

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

HEARD ON: 29.04.2024

DELIVERED ON: 29.04.2024

**CORAM:
THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**M.A.T. 2247 of 2023
With
I.A. No. CAN 1 of 2023**

**The State of West Bengal & Ors.
Vs.
Krishnendu Adhikari**

Appearance:-

**Mr. Kishore Datta, Ld. Advocate General
Mr. Tapan Kr. Mukherjee, Ld. Addl. GP
Mr. Rudradipta Nandy, Ld. Addl. PP
Mr. Sabyasachi Bhattacharjeefor the appellants**

**Mr. Rajdeep Majumder
Mr. Moyukh Mukherjee
Ms. Sangita Banerjee
Mr. Souvik Palodhifor the respondent/writ petitioner**

JUDGMENT

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

1. This intra-Court appeal by the State is directed against the order dated 1st November, 2023 passed in W.P.A. 25831 of 2023. The first ground on which the order is challenged is by contending that the State did not have adequate opportunity to put forth their submissions and no time was granted by the

learned Writ Court to file their affidavit in opposition and on the very first day, the writ petition has been allowed apart from imposing cost of Rs. 5 lakhs.

2. The learned advocate for the respondent/writ petitioner would submit that the case has had a chequered history. There were several orders passed by the Hon'ble Supreme Court as well as there are other orders passed by the various Single Benches of this Court and in this regard a compilation has also been filed.
3. In our view, if the writ petition has to be allowed and the impugned order in the writ petition has to be set aside, the contesting respondent should have adequate opportunity to put forth their submissions. It is true that in all cases, the Court need not call for affidavits but in cases where there has been previous litigation and orders passed by the Hon'ble Supreme Court as well as various Single Benches of this Court, it will be advisable that the objections, which the contesting respondents would raise, should be put in place in the form of an affidavit. We find such an opportunity has not been granted to the appellants/State when the writ petition was heard and disposed of. Apart from that, the Court has also imposed a cost of Rs. 5 lakhs, which, in our opinion, is not called for.
4. Therefore, we are inclined to restore the writ petition to the file of the learned Single Bench to be heard afresh after the affidavit in opposition is filed by the contesting respondents with liberty to the writ petitioner to file a reply to the same.
5. Considering the fact that the notice issued under Section 160 of the Code of Criminal Procedure, which was impugned in the writ petition was quashed by the impugned order dated 1st November, 2023, it will be inequitable to revive

such a notice at this juncture since if the writ petition is restored to the file of the learned Single Bench, the operation of the notice would stand revive. Therefore, there will be a stay of all further proceedings pursuant to the notice issued under Section 160 of the Code of Criminal Procedure till the writ petition is heard and disposed of.

6. For the above reasons, the order passed in the writ petition is set aside and the writ petition is restored to the file of the learned Single Bench. The contesting respondents are directed to file their affidavit in opposition within three weeks from date; reply thereto, if any, may be filed by the writ petitioner within two weeks from the date of receipt of the affidavit in opposition and the Registry is directed to list the writ petition before the appropriate Bench immediately after five weeks from date, that will be in the week commencing 10th June, 2024.
7. The appellants are granted liberty to file the certified copy of the impugned order, which is taken on record.
8. With the above observations/directions, the appeal and the connected application stand disposed of.
9. No costs.
10. 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.

(HIRANMAY BHATTACHARYYA, J.)