

05.01.2024
Item No.05
Court No.6.
S. De

M.A.T. 2457 of 2023
with
I.A. No. CAN 1 of 2023
I.A. No. CAN 2 of 2023
Md. Nasrullah & Ors.
Vs.

The Kolkata Municipal Corporation & Ors.

Mr. Arka Pratim Chowdhury,
Mr. Swayan Bhattacharyya,
Ms. Shreya Chakraborty,
...for the appellants.
Mr. Anish Kr. Mukherjee,
...for the respondent no.7.
Mr. Alak Kumar Ghosh,
Mr. S. Panda,
...for the K.M.C.
Mr. Amitesh Banerjee, Ld. Sr. St. Counsel.
Mr. Tarak Karan,
...for the State.

In re :- I.A. No. CAN 1 of 2023

This is an application for leave to appeal against an order dated November 24, 2023, passed by a learned Judge of this Court in CPAN 290 of 2023, being a contempt application filed by the respondent no.7 herein.

An order of demolition of the concerned unauthorized structure was passed by Kolkata Municipal Corporation way back in 2017. The intending appellants herein challenged the demolition order by filing WPA 23279 of 2022. The application was dismissed. The learned Single Judge directed implementation of the demolition order.

The intending appellants challenged the said order of the learned Single Judge by filing MAT 1800 of 2022. When the appeal came up for admission on December 6, 2022, it was submitted on behalf of the appellants that the appellants were not desirous of pressing the appeal. They prayed for some time to vacate the premises in question. The appeal and the application were disposed of with the following observations :

“Although, the appellants have absolutely no right to be in possession of the premises in question any further even for a day, on humanitarian grounds, we grant fifteen days to the appellants to vacate the premises in question. The Corporation shall hold its hand for fifteen days and thereafter shall take steps in accordance with law.”

The present application has been filed alleging violation of the order of the learned Single Judge dated November 10, 2022, which was upheld by the Division Bench by its order dated December 16, 2022. In fact, the appeal was withdrawn as has been recorded above.

In the contempt application, the intending appellant is not a party. It is settled law that in a contempt application there is no scope for intervention. It is a matter between the Court and the alleged contemnor. Hence, we are not inclined to

grant leave to the intending appellants to prefer appeal against the order dated November 24, 2023.

Even if we were inclined to grant leave to appeal, we would have dismissed the appeal since the intending appellants obtained fifteen days' time from this Court to vacate the concerned premises, way back on December 6, 2022. More than a year has gone by since then. The intending appellants have still not vacated the premises in question. There can be absolutely no question of showing any leniency or indulgence to the intending appellants.

Consequently, this application being CAN 1 of 2023, the appeal being MAT 2457 of 2023 and the application for stay being CAN 2 of 2023 are dismissed with costs assessed at Rs. 30,000/- (Rupees Thirty Thousand Only) to be paid by the appellants to the West Bengal State Legal Services Authority within a fortnight from date.

The department shall forward a copy of this order to the Member Secretary of the West Bengal State Legal Services Authority who shall draw to our attention the failure, if any, on the part of the appellants to pay the costs as directed above.

This will not prevent the intending appellants from claiming appropriate relief against the person responsible for the concerned unauthorized structure, before the appropriate forum, in accordance with law.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)