

01.02.2024
Item No.01
Court No.6.
S. De

M.A.T. 2076 of 2023
With
I.A. No. CAN 1 of 2023
I.A. No. CAN 2 of 2023

M/s. Geeta Glass Works Private Limited.
Vs.
Smt. Mili Dutta & Ors.

Mr. Arif Ali,
Mr. Sarban Bhattacharjee,
...for the appellant.

Mr. Bhudeb Bhattacharyya,
Mr. Sugata Shankar Roy,
...for the respondent nos. 1&2.

Sk. Md. Galib,
Ms. Sujata Mukherjee,
...for the State respondents.

Mr. Biswajit Mukherjee,
Mr. Gopal Chandra Das,
...for the K.M.C.

By consent of the parties, the appeal and the connected application are taken up together for hearing.

A judgment and order dated April 26, 2023, whereby the writ petition of the respondent nos. 1 and 2 herein was disposed of by a learned Judge of this Court, is the subject matter of challenge in this appeal at the instance of the respondent nos. 6 in the writ petition.

It appears that the writ petitioners approached the learned Single Judge by challenging an order of the Controller, Kolkata Thika Tenancy, dated April 16, 2012. A challenge was also thrown to the refusal of the Kolkata Municipal Corporation authorities to mutate the names of the writ petitioners as owners of premises no. 23M, Radha Madhab Dutta Garden Lane, Kolkata – 700 010. The said property presently stands mutated in the name of the appellant herein as a thika tenant.

The learned Judge, after hearing learned counsel representing the parties concluded that the order of the Controller of Thika Tenancy has to be challenged before the West Bengal Land Reforms and Tenancy Tribunal (in short the ‘Tribunal’). The learned Judge disposed of the writ petition with the following observations and directions :

“However, on perusal of interim order passed by the coordinate Bench at the time of admission of the writ petition it appears that direction has been given on 15th November, 2016 directing that the mutation which has been done in favour of the private respondents would be treated as temporary till disposal of the writ petition.

On consideration of the issue involved in this writ petition it is appropriate for the petitioners to approach the Tribunal. This Court directs that the interim order passed on 15th November, 2016 shall continue for a period of eight weeks from date. Petitioners shall be at liberty to file original application before the West Bengal Land Reforms & Tenancy Tribunal within a period of eight weeks from date. In the event original application is filed before the Tribunal challenging the order of the Controller, Kolkata Thika Tenancy, dated 16th April, 2012, the interim order passed by the coordinate Bench on 15th November, 2016 shall continue till disposal of the original application.

However, it is made clear, if petitioners fail to approach the Tribunal by filing the original application within the aforesaid time the interim order passed by this Court on 15th November, 2016 shall stand vacated without any further reference to this Court.

This Court has not expressed any view on merit of the order passed by the Thika Controller and all issues are kept open.”

Being aggrieved, the respondent no.6 in the writ petition has come up by way of this appeal.

The appellant's grievance is two-fold. Firstly, it says that the writ petitioners have filed an original application before the Tribunal assailing the relevant order of the Thika Controller within the time period granted by the learned Single Judge. However, they are contending that the learned Single Judge has condoned the delay in approaching the Tribunal. Learned advocate says that this could not have been done by the learned Judge and His Lordship has also not done so. The order is being wrongly interpreted by the writ petitioners before the Tribunal. Hence, a clarification is required.

Secondly, learned counsel for the appellant says that the learned Judge could not have directed continuation of the interim order till the disposal of the original application if such application was filed by the writ petitioners before the Tribunal within the period of eight weeks granted by the learned Single Judge. There is huge delay on the part of the writ petitioners

in approaching the Tribunal. Hence, technically the appeal that has been filed before the Tribunal is time barred since such statutory appeal was required to be presented within thirty days from the date of the impugned order of the Thika Controller as provided in Section 12 of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001. Learned counsel says that the writ petitioners may be able to persuade the Tribunal to condone the delay but the fact remains that such condonation has to be first obtained before the appeal can be admitted by the Tribunal.

Learned counsel relied on a decision of a Division Bench of this Court in the case of ***Surendra Nath Roy Vs. Jatindra Nath Roy*** reported in ***(1940-41) 45 CWN 524***. In that case, a plaint had been presented before a wrong Court. The plaint was returned by that Court enlarging the time period for presenting the same before the appropriate Court. The matter having been carried to the Division Bench of this Court, it was held that it was for the Court before which the plaint was to be re-filed to consider whether the same was being presented within the period of limitation. The Court returning the plaint could not enlarge the period of limitation as that would go beyond the statute of limitation. Learned counsel says that the same principle would apply in this case.

Learned advocate for the writ petitioners draws our attention to a certified copy of an order dated July 3, 2023, passed by the Tribunal. The relevant portion of the said order reads as follows :

“Ld. Government Representative raises objection regarding the maintainability of this present application as there is apparent delay in filing the present application and the applicants have not taken proper steps for condonation of such delay either in the Original Application or in the present application also suffers from non-joinder of necessary parties.

As the Hon’ble High Court in its order dated 26.04.2023 has granted liberty to the applicants to approach this Tribunal wherein the writ petition was filed challenging the order of the Thika Controller, Kolkata dated 16.04.2012 there is no delay in the present application as the applicants have filed the present application on 09.06.2023 which is within the limitation period.

.....

Accordingly, the present application is hereby admitted.”

Learned advocate for the writ petitioners says that the learned Single Judge, considering the facts and circumstances of the case was satisfied that the interest of the writ petitioners is required to be protected. Accordingly, the learned Judge permitted the writ petitioners to file the appeal before the Tribunal within eight weeks and directed continuation of the interim protection till the disposal of the appeal before the Tribunal. There is no infirmity in the order of the learned Single Judge. This appeal should be dismissed.

We agree with learned advocate for the appellant when he says that the learned Judge could not have condoned the delay in presenting the appeal before the Tribunal. It may not be necessary for us to read the order impugned in that manner also. In our view, the learned Single Judge's order should be construed as having permitted the writ petitioners to approach the Tribunal with an appeal and application for condonation of delay, if any. We would like to read the order in this manner since in our considered opinion the learned Single Judge did not have the jurisdiction to condone the delay in presenting appeal before the Tribunal. It is for the Tribunal to decide whether the delay should be condoned or not. If the appellant before the Tribunal can satisfactorily explain the delay, the Tribunal may well condone the delay and proceed

with the appeal on merits. We are of the view that the Tribunal misunderstood the true purport of the order dated April 26, 2023, which is impugned in this appeal.

Hence, we only clarify that the order dated April 26, 2023, passed by the learned Single Judge in WPA 19273 of 2015 shall not be construed as having condoned the delay in presenting the relevant appeal before the Tribunal. We say no further. Whatever the legal consequences are, will follow. The writ petitioners will be at liberty to file any application for condonation of delay before the Tribunal, if they are so advised and the Tribunal shall consider the same in accordance with law after giving an opportunity of filing objection thereto to the present appellant.

Since we are told that the disputes between the parties are pending for a long time, we request the Tribunal to dispose of the matter pending before it, as expeditiously as possible.

The appeal being MAT 2076 of 2023 is disposed of accordingly along with the application being I.A. No. CAN 2 of 2023.

Since we have not called for affidavits, the allegations contained in the stay application are deemed not to be admitted by the respondents.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as

expeditiously as possible on compliance with all the necessary formalities.

(M.V. Muralidaran, J.)

(Arijit Banerjee, J.)