

02.02.2024
Item no.12.
Court No.6.
AB

**M.A.T. 2166 of 2023
With
IA CAN 1 of 2023**

**Md. Salim
Vs
Kolkata Municipal Corporation & Others**

Mr. Tarique Quasimuddin,
Md. Irshad Yaqub,
Md. Faizan Yakubfor the Appellant.

Mr. Srijan Nayak,
Mr. Subrata Sikdarfor the KMC.

Mr. Abdul Hadifor the Respondent No.8.

Mr. Lalit Mohan Mahata,
Mr. Jagabandhu Royfor the State.

Read order dated January 29, 2024.

The short grievance of the appellant, who was the respondent no.8 in the writ petition filed by the respondent no.8 in this appeal, is that no notice of the application for restoration of the writ petition, which stood dismissed for default, was served on the appellant herein. Therefore, the appellant could not be present before the Court on the date the matter was restored. On the same day, the learned Judge took up the writ petition for hearing, after restoring the same and disposed it of by passing the order impugned in this appeal. This amounted to breach of the principles of natural justice. The order under appeal should be set aside.

On the last occasion i.e., January 29, 2024, learned Advocate for the respondent no.8/writ petitioner had submitted that his instructions are that the restoration application was served on the appellant herein. We had directed the writ petitioner to produce evidence of such service.

Today, learned Advocate for the writ petitioner produces a copy of the affidavit of service that was filed before the learned Single Judge. From the annexures to such affidavit, it is clear that the restoration application was served on the appellant herein on April 24, 2023. The impugned order was passed much after that. Hence, it cannot be said that the principles of natural justice were flouted. The appellant should have been more diligent and vigilant in the matter.

Copy of the aforesaid affidavit of service filed in Court today be kept with the records.

In view of the aforesaid, we find no apparent infirmity in the order under appeal. Since the appellant chose not to appear before the learned Single Judge on the date the matter was disposed of, we are not inclined to interfere with the order under appeal.

The appeal and the connected application are dismissed.

This will not prevent the appellant from approaching the learned Single Judge with an

appropriate application for appropriate relief, if he is entitled to do so in law.

If any such application is filed, the learned Judge is requested to decide the same without being influenced by any observation in this order.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Supratim Bhattacharya, J.)