code 'as far as it can be made applicable' to such proceeding. The procedures prescribed in respect of suit in the Code if are made applicable to the writ proceedings then in many cases it may frustrate the exercise of extra-ordinary powers by the High Court under Articles 226 and 227 of the Constitution."

17. Learned counsel for the petitioner submits that in dealing with writ petition under Articles 226 and 227 of the Constitution. High Court must not follow the Rule and procedure mentioning the Code of Civil Procedure. "Proceedings" defined under Section 141 of CPC does not include "any proceedings under Article 226 of the Constitution".
18. Refuting the contentions of the writ petitioner, Mr. Sen submits that according to Calcutta High Court Appellate Side Rules 53 procedure provided in the Code of Civil Procedure in regard to suits shall be followed, as far as it can be made applicable in all proceedings for issue of a writ.

"53. Save and except as provided by these rules and subject thereto, the procedure provided in the Code of Civil procedure (Act V of 1908) in regard to suits shall be followed, as far as it can be made applicable, in all proceedings for issue of a writ."

19. Having heard the learned counsel for the parties, also considering the rival pleadings and submissions it appears that the ground for setting aside the order passed by this Court on 1st of August, 2024,

as assigned by the respondent (CSTC) that the learned counsels who were engaged on behalf of (CSTC) had missed the list consequently, could not appear. It is further ground of (CSTC) that there are sufficient merits in law and fact to decide the writ petition on contest. Thus, the exparte order passed by this Court is required to be set aside.

20. In considering the 1st ground it is true that none of the learned advocates who engaged by the (CSTC) were appeared before this Court on 1st August, 2024 when the matter was fixed for hearing.

21. It further appears from the record that this matter 1st time appears before this Court on 10th of December, 2019 on that date a Coordinate Bench of this Court has directed the respondent authority to file affidavit-in-opposition within a period of four weeks.

22. In spite of such direction no affidavits were placed on record by the respondent authority till today. However, during the course of argument of this instant application a photo copy of affidavit-in-opposition of (CSTC) was shown to this Court wherefrom it appears that one affidavit by the (CSTC) though affirmed on 15th day of December, 2020, but it was never filed before this Court. Moreover, it was served upon an advocate of this Court who never engaged on behalf of the petitioner in this matter.

23. It further pertinent to mention wherein that usually this Court take up the mentioning after service of notice to the learned advocate for the other parties. The same procedure was adopted in this matter

and the matter was listed after notice to the learned advocate for the respondent (CSTC). Moreover, before taking hearing notices were served upon the learned advocate on record on behalf of (CSTC). In spite of that no affidavit-in-opposition has been placed on record or none appears on behalf of (CSTC) on 1st of August, 2024. The entire fact suggests that respondent authority (CSTC) were not at all diligent to conduct the matter before this Court while a Coordinate Bench of this Court has directed to file an affidavit-in-opposition within four weeks from 10th of December, 2019. The authority concerned never filed such affidavits before this Court. Moreover, the authorities concerned are so careless they serve the copy of affidavit upon another advocate of this Court. However, the authority concerned usually put blame upon engaged advocate on record on behalf of them for their callousness. The Hon'ble Supreme Court has time and again deprecated the practice of litigants to blame their engaged advocate for their own callousness and negligence Hon'ble Supreme Court has specifically declared the law in paragraph 10 of **Rajneesh Kumar & Anr. Vs. Ved Prakash** which is set out as hereunder:

"It appears that the entire blame has been thrown on the head of the advocate who was appearing for the petitioners in the trial court. We have noticed over a period of time a tendency on the part of the litigants to blame their lawyers of negligence and carelessness in attending the

proceedings before the court. Even if we assume for a moment that the concerned lawyer was careless or negligence, this, by itself, cannot be a ground to condone long and inordinate delay as the litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about the judicial proceedings pending in the court initiated at his instance. The litigant, therefore, should not be permitted to throw the entire blame on the hand of the advocate and thereby disown him at any time and seek relief."

24. Considering the entire aspects also considering the submissions made on behalf of the petitioner (CSTC) it appears to me that the ground assigned by the petitioner (CSTC) for setting aside the exparte order passed by this Court is not sufficient.

25. Mr. Sen has placed on record some law decided by the Hon'ble Apex Court which are relevant to that of the merits of this matter but as I am dealing with the application being CAN 1 of 2024. Such law declared by the Hon'ble Apex Court is not required to be dealt with.

26. Under the above observations, I find no justification to allow the application being CAN 1 of 2024. Hence the same is hereby dismissed.

27. Let the contempt application appear in the list one week after Puja Vacation under the heading "**Contempt Application**".

28. According, the application being CAN 1 of 2024 is disposed of.

29. Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)