

JPD-40
Ct No.01
30.07.2024
AK

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Jurisdiction

MAT 42 of 2024
IA No: CAN 1 of 2024
CAN 2 of 2024

The Mal Municipality and another
Vs
Swapan Bhowmik and others

Mr. Amritam Mandal
Mr. Debasish Mukherjee
Ms. Srishti Sarker

.... for the appellants.

Mrs. Kanika Sarkar
Mr. Nabankur Paul
Mrs. Suman Saha

...for the respondent no.1.

Mr. Subir Kr. Saha
Mr. Sumit Kumar

...for the State.

1. Learned counsel for the appellant challenges the impugned order on two-fold grounds.
2. First, it is submitted that the writ petitioner/private respondent had completed certain work for the appellant/Municipality.
3. However, there was an ongoing enquiry into certain deficiencies in the work of the writ petitioner.
4. Without considering the same and also without taking into account that no opportunity was given to the appellant/Municipality to file any affidavit-in-opposition to the writ petition, the writ court

disposed of the writ petition by placing reliance on a purported admission by the Municipality that the amount-in-question was due to the writ petitioner.

5. Secondly, learned counsel for the appellants argues that the writ petitioner could not, in his personal capacity, claim dues of the partnership firm, which was the entity which did the work-in-question.
6. Learned counsel for the respondents places reliance on the minutes of hearing held on April 10, 2023, annexed at page-80 of the stay application.
7. From the same, it is pointed out that the Municipality had sought for a reduction of the bills of the appellants but did not substantially deny its liability to pay such amount and as such, there is no scope of interference with the impugned order.
8. It is next submitted by the private respondent that the writ petitioner acted on the Power of Attorney given by the other partners and as such, represented the partnership firm itself.
9. Thus, it is argued that since the writ court took one of the possible views, there ought not to be any interference by this court.
10. A careful perusal of the minutes of the meeting dated April 10, 2023, which is the pivot of the adjudication, shows that in the third and fourth paragraphs of the same, it was mentioned by the Municipality that an enquiry was going on for taking

further action in respect of the work done by the writ petitioner/respondent.

- 11.** It was stated that the sub-Assistant Engineer, Mal Municipality was instructed to make an enquiry in the matter and submit a report but unfortunately due to engagement in other official matters the enquiry was not done by the sub-Assistant Engineer and the matter remained pending since long.
- 12.** The next paragraph starts with the word “However”, thereby qualifying the previous reference to the enquiry.
- 13.** The Municipality goes on to state in the said minutes that the sub-Assistant Engineer, Mal Municipality was not allotted funds for the work at the relevant time and naturally the Municipality has to pay the bill out of its own source of fund but presently the financial condition of the Municipality was too bad and the local body was unable to pay even the regular monthly salary, wages of the employees since three months.
- 14.** In the penultimate paragraph of the said minutes, it was categorically mentioned by the Municipality that in this position, considering the opinion and financial position of the writ petitioner and also the financial condition of the Municipality, the Chairman requested the writ petitioner to reduce the amount of the bill to Rs.17 lakh so that the

payment may be made smoothly in three equal monthly installments, to be started from July, 2023.

- 15.** The very request of the Municipality to the writ petitioner/private respondent to reduce the amount itself shows that in principle, there was no controversy as to the liability of the Municipality to pay such amount.
- 16.** Thus, although a pending enquiry was referred to by the Municipality in the earlier paragraphs of the minutes, at the same time, it was observed that the same was pending since long and such statement was subsequently qualified by the request of the Municipality to reduce the amount due to the writ petitioner, thereby virtually admitting its liability for such amount.
- 17.** In any event, the view taken by the writ court was one of the plausible views and in intra-court appeals, this court ought not to interfere merely to substitute its own views.
- 18.** Insofar as the authority of the writ petitioner to represent the partnership, we find that the partners of a partnership firm are not separate juristic entities from the partnership firm in the sense which is applicable to a company.
- 19.** Since the petitioner all along claimed in the capacity of a partner and also submits that he was empowered by the other partners and as no such

objection was taken before the writ court as reflected from the impugned order, we are not inclined to permit the present appellant to take such ground at the present juncture.

- 20.** Even keeping in view that the order was passed *ex parte*, we are of opinion that the writ petitioner was entitled as a partner to represent the firm.
- 21.** That apart, we find from the impugned order that the Municipality was directed to clear the due amount for the work to the petitioner, which work was actually done by the partnership firm.
- 22.** Accordingly, the direction of the writ court should be construed to mean that the Municipality shall clear the due amount of the partnership firm which was represented by the writ petitioner.
- 23.** Moreover, for such technical reason that the amount was directed to be paid to the petitioner, we are not inclined to interfere with the order.
- 24.** Accordingly, MAT 42 of 2024 and CAN 1 of 2024 as well as CAN 2 of 2024 are disposed of without interfering with the impugned order but with the observation that the direction of the writ court for the Municipality to clear the amount of the petitioner to the tune of Rs.25,06,962/- should be construed to be payable to the partnership firm which worked as the contractor of the Municipality.

- 25.** However, keeping in view the financial condition of the appellant/ Municipality, the dues of the partnership firm shall be cleared off by the Municipality in terms of the direction of the writ court within two months from this date.
- 26.** There shall be no order as to costs.
- 27.** Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance with all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

(Prasenjit Biswas, J.)