

01 06.09.2024

Ct-29

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In the Circuit Bench at Jalpaiguri
RVW 5 of 2024
in
MAT 81 of 2023
with
IA No. CAN 1 of 2024
Mal Municipality & Anr.
Vs.
Shiv Ratan Agarwal & Ors.

Mr. Debojyoti Dutta
Mr. Siddhartha Banerjee
Mr. Amritam Mondal
Mr. Debasish Mukhopadhyay
Ms. Jeenia Rudra
Ms. Ananya Chakraborty
Ms. Sipra Naskar

... For the Review
Applicants/Petitioners

Mr. Mahim Sasmal
Mr. Suman Kumar Sikder

... For the Respondent no. 2

1. The affidavit as filed by the respondent no. 1/writ petitioner, as directed by this Court vide our earlier order dated 09.8,2024, is taken on record. Learned advocate for the review applicants craves leave to file supplementary affidavit as well as an affidavit-in-reply today. The supplementary affidavit and the affidavit-in-reply, as filed on behalf of the review petitioners are also taken on record.

2. In support of the review petition, learned advocate for the review petitioners at the very outset draws our attention to the judgment as passed by us while dismissing MAT 81 of 2023. Our attention is also drawn to page no. 277 of the Stay Petition being CAN 1 of 2024. It is submitted

that while dismissing MAT 81 of 2023, the present review petitioners being the appellants in the said appeal due to bona fide mistake could not produce the letter dated 04.03.2019 wherefrom it would reveal that the respondent no. 1/writ petitioner under cover of the said letter has specifically stated that they have completed 50% to 60% works of the relevant five work orders.

3. It is submitted that this letter was discovered from the office file of the review petitioners after passing of the judgment and in the event the said letter was placed before this Court at the time of hearing of the said appeal the findings of ours would have been different. It is further submitted that since from the letter dated 04.03.2019 it would reveal that the respondent no. 1/writ petitioner had completed 50% to 60% works in respect of five work orders, the judgment as passed in MAT 81 of 2023, while affirming the order dated 15.6.2023 as passed by the learned Single Judge, may be restricted to maximum 60% of the tendered amount as mentioned in the writ petition.

4. Per contra, learned counsel for the respondent no. 1/writ petitioner draws our attention to the affidavit, as filed today in Court. He submits

before this Court that it is specific case of the respondent no. 1/writ petitioner that the letter dated 04.03.2019, as claimed to have been issued by the writ petitioner, is forged one and at no point of time such letter was issued by the writ petitioner in favour of the review petitioner/appellant i.e Mal Municipality. In course of hearing, learned advocate for the review petitioner has handed over the original letter dated 04.03.2019.

5. On perusal of the entire materials before us and after giving due consideration of the submissions of the learned advocates for the contending parties it appears to us that while passing our judgment dated 30th April, 2024 in MAT 81 of 2023, we concentrated ourselves on two letters, namely; letter dated September 09, 2022 and April 26, 2022 and we have come to a finding that those two subsequent letters have got no bearing with regard to the claim of the writ petitioner.

6. Admittedly, the letter dated 04.03.2019 was not produced either before the Writ Court or before us while we were hearing the appeal. Admittedly, from the letter dated 04.03.2019 we found that there is a clear communication from the respondent no. 1/writ petitioner that in respect of five work orders they have completed 50% to 60%

works. Such being the position, it appears to us that on account of production of the aforesaid letter dated 04.03.2019 which could not be produced by the review petitioner either at the time of hearing of the writ petition or at the time of hearing of the appeal being MAT 81 of 2023, the situation has become slightly changed to come to a finding that the respondent no. 1/writ petitioner had completed 60% of the said five work orders. In view of the subsequent disclosure of the aforesaid letter dated 04.03.2019, as produced before us, in course of hearing of the instant review petition, we find that sufficient has been made in the review petition, we find that sufficient case has been made for entertaining the review petition.

7. Accordingly, while disposing the instant review petition we direct that our judgment dated 30th April, 2024 as passed in MAT 81 of 2023 shall remain restricted to the claim of the respondent no. 1/writ petitioner to the extent of 60% of the tendered amount which is to be paid within three weeks from today.

8. We find that there is a dispute with regard to authenticity of the letter dated 4th March, 2019, as it has been clearly contended in the writ petition that this letter has been forged and fabricated. In

view of the aforesaid, the claim of the review petitioner is restricted to the extent of 60%, as indicated above and for the balance 40%, it would be open for the writ petitioner to take appropriate steps in accordance with law. If any step is taken within a period of two months from date, the petitioner may be entitled to the benefit of Section 14(2) of the Limitation Act, 1963.

9. Mr. Dutta, the learned Counsel for the review applicants, has strenuously argued that the letter dated 4th March, 2019 is genuine but could not explain the reason for the Municipality to respond to the said letter or the future letter making any reference to the said letter in denying its claim. Even if, we assume that any such letter has been submitted by the writ petitioner, there is nothing on record to show that the work claimed to have been executed by the writ petitioner in terms of the letter dated 4th March, 2019 has been disputed by the Municipality whereby it gives a clear impression that in so far 60% of the total value of the work orders awarded to the writ petitioner their entitlement cannot be denied and/or disputed.

10. Mr. Dutta has produced the letter of the writ petitioner claiming it to be the original and genuine. In a writ petition, ordinarily the Court

will not go into the forensic examination of the letter and assess of the quality of the objection raised against the said letter and it would be proper to adjudicate and/or decide the genuinity of the said letter in an appropriate proceeding. However, having regard to the fact that it may be presumed for the time being that a Municipality would not indulge in fabrication and/or forging of a letter as public money is involved, we are prima facie accepting the said letter and modify the relief to the extent indicated herein above.

11. On such consideration, the Review application being RVW 5 of 2024 and CAN 1 of 2024 stand disposed of.

12. All parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

(Soumen Sen, J.)

(Partha Sarathi Sen, J.)

